

*independent or special districts; amending Minnesota Statutes 1971, Chapter 122, by adding a section.*

Be it enacted by the Legislature of the State of Minnesota:

**Section 1. EDUCATION; SCHOOL DISTRICTS; UNORGANIZED TERRITORIES; ST. LOUIS COUNTY.** Sections 122.41 to 122.46 shall not apply to that unorganized territory of St. Louis county which was organized into Independent School District No. 710 pursuant to resolution of the St. Louis county board of commissioners June 23, 1970, as amended.

Approved May 24, 1973.

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## CHAPTER 732—H.F.No.491

[Coded]

*An act relating to labor and industry; providing for safe and healthful working conditions for working men and women; authorizing the commissioner of labor and industry to promulgate standards and rules and regulations therefor; creating an occupational safety and health advisory board; prescribing penalties; amending Minnesota Statutes 1971, Section 175.16; repealing Minnesota Statutes 1971, Sections 182.01 to 182.08; 182.10 to 182.62; and 183.05 to 183.34.*

Be it enacted by the Legislature of the State of Minnesota:

**Section 1. [182.65] OCCUPATIONAL SAFETY AND HEALTH ACT OF 1973; CITATION AND LEGISLATIVE PURPOSE.** Subdivision 1. Sections 1 to 26 of this act shall be known as the "Occupational Safety and Health Act of 1973."

Subd. 2. The legislature finds that the burden on 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 and education, and in the earnest cooperation of government, employers and employees; and that a program of regulation and enforcement is a necessary supplement to these more basic programs.

The legislature declares it to be its purpose and policy through the exercise of its powers to assure so far as possible every working

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man and woman in the state of Minnesota safe and healthful working conditions and to preserve our human resources by

(a) Authorizing the occupational safety and health advisory board to advise, consult with or recommend on any matters relating to the Minnesota occupational safety and health plan to the commissioner of labor and industry and the secretary of the state board of health and by authorizing the commissioner of labor and industry to promulgate and enforce mandatory occupational safety and health standards applicable to employers and employees in the state of Minnesota;

(b) Encouraging employers and employees to increase their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(c) Providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(d) Providing for research in the field of occupational safety and health; including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(e) 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;

(f) Utilizing advances already made by federal laws and regulations providing safe and healthful working conditions;

(g) Providing 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;

(h) 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;

(i) 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;

(j) Encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment;

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(k) Providing consultation to employees and employers which will aid them in complying with their responsibilities under this act where such consultation does not interfere with the effective enforcement of this act;

(l) Providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health.

Sec. 2. [182.651] **DEFINITIONS.** Subdivision 1. For the purpose of sections 1 to 26, the terms defined in this section have the meanings given them.

Subd. 2. "Commissioner" means the commissioner of labor and industry or his duly designated representative.

Subd. 3. "Commission" means the occupational safety and health review commission established pursuant to section 15.

Subd. 4. "Board" means the occupational safety and health advisory board.

Subd. 5. "Department" means the department of labor and industry.

Subd. 6. "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, the state of Minnesota and its political subdivisions, or any group of persons.

Subd. 7. "Employer" means a person who has one or more employees and includes any person acting in the interest of, or as a representative of, an employer and includes the state and all of its political subdivisions.

Subd. 8. "Federal standard" means a standard, or modification thereof, adopted by a rule promulgated under section 6 of the federal occupational safety and health act of 1970 P.L. 91-596.

Subd. 9. "Employee" means any person suffered or permitted to work by an employer, including any person acting directly or indirectly in the interest of or as a representative of, an employer, and shall include state, county, village, borough, town, city, school district, or governmental subdivision.

Subd. 10. "Place of employment" means any factory, plant, foundry, construction site, farm workplace, premises, vehicle or any other work environment where any employee is during the course of his employment.

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Subd. 11. "Standard" means an occupational safety and health standard promulgated by the commissioner which requires conditions, or the adoption or use of one or more practices, means, methods, operations or processes reasonably necessary or appropriate to provide safe and healthful employment and places of employment.

