

House Bill 1424

By: Representatives Drenner of the 66<sup>th</sup>, Orrock of the 56<sup>th</sup>, Benfield of the 67<sup>th</sup>, Turnquest of the 73<sup>rd</sup>, Henson of the 65<sup>th</sup> and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 45 of the Official Code of Georgia Annotated, relating to public officers and  
2 employees, so as to enact the "Georgia Public Service Employees' Occupational Safety and  
3 Health Act"; to ensure that all public employees can be provided with safe and healthful  
4 work environments free from recognized hazards; to provide for the promulgation of  
5 standards to protect the health and safety of the state's public workforce; to provide for other  
6 related matters; to provide an effective date; to repeal conflicting laws; and for other  
7 purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 To amend Title 45 of the Official Code of Georgia Annotated, relating to public officers and  
11 employees, is amended by adding after Chapter 22 a new Chapter 22A to read as follow:

12 **"CHAPTER 22A**

13 45-22A-1.

14 This chapter shall be known and may be cited as the "Georgia Public Service Employees'  
15 Occupational Safety and Health Act."

16 45-22A-2.

17 As used in this chapter, the term:

- 18 (a) 'Commissioner' means the Commissioner of Labor or his or her designee.  
19 (b) 'Employee' or 'public employee' means any person holding a position by appointment  
20 or employment in the service of an employer, as that term is used in this chapter.  
21 (c) 'Employee representative' means an employee authorized by other employees to  
22 represent them, but need not be a formal or recognized bargaining agent.  
23 (d) 'Employer' means the state, any political subdivision of the state, a public agency, or  
24 any other governmental agency or instrumentality thereof, or any county, municipality, or

1 any department, division, bureau, board, council, agency, or authority of any county or  
2 municipality.

3 (e) 'Review Commission' means the Occupational Safety and Health Review Commission  
4 created by Code Section 45-22A-11.

5 (f) 'Secretary' means the Secretary of the United States Department of Labor.

6 (g) 'Workplace' means a place where public employees are assigned to work.

7 42-22A-3.

8 (a) Every employer shall provide each of his or her employees with employment and a  
9 place of employment which are free from recognized hazards which may cause serious  
10 injury, physical harm, or death to such employees.

11 (b) Every employer shall comply with occupational safety and health standards  
12 promulgated under this chapter.

13 (c) Every employee shall comply with all occupational safety and health standards and  
14 regulations promulgated under this chapter which are applicable to his or her own actions  
15 and conduct.

16 45-22A-4.

17 (a) The state shall promulgate a plan for the development and enforcement of occupational  
18 safety and health standards with respect to public employers and public employees, in  
19 accordance with Section 18(c) of the federal Occupational Safety and Health Act of 1970,  
20 29 U.S.C. Section, et seq.

21 (b) The Georgia Department of Labor shall be the sole agency responsible for  
22 administering and enforcing this plan throughout the state.

23 42-22A-5.

24 (a) The Commissioner shall provide for the adoption of all applicable occupational health  
25 and safety standards, amendments, or changes adopted or recognized by the secretary under  
26 the authority of the federal Occupational Safety and Health Act of 1970, 29 U.S.C.  
27 Section, et seq.

28 (b) Notwithstanding the provisions of subsection (a) of this Code section, the  
29 Commissioner shall provide for the adoption of standards necessary for the protection of  
30 the occupational safety and health of public employees when he or she finds:

31 (1) That no applicable federal standard exists; or

32 (2) That a federal standard exists, but conditions in public workplaces in this state require  
33 a different standard, and such state standard will be at least as effective in providing safe  
34 and healthy places of employment as the federal standard.

1 (c) The Commissioner shall promulgate all regulations which are deemed necessary for  
2 the proper administration and enforcement of this chapter.

3  
4 45-22A-6.

5 (a) Any employer may apply to the Commissioner for a temporary order granting a  
6 variance from a standard or any provision thereof promulgated under this chapter.

