

FILE NAME: Pennsylvania (PA)

DATE: 1958

DOC#: PA020

DOCUMENT DESCRIPTION: Univ of Pittsburgh Law School Report -  
Industrial Health

## TABLE OF CONTENTS

|                                                                              | Page |
|------------------------------------------------------------------------------|------|
| FOREWORD .....                                                               | v    |
| INTRODUCTION .....                                                           | ix   |
| EDITOR'S INTRODUCTION .....                                                  | xiii |
| ORGANIZATION CHART, PENNSYLVANIA DEPARTMENT OF HEALTH                        |      |
| <b>CHAPTER I.</b>                                                            |      |
| PUBLIC HEALTH ADMINISTRATION IN PENNSYLVANIA .....                           | 1    |
| State .....                                                                  | 1    |
| <i>Secretary of Health</i> .....                                             | 1    |
| <i>Advisory Health Board</i> .....                                           | 2    |
| <i>State Department of Health</i> .....                                      | 4    |
| Local Health Administration .....                                            | 5    |
| <i>County Health Departments</i> .....                                       | 5    |
| <i>Departments or Boards of Health in Other Political Subdivisions</i> ..... | 15   |
| Administrative Agency Law .....                                              | 18   |
| Supplement .....                                                             | 21   |
| <b>CHAPTER II.</b>                                                           |      |
| VITAL STATISTICS .....                                                       | 25   |
| Introduction and History .....                                               | 25   |
| Existing Law of Pennsylvania—Vital Statistics Law of 1953 .....              | 26   |
| Definitions .....                                                            | 28   |
| <i>State Department of Health</i> .....                                      | 28   |
| <i>General Powers and Duties</i> .....                                       | 28   |
| <i>Bureau of Vital Statistics</i> .....                                      | 29   |
| <i>State Registrar</i> .....                                                 | 29   |
| Forms .....                                                                  | 30   |
| Regulations .....                                                            | 30   |
| Registration District Administration .....                                   | 31   |
| Districts and Zones .....                                                    | 31   |
| Office of Local Registrar .....                                              | 32   |
| Field Registration Offices .....                                             | 32   |
| Local Registrars' Duties .....                                               | 32   |
| Local Registrars' Compensation .....                                         | 33   |
| Court Officers .....                                                         | 34   |
| Institutional Records .....                                                  | 34   |
| Birth Registration .....                                                     | 34   |
| "Live Birth" .....                                                           | 34   |
| General Provisions .....                                                     | 35   |
| Births Outside Pennsylvania .....                                            | 35   |
| Syphilis Test Reports .....                                                  | 36   |
| Notification of Birth Registration .....                                     | 36   |
| Foundling Registration .....                                                 | 37   |
| Death and Fetal Death Registration .....                                     | 38   |
| "Death and Fetal Death" .....                                                | 38   |
| Presumed Deaths .....                                                        | 39   |
| "Dead Body" .....                                                            | 39   |

**PUBLIC HEALTH LAWS  
OF  
PENNSYLVANIA**

*A Study of the Laws of the Commonwealth  
of Pennsylvania Relating to Public Health*