Subd. 12. "Serious violation" means a violation of any standard, rule, regulation or order which creates 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 a place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

Subd. 13. "Act" means the Minnesota occupational safety and health act of 1973.

Sec. 3. [182.652] **COVERAGE.** Subdivision 1. The provisions of this act or any standard or regulation promulgated pursuant to this act shall apply to all places of employment within this state except as noted in subdivision 2.

Subd. 2. Nothing in this act shall apply to any working conditions which are under the exclusive jurisdiction of the federal government.

Subd. 3. The department, in the exercise of its duties under this act, shall give due consideration to all federal regulations of concurrent jurisdiction and shall avoid unnecessary duplication of enforcement efforts.

Sec. 4. [182.653] **RIGHTS AND DUTIES OF EMPLOYERS.** Subdivision 1. Rights and duties of employers include but are not limited to those specified in this section.

Subd. 2. 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 harm to his employees.

Subd. 3. Each employer shall comply with occupational safety and health standards or regulations promulgated pursuant to this act.

Subd. 4. Each employer shall refrain from any unreasonable restraint on the right of the commissioner or his authorized representative to inspect the employer's place of business. Each employer shall assist the commissioner, or his authorized representative, in the performance of inspection duties by supplying or by

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making available information dealing with injury reports, general safety records, and other records required under this act, and any necessary personnel or necessary inspection aids.

Subd. 5. Any employer or association of employers is entitled to participate in the development, revision and revocation 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.

Subd. 6. Any employer is entitled, under section 6, to seek an order granting a variance from an occupational safety and health standard.

Subd. 7. Any employer is entitled, under section 19, to protection of his trade secrets and other legally privileged communications.

Sec. 5. [182.654] **RIGHTS AND DUTIES OF EMPLOYEES.**  
Subdivision 1. Rights and duties of employees include but are not limited to those specified in this section.

Subd. 2. Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this act which are applicable to his own actions and conduct.

Subd. 3. Any employee or association of employees is entitled to participate in the development, revision and revocation 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.

Subd. 4. Each employee or his authorized representative shall be notified by his 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.

Subd. 5. The employee representative shall be given the opportunity to participate in any hearing which concerns an application by his employer for a variance from a standard promulgated under this act.

Subd. 6. Any employee who may be adversely affected by a standard or variance issued pursuant to section 6 of this act may file a petition stating his position with regard to proposed standard or variance with the commissioner.

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Subd. 7. 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 be provided by his employer with the opportunities provided in section 6, subdivision 10.

Subd. 8. Subject to regulations issued pursuant to this act any employee or authorized representative of employees has the right to request an inspection and to consult with the commissioner at the time of the physical inspection of any workplace as provided in section 10.

Subd. 9. No employee shall be discharged or in any way 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. Discriminatory acts are subject to the sanctions contained in section 20.

**Sec. 6. [182.655] OCCUPATIONAL SAFETY AND HEALTH STANDARDS.** Subdivision 1. Minnesota Statutes, Chapter 15 notwithstanding, standards and variances shall be proposed, granted, adopted, modified or revoked by the commissioner in accordance with the procedures of this section.

Subd. 2. Whenever the commissioner, in order to serve the objectives of this act, determines that a rule should be promulgated under this section, establishing, modifying or revoking an occupational safety and health standard, the commissioner shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard and shall afford interested persons a period of 30 days after publication to submit written data or comments.

On or before the last day of the period provided for the submission of written data or comments, any interested person may file with the commissioner written objections to the proposed rule, 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 publish a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

Subd. 3. Within 60 days after the expiration of the period provided for the submission of written data or comments or within 60 days after the completion of any hearing, the commissioner shall issue a rule promulgating, modifying, or revoking an occupational

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safety or health standard or make a determination that a rule should not be promulgated. Such a rule 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 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 standard.

Subd. 4. The commissioner, in promulgating standards dealing with toxic materials or harmful physical agents under this section, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best 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. Development of standards under this subdivision shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in the terms of objective criteria and of the performance desired.