7 (b) Such temporary order shall be granted only if the employer files an application which  
8 means the requirements of subsection (f) of this Code section and establishes that:

9 (1) He or she is unable to comply with a standard by its effective date because of  
10 unavailability of professional or technical personnel or of materials and equipment  
11 needed to come into compliance with the standard, or because necessary construction or  
12 alteration of facilities cannot be completed by the effective date;

13 (2) He or she is taking all available steps to safeguard employees against the hazards  
14 covered by the standard; and

15 (3) He or she has an effective program for coming into compliance with the standard as  
16 quickly as practicable.

17 (c) Any temporary order issued under this Code section shall prescribe the practices,  
18 means, methods, operations, and processes which the employer must adopt and use while  
19 the order is in effect and state in detail his or her program for coming into compliance with  
20 the standard.

21 (d) Such a temporary order may be granted only after notice to employees and an  
22 opportunity for a hearing, provided the Commissioner may issue one interim order to be  
23 effective until a decision is made on the basis of the hearing.

24 (e) No temporary order may be in effect for longer than the period needed by the employer  
25 to achieve compliance with the standard, or one year, whichever is shorter, except that such  
26 an order may be renewed not more than twice, so long as the requirements of this Code  
27 section are met and an application for renewal is filed at least 90 days prior to the  
28 expiration date of the order. No interim renewal of an order may remain in effect longer  
29 than 180 days.

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

31 (1) A specification of the standard or portion thereof from which the employer or owner  
32 seeks a variance;

33 (2) A representation by the employer, supported by representations from qualified  
34 persons who have first-hand knowledge of the facts represented, that he or she is unable  
35 to comply with the standard or portion thereof and a detailed statement of the reasons  
36 therefor;

1 (3) A statement of the steps he or she has taken and will take, with specific dates, to  
2 protect employees against the hazard covered by the standard;

3 (4) A statement of when he or she expects to be able to comply with the standard and  
4 what steps he or she has taken and what steps he will or she will take, with dates  
5 specified, to come into compliance with the standard; and

6 (5) A certification that he or she has informed his or her employees of the application by  
7 giving a copy thereof to their employee representative, posting a statement giving a  
8 summary of the application, and specifying where a copy may be examined at the place  
9 of places where notices to employees are normally posted, and by other appropriate  
10 means. A description of how employees have been informed shall be contained in the  
11 certification. The information to employees shall also inform them of their right to  
12 petition the Commissioner for a hearing.

13 45-22A-7.

14 (a) Any affected employer may apply to the Commissioner for a permanent rule or order  
15 for a variance from a standard promulgated under this chapter. Affected employees shall  
16 be given notice of each such application and an opportunity to participate in a hearing.

17 (b) The Commissioner shall issue such rule or order for a permanent variance if he or she  
18 determines on the record, after opportunity for an inspection where appropriate and a  
19 hearing, that the proponent of the variance has demonstrated by a preponderance of the  
20 evidence that the conditions, practices, means, methods, operations, or processes used or  
21 proposed to be used by an employer will provide employment and places of employment  
22 which are as safe and healthy as those which would prevail if he or she complied with the  
23 standard.

24 (c) The rule or order for a permanent variance so as issued shall prescribe the conditions  
25 the employer must maintain, and the practices, means, methods, operations, and processes  
26 which he or she must adopt and utilize to the extent they differ from the standard in  
27 question.

28 (d) A rule or order for a permanent variance may be modified or revoked upon application  
29 by an employer, any employee or employee representative, or by the commissioner on his  
30 or her own motion, in the manner prescribed for its issuance under this Code section at any  
31 time after six months from its issuance.

32 45-22A-8.