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**1958**

## TABLE OF CONTENTS

|                                                                                 | Page |
|---------------------------------------------------------------------------------|------|
| "Fetal Remains" .....                                                           | 40   |
| Duty to File Death and Fetal Death Certificates .....                           | 40   |
| "Person in Charge" to File .....                                                | 40   |
| Information for Death and Fetal Death Certificates .....                        | 41   |
| Syphilis Test Reports on Fetal Death Certificates .....                         | 42   |
| Coroner Functions .....                                                         | 42   |
| Place of Registration .....                                                     | 43   |
| Reciprocal Subregistrar System .....                                            | 44   |
| Interment and Handling of Dead Bodies .....                                     | 45   |
| Burial and Removal Permits .....                                                | 45   |
| Interment Regulations .....                                                     | 46   |
| Disinterment Permits .....                                                      | 47   |
| Transit Permits .....                                                           | 48   |
| Foreign Permits .....                                                           | 48   |
| Marriage Registration .....                                                     | 49   |
| General .....                                                                   | 49   |
| Marriage Registration Forms .....                                               | 49   |
| Marriage License Fees .....                                                     | 49   |
| Marriage License Reports .....                                                  | 51   |
| Changes in Civil Status .....                                                   | 51   |
| Court Reports of Changes of Civil Status .....                                  | 51   |
| Amendment of Birth Certificates for Change in Civil Status .....                | 52   |
| Subsequent Registrations .....                                                  | 53   |
| Introduction .....                                                              | 53   |
| Supplemental Reports .....                                                      | 53   |
| Delayed Registrations .....                                                     | 54   |
| Delayed Registrations of Births which Occurred Prior to 1906 .....              | 55   |
| Correction of Records Originally Incorrect .....                                | 56   |
| Correction of Given Name on Birth Certificate .....                             | 57   |
| Correction of Date of Birth on Birth Certificate .....                          | 57   |
| Correcting Spelling of Surnames .....                                           | 57   |
| Correction of Names of Persons of Illegitimate Birth .....                      | 57   |
| Correction of Death Certificates .....                                          | 58   |
| Correction of Date or Place of Death .....                                      | 58   |
| Correction of Medical Certification of Death .....                              | 58   |
| Use of Records .....                                                            | 58   |
| Disclosure of Records in General .....                                          | 58   |
| Disclosure of Marriage Registration and Court Report<br>Records .....           | 59   |
| Disclosure of Illegitimacy of Birth .....                                       | 59   |
| Disclosures of Other Matters .....                                              | 59   |
| Disclosure of Records by Local Registrars .....                                 | 60   |
| Issuance of Certified Copies of Death Certificates by Local<br>Registrars ..... | 61   |
| Fees for Copies .....                                                           | 61   |
| Evidentiary Sufficiency of Records .....                                        | 62   |
| Penalties .....                                                                 | 62   |
| Supplement .....                                                                | 64   |

## TABLE OF CONTENTS

|                                                                        | Page |
|------------------------------------------------------------------------|------|
| <b>. CHAPTER III.</b>                                                  |      |
| <b>COMMUNICABLE DISEASE CONTROL</b> .....                              | 67   |
| Introduction .....                                                     | 67   |
| Communicable Disease Law of 1923 .....                                 | 69   |
| Venereal Disease Statutes .....                                        | 78   |
| <i>Venereal Disease Law</i> .....                                      | 78   |
| <i>Other Laws</i> .....                                                | 84   |
| Tuberculosis .....                                                     | 86   |
| Typhoid Fever Carriers .....                                           | 87   |
| Smallpox Vaccination .....                                             | 88   |
| Food Handlers and Other Occupations .....                              | 90   |
| Animals, Birds and Insects .....                                       | 93   |
| Miscellaneous .....                                                    | 94   |
| Laboratories .....                                                     | 95   |
| <i>Statute</i> .....                                                   | 95   |
| <i>Regulations</i> .....                                               | 98   |
| Supplement .....                                                       | 101  |
| <b>CHAPTER IV.</b>                                                     |      |
| <b>HOSPITALS</b> .....                                                 | 112  |
| Introduction .....                                                     | 112  |
| Administrative Powers and Duties at the State Level .....              | 113  |
| <i>Department of Welfare</i> .....                                     | 113  |
| <i>Administrative Code of 1929</i> .....                               | 114  |
| <i>State-Owned Hospitals</i> .....                                     | 116  |
| <i>State-Aided Hospitals</i> .....                                     | 117  |
| <i>Maternity Homes and Hospitals</i> .....                             | 120  |
| <i>Private Mental Institutions</i> .....                               | 120  |
| <i>County and Municipally Owned Hospitals</i> .....                    | 120  |
| <i>Private Hospitals and Nursing Homes</i> .....                       | 120  |
| <i>Hospitals Constructed with Federal Aid</i> .....                    | 120  |
| <i>Commercial Boarding Homes for the Aged</i> .....                    | 121  |
| <i>Other State Departments</i> .....                                   | 121  |
| <i>Department of Health</i> .....                                      | 121  |
| <i>Department of the Auditor General</i> .....                         | 123  |
| <i>Department of Labor and Industry</i> .....                          | 124  |
| <i>Department of Public Instruction</i> .....                          | 125  |
| <i>Department of Revenue</i> .....                                     | 125  |
| <i>Department of Property and Supplies</i> .....                       | 126  |
| State Institutions .....                                               | 127  |
| <i>General</i> .....                                                   | 127  |
| <i>General Hospitals</i> .....                                         | 128  |
| <i>Ashland State Hospital</i> .....                                    | 129  |
| <i>Blossburg, Connellsville and Phillipsburg State Hospitals</i> ..... | 130  |
| <i>Hazleton State Hospital</i> .....                                   | 131  |
| <i>Scranton State Hospital</i> .....                                   | 131  |
| <i>Shamokin State Hospital</i> .....                                   | 132  |