Subd. 5. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of subdivision 7 and establishes that:

(a) He is unable to comply with a 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 standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(b) He is taking all available steps to safeguard his employees against the hazards covered by the standard; and

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

Subd. 6. Any temporary order issued under this section 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 the employer's program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and to employee representative and

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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 a hearing. No temporary order may be in effect for 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. No such order shall be renewed unless the requirements of this section are met and an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim order may remain in effect for longer than 180 days.

Subd. 7. An application for a temporary order under this section 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 first hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;

(c) A statement of the steps being taken and which will be taken, with specific dates, to protect employees against the hazards 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 specific dates, to come into compliance with the standard; and

(e) A certification that he has informed his employees of the application by giving a copy thereof to their authorized 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 appropriate means, and that he has informed his employees of their right to petition the commissioner for a hearing.

Subd. 8. 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 a 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

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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. 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 subdivision at any time after six months from its issuance.

Subd. 9. 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 or the United States secretary of labor or the United States secretary of health, education and welfare, designed to demonstrate or validate new and improved techniques to safeguard the health and safety of workers.

Subd. 10. Any standard promulgated under this section 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, if feasible engineering and administrative methods of protection alone do not provide adequate protection, and this equipment shall be made available by or at the cost of the employer. Such standards shall provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary and appropriate for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and 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 results of such examinations or tests shall be furnished only to the commissioner and, at the request of the employee, to his physician.

Subd. 11. The commissioner shall provide for an emergency temporary standard to take immediate effect upon publication if he determines:

(a) 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

(b) That such emergency standard is necessary to protect employees from such danger. Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in subdivision 2.

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Upon publication of such standard or standards, which interested persons may receive upon request and payment of fees, the commissioner shall commence a proceeding in accordance with subdivision 2 and the standard as published shall also serve as a proposed rule for the proceeding; the commissioner shall promulgate a standard under this section no later than six months after the publication of the emergency standard.

Subd. 12. Standards promulgated under this section shall not be different from federal standards where the standard significantly affects interstate commerce, unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.

Subd. 13. All standards adopted by the commissioner shall be at least as effective as those which are presently or will, in the future, be promulgated under section 6 of the federal occupational safety and health act of 1970.

Subd. 14. The commissioner may recommend for adoption those portions of current occupational health and safety standards deemed significant and deserving of mandatory status adopted by the Threshold Limit Value Committees of the American Conference of Governmental Industrial Hygienists, the American National Standards Institute, or other recognized national standard-setting organizations and recommended to the commissioner by the board; and may further periodically adopt changes in such standards under the same circumstances but not more often than once a year.

**Sec. 7. [182.656] OCCUPATIONAL SAFETY AND HEALTH ADVISORY BOARD.** Subdivision 1. An occupational safety and health advisory board consisting of 12 members appointed by the governor is created to advise the department. The board members shall be chosen so that three shall represent management; three shall represent labor; three shall represent occupational safety and health professions; and three shall represent the general public.

The governor shall designate one of the public members as chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health. The commissioner and the secretary of the state board of health shall be exofficio members and the commissioner shall serve as secretary of the board. The board shall elect from its members, by a concurring vote of not less than six members, other officers as necessary to carry out the duties thereof.

Subd. 2. The governor, with the advice and consent of the senate, shall appoint the members of the board for terms of four years, or until their successors are appointed and qualified, except that of the members first appointed, three shall be appointed for

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four years, three for three years, three for two years, and three for one year. Vacancies shall be filled by appointment for the unexpired term by the governor in the same manner as the original appointments

Subd. 3. A majority of the board members constitutes a quorum. Members of the board, other than the secretary, shall receive \$35 for each day or part thereof, not to exceed 25 days in any calendar year, necessarily spent in the discharge of their duties. Reimbursement for expenses incurred shall be made pursuant to the rules governing state employees. The board shall meet not less than four times in any calendar year, at the call of its chairman, or upon request of any six members. A tape recording of the meeting with the tape being retained for a one-year period will be available upon the request and payment of costs to any interested party.