33 (a) In accordance with the regulations which shall be adopted by the Commissioner, each  
34 employer shall make, keep, preserve, and make available the following records to the  
35 Commissioner:

1 (1) Records regarding the employer's activities relating to this chapter as the  
2 Commissioner deems necessary or appropriate for the enforcement of this chapter or for  
3 developing information regarding the causes and prevention of occupational accidents  
4 and illnesses

5 (2) Records regarding work related deaths, injuries, and illnesses other than minor  
6 injuries which require only first-aid treatment and which do not involve medical  
7 treatment, loss of consciousness, restriction of work or motion, or transfer to another job;  
8 and

9 (3) Records regarding employee exposure to potentially toxic materials or other harmful  
10 physical agents which the regulations require to be monitored or measured. The  
11 regulations shall provide employees or their representatives with an opportunity to  
12 observe the monitoring or measurement and access to the records of the monitoring or  
13 measurement. Each employee or former employee shall be informed of and have access  
14 to all records which will indicate his or her own exposure to toxic materials or harmful  
15 physical agents and the properties, characteristics, and effects thereof. Each employer  
16 shall promptly notify any employee who has been or is being exposed to toxic materials  
17 of harmful physical agents in concentrations or at levels which exceed those prescribed  
18 by any safety and health standard promulgated under this chapter, and shall inform any  
19 employee who is being exposed of the corrective action being taken and the time limit  
20 for compliance pursuant to paragraph (a) of Code Section 45-22A-10.

21 (b) Each employer shall, in accordance with regulations which shall be adopted by the  
22 Commissioner, file with the Commissioner periodic reports based on the records kept  
23 pursuant to this Code section.

24 (c) The Commissioner shall develop and maintain an effective program of collection,  
25 compilation, analysis, and reporting to the public of statistics on work related deaths,  
26 injuries and illnesses other than minor injuries which require only first-aid treatment and  
27 which do not involve medical treatment, loss of consciousness, restriction of work or of  
28 motion, or transfer to another job, except that any information which identifies an  
29 individual employee shall be confidential.

30 (d) The Commissioner shall promote, encourage, or directly engage in programs of  
31 studies, information and communication concerning occupational safety and health  
32 statistics.

33 45-22A-9.

34 (a) Any employee, group of employees, or employee representative who believes that a  
35 violation of a safety standard exists, or that an imminent danger exists, may request an  
36 inspection by giving notice to the Commissioner of the violation or danger.

1 (b) The notice and request shall be in writing, shall set forth the grounds for the notice and  
2 shall be signed by the employee, a group of employees, or the employee representative.

3 (c) Upon the request of the person giving the notice, his or her name or the name of any  
4 employee representative giving the notice shall be withheld. The Commissioner shall  
5 conduct an appropriate inspection at the earliest time possible.

6 (d) The Commissioner shall have the right of immediate entry at reasonable hours and  
7 without advance notice into any workplace to conduct such investigations as he or she may  
8 deem necessary.

9 (e) The authority of the Commissioner to inspect any premises for purposes of  
10 investigating an alleged violation shall not be limited to the alleged violation but shall  
11 extend to any other area of the premises in which he or she has reason to believe that a  
12 violation of any provision of this chapter under his or her jurisdiction exists.

13 (f) A representative of the employer, the employee, or employees giving the notice, and  
14 an employee representative shall be given the opportunity to accompany the Commissioner  
15 during an inspection for the purpose of aiding in such inspection. Where there is no  
16 employee representative, the Commissioner shall consult with a reasonable number of  
17 employees concerning matters of safety in the workplace.

18 (g) No employee who accompanies the Commissioner on an inspection shall suffer any  
19 reduction in wages.

20 (h) Any person who gives advance notice of any inspection to be conducted under this  
21 chapter, without authority from the Commissioner or his or her designees, shall, upon  
22 conviction, be punished by a fine of not more than \$1,000.00 or by imprisonment for not  
23 more than six months, or by both.

24 (i) The Commissioner shall maintain records of the results of any investigation under his  
25 or her jurisdiction, which, after a final agency or judicial action is taken regarding any  
26 order to comply which results from the inspection, shall be made available to the public  
27 upon request, except that any information which identifies an individual employee shall be  
28 confidential.