## TABLE OF CONTENTS

|                                                                                            |  |
|--------------------------------------------------------------------------------------------|--|
| <i>Coaldale State Hospital</i> .....                                                       |  |
| <i>Nanticoke State Hospital</i> .....                                                      |  |
| <i>Locust Mountain State Hospital</i> .....                                                |  |
| <i>Tuberculosis Hospitals</i> .....                                                        |  |
| <i>State Hospital for Crippled Children</i> .....                                          |  |
| <i>Hospitals for the Mentally Ill</i> .....                                                |  |
| Licensure .....                                                                            |  |
| <i>General</i> .....                                                                       |  |
| <i>Maternity Homes and Hospitals</i> .....                                                 |  |
| <i>Private Nursing Homes and Hospitals</i> .....                                           |  |
| <i>Private Mental Hospitals</i> .....                                                      |  |
| Pennsylvania Hospital Survey and Construction Act .....                                    |  |
| <i>Article I—General</i> .....                                                             |  |
| <i>Article II—Survey and Planning</i> .....                                                |  |
| <i>Article III—Plans and Construction</i> .....                                            |  |
| Powers and Duties at the Local Level .....                                                 |  |
| <i>General</i> .....                                                                       |  |
| Counties .....                                                                             |  |
| <i>Appropriations to Hospitals</i> .....                                                   |  |
| <i>Contagious Disease Hospitals</i> .....                                                  |  |
| <i>Tuberculosis Hospitals</i> .....                                                        |  |
| <i>Effect of the Local Health Administration Law</i> .....                                 |  |
| <i>Cities of the First Class</i> .....                                                     |  |
| <i>Cities of the Second Class</i> .....                                                    |  |
| <i>Cities of the Second Class A</i> .....                                                  |  |
| <i>Cities of the Third Class</i> .....                                                     |  |
| Boroughs and Townships .....                                                               |  |
| Boroughs .....                                                                             |  |
| First Class Townships .....                                                                |  |
| Second Class Townships .....                                                               |  |
| Miscellaneous Laws .....                                                                   |  |
| <i>Gifts to State Hospitals</i> .....                                                      |  |
| <i>Exemption and Exoneration from Local Taxes</i> .....                                    |  |
| <i>Religious Services</i> .....                                                            |  |
| <i>Discrimination on Account of Race or Color</i> .....                                    |  |
| <i>Retention from Wages of Hospital Subscriptions</i> .....                                |  |
| <i>Standards for Institutions to Comply with Federal Social Security Legislation</i> ..... |  |
| <i>Narcotics</i> .....                                                                     |  |
| <i>Special Hospital Police</i> .....                                                       |  |
| <i>Nonprofit Hospital Plan</i> .....                                                       |  |
| <i>Tuberculosis as Occupational Disease of Nurses in Hospitals and Sanatoria</i> .....     |  |
| Administrative Rules and Regulations of the Department of Welfare .....                    |  |
| <i>State-Aided Hospitals</i> .....                                                         |  |
| <i>Administrative and Physical Plant Requirements</i> .....                                |  |
| <i>Standards for Patient Care</i> .....                                                    |  |