Sec. 8. [182.657] **RULES AND REGULATIONS.** The commissioner shall promulgate, in accordance with Minnesota Statutes, Chapter 15, such rules and regulations as may be deemed necessary to carry out the responsibilities of this act, except for those responsibilities contained in section 6, including rules and regulations dealing with the inspection of places of employment.

Sec. 9. [182.658] **POSTING REQUIREMENTS.** The commissioner shall issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this act including the provisions of applicable standards.

Sec. 10. [182.659] **INSPECTIONS.** Subdivision 1. In order to carry out the purposes of this act, the commissioner, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized to enter without delay and at reasonable times any place of employment; and 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, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

Subd. 2. In making his inspections and investigations under this act the commissioner shall have the power to administer oaths, certify as to official acts, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and production of papers, books, documents, records and testimony. In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, the district court shall, upon application of

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the commissioner, compel obedience proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify therein.

Subd. 3. Subject to regulations issued by the commissioner, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the commissioner during the physical inspection of any workplace under subdivision 1 for the purpose of aiding such inspection. The authorized representative of employees shall also be given the opportunity to participate in any conference or discussion held prior to or during any such inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees concerning matters of health and safety in the workplace. No employee as a consequence of aiding such inspection shall lose any privilege or payment that he would otherwise earn, such loss being a discriminatory act subject to the sanctions contained in section 20.

Subd. 4. Any employee or representative of employees who believes 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 to the commissioner of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice 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 on any record published, released, or made available pursuant to section 14, subdivision 4. If upon receipt of such notification the commissioner determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such danger or violation exists. An inspection conducted pursuant to a complaint may cover all of the premises of the employer and shall not be limited to that portion of the premises specified in the notice. If the commissioner determines that there are no reasonable grounds to believe that such a violation or danger exists he shall notify the employee or representative of employees in writing of such determination. Upon such notification the employee or the employee representative may request the commissioner to reconsider his determination. Upon receiving such request the commissioner shall review his determination.

Subd. 5. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the commissioner, in writing, of any violation of

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this act which they have reason to believe exists in such workplace. The commissioner shall, by regulation, establish procedures for informal review of any refusal by a representative of the commissioner to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the commissioner's final disposition of the case.

Subd. 6. Upon the refusal of an owner, operator, or agent in charge to permit entry as specified in this act, the commissioner may apply for an order in the district court in the county in which he was refused entry, which compels the employer to permit the commissioner to enter and inspect the place of employment.

Subd. 7. Advance notice may not be authorized by the commissioner except:

(a) In cases of apparent imminent danger to enable the employer to abate the danger as quickly as possible;

(b) In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

(c) Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection;

(d) In other circumstances where the commissioner determines that the giving of advance notice would enhance the probability of an effective and thorough inspection; and

(e) The reason for advance notice and the results will be recorded and retained on an appropriate form.

When advance notice is given to an employer, such notice shall also be given by the commissioner to the authorized representative of employees if the identity of such representative is known to the employer.

Violations of this subdivision are subject to the sanctions contained in section 18, subdivision 3.

Sec. 11. [182.66] CITATIONS. Subdivision 1. If, upon inspection or investigation, the commissioner believes that an employer has violated a requirement of section 4, subdivisions 2, 3 or 4, or any standard, rule, regulation or order prescribed pursuant to this act, he shall with reasonable promptness and in no event later than six months following the inspection issue to the employer by certified mail a written citation. The citation shall be in writing, as shall describe with particularity the nature of the violation, includ-

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ing a reference to the provision of the act, standard, rule, regulation or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.

Subd. 2. 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 a violation referred to in the citation occurred.

Subd. 3. 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 safety and health.

Sec. 12. [182.661] **ENFORCEMENT.** Subdivision 1. If, after an inspection or investigation, the commissioner issues a citation under section 11, he shall notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 17 and that the employer has 15 working days within which to notify in writing the commissioner that he wishes to contest the citation, proposed assessment of penalty, or the period of time fixed in the citation given for correction of violation. If within 15 working days from the receipt of the notice issued by the commissioner the employer fails to notify the commissioner in writing that he intends to contest the citation or proposed assessment of penalty, and no notice contesting either the citation or the time fixed for abatement in the citation is filed by any employee or representative of employees under section 12, subdivision 3 within such time, the citation and assessment, as proposed, shall be deemed a final order of the commission and not subject to review by any court or agency.