29 (j) Any information obtained by the Commissioner under this Code section shall be  
30 obtained with a minimum burden upon the employers.

31 45-22A-10.

32 (a) If the Commissioner determines that an employer has violated a provision of this  
33 chapter, or a safety standard or regulation promulgated under this chapter, he or she shall  
34 with reasonable promptness, and in no case more than six months after his or her  
35 determination, issue to the employer a written order to comply which shall describe the  
36 nature of the violation, including a reference to the provision of the Code section, standard,

1 regulation, or order alleged to have been violated, the sanction therefor, where appropriate,  
2 and shall fix a reasonable time for compliance.

3 (b) If the Commissioner issues to an employer an order to comply, the employer shall post  
4 such order or a copy thereof at or near each location of the violation cited in the order so  
5 that it is clearly visible to affected employees. The Commissioner shall make such order  
6 available to employee representatives and affected employees, and shall make the order  
7 available to the public upon request.

8 (c) If no notice of intent to contest any provision of the order is filed with the  
9 Commissioner by an employer, employee, or employee representative within 15 working  
10 days of the issuance of an order to comply, the order shall be deemed final and not subject  
11 to review by any court or agency. If within 15 working days of the issuance of an order to  
12 comply, any employer, employee, or employee representative files a notice with the  
13 Commissioner of intent to contest any provision of the order, the Commissioner shall  
14 immediately advise the Occupational Safety and Health Review Commission of the  
15 notification, and the commission shall afford an opportunity for a hearing. The review  
16 commission shall thereafter issue an order, based on a finding of fact, affirming, modifying,  
17 or vacating the Commissioner's order to comply or the proposed penalty, or directing other  
18 appropriate relief, and the order shall become final 45 days after its issuance. The rules of  
19 procedure prescribed by the review commission shall provide affected employers,  
20 employees, or representatives of affected employees an opportunity to participate as parties  
21 to hearings under this subsection.

22 (d) If the time for compliance with an order of the Commissioner issued pursuant to this  
23 Code section elapses, and the employer has not made a good faith effort to comply, the  
24 Commissioner shall impose a civil administrative penalty of up to \$7,000.00 per day for  
25 each violation of a provision of this chapter, or of a standard or regulation promulgated  
26 under this chapter, or of an order to comply. Any employer who willfully or repeatedly  
27 violates the requirements of this Code section or any standard, rule, order, or regulation  
28 promulgated under this chapter shall be assessed a civil administrative penalty of up to  
29 \$70,000.00 for each violation. If the violation is of a continuing nature, each day during  
30 which it continues after the date given for compliance in accordance with the order of the  
31 Commissioner shall constitute an additional separate and distinct offense.

32 (e) The Commissioner is authorized to compromise and settle any claim for a penalty  
33 under this Code section such amount as, in the discretion of the Commissioner, may appear  
34 appropriate and equitable under all of the circumstances.

1 45-22A-11.

2 (a) There is established an Occupational Safety and Health Review Commission within  
3 the Department of Labor to hear appeals regarding orders to comply and penalties issued  
4 under this chapter.

5 (b) The commission shall consist of three members appointed by the Governor from  
6 among persons who by reason of training, education, or experience are qualified to carry  
7 out the functions of the commission. The Governor shall designate one of the members of  
8 the commission to serve as chairperson.

9 (c) Members of the review commission shall serve terms of four years and until their  
10 successors are appointed. The salaries, compensation, and wages of the members of the  
11 commission shall be established by the Commissioner.

12 (d) The Department of Labor shall provide the review commission with the support staff  
13 necessary for the review commission to perform its duties. The members and the support  
14 staff shall be reimbursed for necessary expenses incurred in the performance of their duties.

15 (e) The review commission shall meet as often as is necessary to hear and rule on appeals  
16 regarding orders to comply and penalties issued under this chapter. The review  
17 commission shall adopt rules with respect to the procedural aspects of its hearings.