## TABLE OF CONTENTS

|                                                             | Page   |
|-------------------------------------------------------------|--------|
| <i>Hospital Administrative Officer</i> .....                | 162    |
| <i>Abandonment and Placement of Children</i> .....          | 162    |
| <i>Maternity Homes and Hospitals</i> .....                  | 162    |
| <i>Licensure</i> .....                                      | 162    |
| <i>Minimum Standards</i> .....                              | 163    |
| <i>Private Nursing Homes and Hospitals</i> .....            | 163    |
| <i>Licensure</i> .....                                      | 163    |
| <i>Other General Regulations</i> .....                      | 164    |
| <i>Special Requirements for Private Hospitals</i> .....     | 164    |
| <i>Special Requirements for Private Nursing Homes</i> ..... | 164    |
| <i>Special Rules for Convalescent or Rest Homes</i> .....   | 164    |
| <i>Private Mental Hospitals</i> .....                       | 165    |
| <i>Licensure</i> .....                                      | 165    |
| <i>General Regulations</i> .....                            | 165    |
| <i>Supplement</i> .....                                     | 166    |
| <br>CHAPTER V.<br>                                          |        |
| FOOD, MEAT, MILK, BEVERAGES AND EATING PLACES .....         | 177    |
| Table of Pennsylvania Food Statutes .....                   | insert |
| Administration .....                                        | 177    |
| Purpose of Legislation .....                                | 179    |
| Acts Relating to Food .....                                 | 180    |
| <i>Acts Relating to Food in General</i> .....               | 180    |
| <i>The General Food Act</i> .....                           | 180    |
| <i>Cold Storage Act</i> .....                               | 189    |
| <i>Other Controls Over Food Generally</i> .....             | 195    |
| <i>Acts Relating to Particular Foods</i> .....              | 196    |
| <i>Bakeries</i> .....                                       | 196    |
| <i>Butter and Butter Substitutes</i> .....                  | 199    |
| <i>Candy</i> .....                                          | 201    |
| <i>Cheese</i> .....                                         | 201    |
| <i>Coffee Imitations</i> .....                              | 202    |
| <i>Eggs</i> .....                                           | 202    |
| <i>Fruit Syrups</i> .....                                   | 204    |
| <i>Grapes, Potatoes, Apples, Peaches</i> .....              | 205    |
| <i>Lard</i> .....                                           | 206    |
| <i>Oysters and Other Shellfish</i> .....                    | 206    |
| <i>Vinegar</i> .....                                        | 208    |
| <i>Meat and Meat Hygiene</i> .....                          | 209    |
| <i>Meat Hygiene Act</i> .....                               | 209    |
| <i>Other Acts Relating to Meat</i> .....                    | 216    |
| <i>Sausage Act</i> .....                                    | 216    |
| <i>Milk and Milk Products</i> .....                         | 219    |
| <i>Milk Permit Act</i> .....                                | 219    |
| <i>Other Milk Acts</i> .....                                | 228    |
| <i>Ice Cream</i> .....                                      | 231    |
| <i>Laws Relating to Beverages</i> .....                     | 234    |
| <i>Non-alcoholic Beverages</i> .....                        | 234    |

## TABLE OF CONTENTS

|                                                                     |  |
|---------------------------------------------------------------------|--|
| 1925 Statute .....                                                  |  |
| 1909 Statute .....                                                  |  |
| 1937 Statute .....                                                  |  |
| Bottled Water .....                                                 |  |
| Public Eating and Drinking Places .....                             |  |
| Public Eating and Drinking Places Act .....                         |  |
| Restaurant Grading .....                                            |  |
| Other Controls .....                                                |  |
| Summary of Problems .....                                           |  |
| Administration .....                                                |  |
| State Level .....                                                   |  |
| Local Level .....                                                   |  |
| Number of Enactments .....                                          |  |
| Uniformity .....                                                    |  |
| Licensing .....                                                     |  |
| Inspections .....                                                   |  |
| Penal Provisions .....                                              |  |
| Seizure and Destruction of Misbranded or Adulterated Products ..... |  |
| Infunctive Powers .....                                             |  |
| Federal and Other Standards .....                                   |  |
| Technological Progress .....                                        |  |
| Supplement .....                                                    |  |