Subd. 2. If the commissioner 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 commission in 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 17 by reason of such failure, and that the employer has 15 working days within which to notify in writing the commissioner that he wishes to contest the commissioner's notification or the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the commissioner, the employer fails to notify in writing the commissioner that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the commission and not subject to review by any court or agency.

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Subd. 3. If an employer notifies the commissioner that he intends to contest the citation or the proposed assessment of penalty or the employee or the employee representative notifies the commissioner that he intends to contest the time fixed for abatement in the citation issued under section 11, or notification issued under subdivisions 1 or 2, the commission shall conduct a hearing in accordance with the applicable provisions of Minnesota Statutes, Chapter 15, for hearings in contested cases. 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 subdivision.

Subd. 4. Enforcement of this section shall continue to be at least as effective as the enforcement as provided for in the federal occupational safety and health act of 1970.

Sec. 13. [182.662] PROCEDURES TO COUNTERACT SERIOUS AND IMMINENT DANGERS. Subdivision 1. If an inspector finds any condition or practice in any place of employment which presents a substantial probability that the condition or practice could result in death or serious physical harm, he shall issue an order, after consultation either by phone or in person with the commissioner and upon the commissioner's recommendation, which prohibits the employment or continuing operational process until such steps as may be necessary are taken to correct or remove the situation. This order shall not be effective for a period longer than three days.

Subd. 2. The district courts 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 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 of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

Subd. 3. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this act. The proceeding shall be as provided by the rules of civil procedure of the district courts, except that no

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temporary restraining order issued without notice shall be effective for a period longer than five days.

Subd. 4. The venue for actions brought under this section shall be any county in which the commissioner has an office, or in which the place of employment, where such a danger exists, is located.

Subd. 5. Whenever and as soon as an inspector concludes that conditions or practices described in subdivision 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.

Subd. 6. 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 district court for a writ of mandamus to compel the commissioner to seek such an order and for such further relief as may be appropriate.

**Sec. 14. [182.663] STATISTICS AND RECORDKEEPING.**  
Subdivision 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. Such programs may cover all employments within the scope of this act. The commissioner shall compile accurate statistics on work deaths, injuries and illnesses which shall include all deaths and 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, restrictions of work or motion, or transfer to another job. Such programs shall be developed so that the state may coordinate and cooperate with a federal data collection and recordkeeping program.

Subd. 2. 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 regulations as necessary or appropriate for the enforcement of this act or for the development of information regarding the causes and prevention of occupational accidents and illnesses. The records which the commissioner shall require the employer to make, keep and preserve shall be at least as effective as those required by the United States Department of Labor.

Subd. 3. 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 under this act. Such regulations shall

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provide employees or their representatives with an opportunity to have access to the records thereof. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring and to have access to the records thereto. In order to carry out the provisions of this section, such regulations may include provisions requiring employers to conduct periodic inspections. 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 occupational safety and health standard promulgated under this act, and shall inform any employee who is being thus exposed of the corrective action being taken.

Subd. 4. The commissioner is authorized to compile, analyze, and publish annually, either in summary or detailed form, all reports or information obtained under this section, and to cooperate with the United States Department of Labor in obtaining national summaries of occupational deaths, injuries and illnesses. The commissioner shall preserve the anonymity of each employee with respect to whom medical reports or information is obtained.