18 (f) An employee or employee representative may participate as a party to any proceeding  
19 regarding the employees' employer before the review commission.

20 (g) The review commission shall hear and make a determination upon any proceeding  
21 instituted before it and shall make a report of the determination which shall constitute its  
22 final disposition of the proceedings. The report shall become the final order of the  
23 commission 45 days after the issuance of the report.

24 (h) In the conduct of hearings, the review commission may subpoena and examine  
25 witnesses, require the production of evidence, administer oaths, and take testimony and  
26 depositions.

27 (i) After hearing an appeal, the review commission may sustain, modify, or dismiss a  
28 citation or penalty.

29 42-22A-12.

30 Any person, including the Commissioner, adversely affected or aggrieved by an order of  
31 the review commission, after all administrative remedies provided by this chapter have  
32 been exhausted, is entitled to judicial review in the Court of Appeals of Georgia.

33 45-22A-13.

34 (a) The Attorney General, at the request of and on behalf of the Commissioner, may bring  
35 an action in the superior court to restrain any conditions or practices in any workplace

1 which the Commissioner determines, in accordance with Code Section 45-22A-10, is such  
2 that a danger exists which could reasonably be expected to cause death or serious physical  
3 harm.

4 (b) Any order issued under this chapter may require such steps to be taken as may be  
5 necessary to avoid, correct, or remove such imminent danger and prohibit the employment  
6 or presence of any individual in locations or under conditions where such imminent danger  
7 exists.

8 45-22A-14.

9 (a) No persons shall discharge, or otherwise discipline, or in any manner discriminate  
10 against any employee because such employee has filed any complaint or instituted or  
11 caused to be instituted any proceeding under or related to this Code section or has testified  
12 or is about to testify in any such proceeding, or because of the exercise by such employee  
13 on behalf of himself or herself or others of any right afforded by this chapter.

14 (b) Any employee who believes that he or she has been discharged, disciplined, or  
15 otherwise discriminated against by any person in violation of this Code section may, within  
16 180 days after the employee first has knowledge such violation did occur, file a complaint  
17 with the Commissioner alleging that discrimination. Upon receipt of the complaint, the  
18 Commissioner shall cause an investigation to be made as he or she deems appropriate. If,  
19 upon that investigation, the Commissioner or his or her designee determines that the  
20 provisions of this section have been violated, he or she shall, not more than 90 days after  
21 the receipt of the complaint, notify the employer and the employee of his or her  
22 determination, which shall include an order for all appropriate relief, including rehiring or  
23 reinstatement of the employee to his or her former position with back pay and reasonable  
24 legal costs. The notice shall become the Commissioner's final determination, unless,  
25 within 15 days of receipt of the notice, the employer or employee requests a hearing before  
26 the Commissioner or his or her designee, in which case the Commissioner shall issue his  
27 or her final determination not more than 45 days after the hearing report is issued.

28 (c) Nothing in this Code section shall be deemed to diminish the rights of any employee  
29 under any law, rule or regulation, or under any collective negotiation agreement.

30 (d) Any waiver by an employee or applicant for employment of the benefits or  
31 requirements of this chapter shall be against public policy and be void and any employer's  
32 request or requirement that an employee waive any rights under this chapter as a condition  
33 of employment or continued employment shall constitute an act of discrimination.

1 44-22A-15.

2 Nothing in this chapter shall be deemed to give public employees the right to strike over  
3 occupational safety and health issues.

4 45-22A-16.

5 In regard to the administration and enforcement of this chapter, the Commissioner shall  
6 make such reports to the Secretary of Labor of the United States in such form and  
7 containing such form and containing such information as the secretary shall from time to  
8 time require."

9 **SECTION 2.**

10 This Chapter shall become effective upon its approval by the Governor or upon its becoming  
11 law without such approval.

12 **SECTION 3.**

13 All laws and parts of laws in conflict with this Chapter are repealed.