### CHAPTER VI.

|                                                          |  |
|----------------------------------------------------------|--|
| DRUGS AND ALCOHOL .....                                  |  |
| General .....                                            |  |
| Drug Legislation—Department of Health .....              |  |
| Narcotics .....                                          |  |
| Anti-Narcotic Act of 1917 .....                          |  |
| Federal Narcotics Statutes .....                         |  |
| Other State Statutes .....                               |  |
| Hypnotic, Analgesic and Body-Weight Reducing Drugs ..... |  |
| Sulfanilamide and Penicillin .....                       |  |
| Drug Legislation—Department of Public Instruction .....  |  |
| Poisons .....                                            |  |
| Adulterated and Misbranded Drugs .....                   |  |
| Act of 1909 .....                                        |  |
| Act of 1945 .....                                        |  |
| Miscellaneous Drug Legislation .....                     |  |
| Treatment of Drug Addicts .....                          |  |
| Treatment of Alcoholics .....                            |  |
| Supplement .....                                         |  |

### CHAPTER VII.

|                                        |  |
|----------------------------------------|--|
| SCHOOL HEALTH .....                    |  |
| Introduction .....                     |  |
| Department of Public Instruction ..... |  |
| Department of Public Assistance .....  |  |

## TABLE OF CONTENTS

| Page |                                                                       | Page |
|------|-----------------------------------------------------------------------|------|
| 235  | <i>Department of Welfare</i> .....                                    | 308  |
| 238  | <i>Department of Health</i> .....                                     | 309  |
| 239  | <i>School Districts</i> .....                                         | 309  |
| 240  | Biennial Medical and Dental Examinations .....                        | 311  |
| 242  | Other Medical Examinations .....                                      | 320  |
| 242  | Nurses and Dental Hygienists .....                                    | 325  |
| 247  | Corrective Treatment and Medical Assistance for School Children ..... | 327  |
| 248  | Communicable Diseases .....                                           | 331  |
| 249  | <i>Tuberculosis</i> .....                                             | 335  |
| 249  | <i>Smallpox Vaccination</i> .....                                     | 335  |
| 249  | School Food Programs .....                                            | 338  |
| 252  | Physically and Mentally Handicapped Children .....                    | 341  |
| 254  | <i>Adaptation Within Regular School Program</i> .....                 | 341  |
| 255  | <i>Special Classes and Special Schools</i> .....                      | 343  |
| 255  | <i>Homebound Children</i> .....                                       | 347  |
| 256  | <i>Uneducable Children</i> .....                                      | 348  |
| 259  | School Plant Facilities .....                                         | 349  |
| 261  | School Busses .....                                                   | 354  |
| 262  | Employees' Health .....                                               | 354  |
| 262  | Health Education and Athletics .....                                  | 356  |
| 265  | Supplement .....                                                      | 358  |
| 267  |                                                                       |      |

### CHAPTER VIII.

|     |                                                                       |     |
|-----|-----------------------------------------------------------------------|-----|
| 269 | CHILD AND MATERNAL HEALTH .....                                       | 364 |
| 269 | Introduction .....                                                    | 364 |
| 270 | <i>Department of Health</i> .....                                     | 364 |
| 270 | <i>Department of Welfare</i> .....                                    | 364 |
| 270 | Licensure and Supervision of Midwives .....                           | 367 |
| 276 | Institutions and Persons Entrusted with the Custody of Children ..... | 369 |
| 278 | <i>Infant Boarding Homes</i> .....                                    | 371 |
| 279 | <i>Children's Boarding Homes</i> .....                                | 372 |
| 281 | Kindergartens and Nursery Schools .....                               | 374 |
| 283 | Employment of Minors .....                                            | 376 |
| 283 | Handicapped Children .....                                            | 383 |
| 286 | Tobacco, Alcoholic Beverages, and Other Harmful Substances .....      | 385 |
| 287 | Pregnant Women in Penal Institutions .....                            | 386 |
| 290 | Supplement .....                                                      | 387 |
| 293 |                                                                       |     |
| 294 |                                                                       |     |
| 297 |                                                                       |     |
| 301 |                                                                       |     |