Subd. 5. Any information obtained by the commissioner under this act shall be obtained with a minimum burden upon employers, especially those operating small business. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

**Sec. 15. [182.664] OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.** Subdivision 1. There is hereby created the occupational safety and health review commission, consisting of three members to be appointed by the governor, by and with the advice and consent of the senate, each member to serve for a period of six years. The governor shall designate one member to serve as chairman. At the time of the initial appointment, one member shall be designated to serve for two years, one for four years, one for six years. The review commission members shall be chosen so that one shall represent management; one shall represent labor; and one shall represent the general public. The members shall be chosen from persons qualified by education, training or experience to carry out the functions of the commission. Service on such commission for a term shall not render a person ineligible for reappointment. Each member shall be reimbursed for those expenses reasonably incurred by him in the performance of his duties and shall receive \$35 for each day or part thereof, necessarily spent in the discharge of their duties. In the event a member is unable to complete his term, his replacement shall serve only the remainder of the term of the member he replaces, unless reappointed at the end thereof.

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Subd. 2. The function of the review commission shall be to review contested citations issued under section 11, contested monetary penalties assessed under section 17 that are not precluded from review by section 12 and all final orders of the commissioner in contested cases. The commission may affirm, modify or revoke a citation, monetary penalty or any contested order of the commissioner.

Subd. 3. The review commission or its appointed hearing examiners may hold hearings at places of convenience to the parties concerned. The powers of the commission in the conduct of hearings, including the power to administer oaths and subpoena persons, may be exercised on its behalf by a member, members or a hearing examiner appointed by the commission chairman. The commission may administer oaths and subpoena persons, including parties, as witnesses and may compel them to produce documentary evidence for hearings. A notice stating the time and place of the hearing must be given ten days in advance of such a hearing to the parties and copies of the notice of such hearing shall be posted by the employer at such places as the commission shall require. The hearings shall be open to the public and the records of hearings shall be maintained and available for examination. The hearing shall be conducted in compliance with rules contained in Minnesota Statutes, Chapter 15. The rules of the commission shall provide affected employers, employees or their representatives an opportunity to participate as parties provided they file notice at least five days before the start of the hearing.

Subd. 4. It shall be the duty of the department to provide such equipment, supplies, clerical assistance, and other needs, as the commission may reasonably require.

Subd. 5. For the purpose of carrying out its functions under this act, two members of the commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members. The findings and decision of a hearing examiner may be appealed to the review commission by the employer, employee, or their authorized representatives, within 30 days following publication of the hearing examiner's findings and decision. The review commission shall have authority to revise, confirm or reverse the findings and decision of hearing examiners.

Sec. 16. [182.665] **JUDICIAL REVIEW.** Any person aggrieved by a final order of the commission in a contested case, or by any standard, rule, regulation or order promulgated by the commissioner, is entitled to judicial review thereof in accordance with the applicable provisions of Minnesota Statutes, Chapter 15.

Sec. 17. [182.666] **PENALTIES.** Subdivision 1. Any employer who wilfully or repeatedly violates the requirements of section 4, or

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any standard, rule, or order promulgated under the authority of this act, may be assessed a fine not to exceed \$10,000 for each violation.

Subd. 2. Any employer who has received a citation for a serious violation of his duties under section 4, or any standard, rule, or order promulgated under the authority of this act, shall be assessed a fine not to exceed \$1,000 for each such violation.

Subd. 3. Any employer who has received a citation for a violation of his duties under section 4, subdivisions 2, 3 and 4, where such violation is specifically determined not to be of a serious nature as provided in section 2, subdivision 12, may be assessed a fine of up to \$1,000 for each such violation.

Subd. 4. Any employer who fails to correct a violation for which a citation has been issued under section 11 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the commissioner in the case of any review proceedings under this act 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.

Subd. 5. Any employer who violates any of the posting requirements, as prescribed under this act, shall be assessed a fine of up to \$1,000 for each violation.

Subd. 6. The commissioner shall have authority to assess all proposed fines provided in this section, giving due consideration to the appropriateness of the fine with respect to the size of the business of the employer, the gravity of the violation, the good faith of the employer, and the history of previous violations.

Subd. 7. Fines imposed under this act shall be paid to the commissioner for deposit in the general fund and may be recovered in a civil action in the name of the department brought in the district court of the county where the violation is alleged to have occurred or the district court where the commissioner has an office.