### CHAPTER IX.

|     |                                                    |     |
|-----|----------------------------------------------------|-----|
| 306 | HOUSING SANITATION .....                           | 388 |
| 306 | General .....                                      | 388 |
| 307 | Legislation .....                                  | 391 |
| 308 | <i>Lodging Houses</i> .....                        | 391 |
|     | <i>Lodging House Act of 1895</i> .....             | 391 |
|     | <i>Tenement Houses</i> .....                       | 391 |
|     | <i>Tenement House Sanitation Act of 1903</i> ..... | 391 |
|     | <i>Act of 1911</i> .....                           | 394 |

## TABLE OF CONTENTS

|                                                                                               | Page |
|-----------------------------------------------------------------------------------------------|------|
| <i>Commercial Boarding Homes</i> .....                                                        | 395  |
| <i>Act of 1951—Commercial Homes for Aged</i> .....                                            | 395  |
| <i>Act of 1925—Boarding Homes for Infants</i> .....                                           | 396  |
| <i>Act of 1947—Boarding Homes for Children</i> .....                                          | 396  |
| <i>Local Regulation</i> .....                                                                 | 397  |
| <i>Administrative Rules and Regulations</i> .....                                             | 401  |
| <i>Tenements, Lodging and Boarding Houses</i> .....                                           | 401  |
| <i>Camps</i> .....                                                                            | 402  |
| <i>Boarding Homes for Infants and Children</i> .....                                          | 403  |
| <i>Plumbing</i> .....                                                                         | 403  |
| <i>The Plumbing Code of 1901 (Cities of the Second, Second Class A and Third Class)</i> ..... | 405  |
| <i>Definitions</i> .....                                                                      | 405  |
| <i>Licensure</i> .....                                                                        | 406  |
| <i>Examination</i> .....                                                                      | 407  |
| <i>Special Provisions for Master Plumbers</i> .....                                           | 408  |
| <i>Plumbing Inspection</i> .....                                                              | 410  |
| <i>Plumbing Regulations</i> .....                                                             | 410  |
| <i>Power to Abate Nuisances Caused by Defective Plumbing or Drainage</i> .....                | 413  |
| <i>Disputes</i> .....                                                                         | 414  |
| <i>Penalties</i> .....                                                                        | 415  |
| <i>The Plumbing Code of 1911 (Cities of the First Class)</i> .....                            | 416  |
| <i>Definitions</i> .....                                                                      | 416  |
| <i>Licensure</i> .....                                                                        | 416  |
| <i>Examination</i> .....                                                                      | 418  |
| <i>Special Provisions for Master Plumbers</i> .....                                           | 419  |
| <i>Registered Apprentices</i> .....                                                           | 419  |
| <i>Plumbing Inspection</i> .....                                                              | 419  |
| <i>Plumbing Regulations</i> .....                                                             | 420  |
| <i>Penalty</i> .....                                                                          | 420  |
| <i>State Assistance in the Field of Housing and Redevelopment</i> ..                          | 421  |
| <i>Supplement</i> .....                                                                       | 423  |

## CHAPTER X.

|                                                               |     |
|---------------------------------------------------------------|-----|
| <i>AIR POLLUTION</i> .....                                    | 425 |
| <i>General</i> .....                                          | 425 |
| <i>Legislation</i> .....                                      | 426 |
| <i>Smoke Enabling Legislation</i> .....                       | 426 |
| <i>Health, Nuisance and General Welfare Legislation</i> ..... | 428 |
| <i>Municipal Regulation of Air Pollution</i> .....            | 429 |
| <i>Administration</i> .....                                   | 430 |
| <i>Prohibitions</i> .....                                     | 431 |
| <i>Permits</i> .....                                          | 434 |
| <i>Appeal Procedure</i> .....                                 | 434 |
| <i>Penalties</i> .....                                        | 434 |
| <i>Miscellaneous Legislation</i> .....                        | 434 |
| <i>Zoning</i> .....                                           | 434 |