Sec. 18. [182.667] **CRIMINAL PENALTIES.** Subdivision 1. 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 act shall, upon conviction, be guilty of a gross misdemeanor and be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

Subd. 2. Any employer who wilfully or repeatedly violates the requirements of section 4, any safety and health standard promulgated under this act, any existing rule or regulation promulgated

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by the department, may be punished by a fine of not more than \$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 \$20,000 or by imprisonment for not more than one year, or by both.

Subd. 3. Any person who gives advance notice of any inspection to be conducted under the authority of this act, without the consent of the commissioner or his designees shall, upon conviction, be assessed a fine of up to \$1,000 or by imprisonment for not more than six months or by both.

Sec. 19. [182.668] **TRADE SECRETS.** All information reported to or otherwise obtained by the commissioner or his representative in connection with any inspection or proceeding under this act which contains or which might reveal a trade secret shall be considered confidential except that such information may be disclosed to other officers or employees concerned with carrying out this act or when relevant in any proceeding under this act. The commissioner shall issue such orders as may be appropriate to protect the confidentiality of trade secrets by allowing, upon the request of an employer any authorized representative of employees in inspections of trade secrets areas or discussions involving trade secrets to be replaced by an employee authorized by the employer; by permitting the employer to screen out trade secret details where photographs are deemed essential to the investigation; and by allowing the employer to restrict samples to be taken where trade secrets might be exposed.

Sec. 20. [182.669] **DISCRIMINATION.** Subdivision 1. Any employee who believes that he has been discharged or otherwise discriminated against by any person because such employee has exercised any right authorized under the provisions of this act may, within 30 days after such alleged discrimination occurs, file a complaint with the commissioner alleging the discriminatory act. 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 a discriminatory act was committed against an employee he shall issue a complaint and serve on the employer, by registered or certified mail, a written notice of hearing together with a copy of the complaint, requiring the respondent to answer the allegations of the complaint at a hearing before the commission at a time and place specified in the notice, not less than ten days after service of said complaint. A copy of the notice shall be furnished to the charging party, and members of the commission.

Subd. 2. At any time after the commissioner has determined that there is probable cause to believe that a respondent has

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engaged in a discriminatory act, the commissioner may file a petition in the district court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this section, including an order or decree restraining him from doing or procuring any act tending to render ineffectual any order the commission may enter with respect to the complaint. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, but no such relief or order extending beyond ten days shall be granted except by consent of the respondent or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory act. The Minnesota rules of civil procedure shall apply to such application, and the district court shall have authority to grant or deny such relief sought on such conditions as it deems just and equitable.

Subd. 3. The commission shall hear the complaint. The hearing shall be conducted at a place designated by the commissioner, within the county where the unfair discriminatory practice occurred or where the respondent resides or has his principal place of business. The hearing shall be conducted in accordance with Minnesota Statutes, Sections 15.0418, 15.0419, 15.0421, and 15.0422, and is subject to appeal in accordance with section 15.0424.

Subd. 4. If the commission finds that the respondent has engaged in a discriminatory act, the commission shall make findings of fact and conclusions of law, and shall issue an order directing the respondent to cease and desist from the discriminatory practice found to exist and to take such affirmative action as in the judgment of the panel or examiner will effectuate the purposes of this chapter. Such affirmative action shall include but shall not be limited to rehiring or reinstatement of the employee to his former position, fringe benefits, seniority rights, back pay, compensatory damages, reasonable attorney fees and any other consideration to which he would have been entitled had he not been discriminated against.

The commission shall cause the findings of fact, conclusions of law, and order to be served on the respondent personally, the charging party by registered or certified mail, and shall furnish copies to the attorney general and the commissioner.

Subd. 5. If the commission makes findings of fact, conclusions of law, and an order in favor of the respondent, such order shall be a final decision of the department.

Subd. 6. Any person aggrieved by a final decision of the commission may seek judicial review in the district court for the judicial district in which the hearing of the commission was held.

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The district court review proceedings shall conform to Minnesota Statutes, Sections 15.0424 and 15.0425.

**Sec. 21. [182.67] ADMINISTRATIVE AUTHORITY.** Subdivision 1. The department has sole authority and responsibility for the administration and enforcement of this act. The commissioner will consult with the department of health in matters related to occupational health and will through written agreement determine those reasonably appropriate services which the department of health will provide in order to effectuate the provisions of this act. Any other department or official of this state or political subdivision thereof which would in any way affect the administration or enforcement of this act shall cooperate and coordinate all such activities with the department to assure orderly and efficient administration and enforcement of this act.

Subd. 2. The department is authorized and empowered to make all contracts and to do all things necessary to cooperate with the United States government, and to qualify for, accept and disburse any grant from the United States government intended for the administration of this act.

Subd. 3. The commissioner shall designate a liaison officer from his department whose duty it shall be to insure the maximum possible consistency in procedures and to insure minimum duplication between the department and the other agencies that may be involved in occupational safety and health.

**Sec. 22. [182.671] WORKMEN'S COMPENSATION.** Nothing in this act shall be construed to supersede or in any manner affect the workmen's compensation law of this state.

**Sec. 23. [182.672] REPRESENTATION IN CIVIL LITIGATION.** The attorney general shall represent the commissioner in all civil actions arising under this act.

**Sec. 24. [182.673] TRAINING AND EDUCATION.** The commissioner shall promulgate rules and regulations for the establishment of programs for the education of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in places of employment covered by this act, and consult with and advise employers and employees, and organizations representing employers and employees, as to effective means of preventing occupational injuries and illnesses.

**Sec. 25. [182.674] REPORTS.** Subdivision 1. The commissioner shall make all reports to the United States department of labor which are required by the assistant secretary of labor.

Subd. 2. Employers shall make all reports to the commissioner and to the assistant secretary of the United States department of labor as are required.

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Sec. 26. Minnesota Statutes 1971, Section 175.16, is amended to read:

175.16 **DIVISIONS.** The department of labor and industry shall consist of the following divisions: division of workmen's compensation, division of boiler inspection, division of ~~accident prevention~~ occupational safety and health, division of statistics, division of women and children, division of employment, and such other divisions as the commissioner may deem necessary and establish. Except for the division of workmen's compensation, each division of the department and persons in charge thereof shall be subject to the supervision of the commissioner and, in addition to such duties as are or may be imposed on them by statute, shall perform such other duties as may be assigned to them by the commissioner.

Sec. 27. **REPEALER.** Minnesota Statutes 1971, Sections 182.01; 182.02; 182.03; 182.04; 182.05; 182.06; 182.07; 182.08; 182.10; 182.11; 182.12; 182.13; 182.14; 182.15; 182.16; 182.17; 182.177; 182.178; 182.179; 182.19; 182.20; 182.21; 182.22; 182.23; 182.24; 182.25; 182.26; 182.27; 182.28; 182.29; 182.30; 182.31; 182.32; 182.33; 182.34; 182.35; 182.36; 182.37; 182.38; 182.39; 182.40; 182.41; 182.42; 182.43; 182.44; 182.45; 182.46; 182.47; 182.48; 182.49; 182.50; 182.51; 182.52; 182.53; 182.54; 182.55; 182.56; 182.57; 182.58; 182.59; 182.60; 182.61; 182.62; 183.05; 183.06; 183.07; 183.08; 183.09; 183.10; 183.11; 183.12; 183.13; 183.14; 183.15; 183.16; 183.17; 183.18; 183.19; 183.20; 183.21; 183.22; 183.23; 183.24; 183.25; 183.26; 183.27; 183.28; 183.29; 183.30; 183.31; 183.32; 183.33; and 183.34 are repealed.

Approved May 24, 1973.

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## CHAPTER 733—H.F.No.595

*An act relating to pollution, requiring the pollution control agency to hold public hearings before granting variances; amending Minnesota Statutes 1971, Section 116.07, Subdivision 5.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1971, Section 116.07, Subdivision 5, is amended to read:

Subd. 5. **POLLUTION CONTROL; VARIANCES; HEARINGS.** The pollution control agency may after public hearing grant

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