## TABLE OF CONTENTS

|                                        | Page |
|----------------------------------------|------|
| <i>Municipal Refuse Disposal</i> ..... | 435  |
| <i>Criminal</i> .....                  | 435  |
| Supplement .....                       | 436  |

### CHAPTER XI.

|                                               |     |
|-----------------------------------------------|-----|
| <b>INDUSTRIAL HEALTH</b> .....                | 437 |
| General .....                                 | 437 |
| Administration .....                          | 438 |
| <i>Department of Labor and Industry</i> ..... | 438 |
| <i>Department of Health</i> .....             | 438 |
| <i>Other Departments</i> .....                | 439 |
| Legislation .....                             | 440 |
| <i>Department of Labor and Industry</i> ..... | 440 |
| <i>The General Safety Act of 1937</i> .....   | 440 |
| <i>Act of 1911—Foundries</i> .....            | 442 |
| <i>Act of 1913—Lead Manufacturing</i> .....   | 442 |
| <i>Act of 1917—Compressed Air</i> .....       | 445 |
| <i>Industrial Homework Law of 1937</i> .....  | 446 |
| <i>Department of Health</i> .....             | 448 |
| <i>Occupational Disease Act</i> .....         | 448 |
| Administrative Rules and Regulations .....    | 452 |
| Supplement .....                              | 454 |

### CHAPTER XII.

|                                                                                 |     |
|---------------------------------------------------------------------------------|-----|
| <b>STREAM POLLUTION, WATER AND PUBLIC BATHING PLACES</b> .....                  | 456 |
| Introduction .....                                                              | 456 |
| <i>Sanitary Water Board</i> .....                                               | 456 |
| <i>Department of Health</i> .....                                               | 457 |
| <i>Bureau of Sanitary Engineering</i> .....                                     | 458 |
| <i>Water Pollution at the Common Law</i> .....                                  | 459 |
| <i>Purity of Waters Act of 1905</i> .....                                       | 461 |
| <i>Clean Streams Act of 1937</i> .....                                          | 462 |
| The Pennsylvania Clean Streams Act .....                                        | 464 |
| <i>Article I. General Provisions and Public Policy</i> .....                    | 464 |
| <i>Definitions</i> .....                                                        | 464 |
| <i>Interpretation of Act and Public Policy</i> .....                            | 465 |
| <i>Article II. Sewage Pollution</i> .....                                       | 466 |
| <i>Prohibition of Sewage Discharge</i> .....                                    | 466 |
| <i>Existing Sewage Discharges</i> .....                                         | 466 |
| <i>Orders to Discontinue Discharges</i> .....                                   | 467 |
| <i>Penalties</i> .....                                                          | 469 |
| <i>Reports of Existing Municipal Sewers</i> .....                               | 470 |
| <i>Applications for Permits for the Discharge of Sewage</i> .....               | 470 |
| <i>Approval of Plans for Sewer Systems and Treatment Works</i> .....            | 471 |
| <i>Revocation or Modification of Permits</i> .....                              | 473 |
| <i>Prohibition Against Discharge of Sewage After Revocation of Permit</i> ..... | 473 |

## TABLE OF CONTENTS

|                                                                                | Page |
|--------------------------------------------------------------------------------|------|
| <i>Municipal Financing of Pollution Abatement</i> .....                        | 474  |
| <i>Revenue Bonds</i> .....                                                     | 475  |
| <i>Issuance and Sale of Revenue Bonds</i> .....                                | 476  |
| <i>Other Methods of Financing</i> .....                                        | 476  |
| <i>Article III. Industrial Wastes</i> .....                                    | 476  |
| <i>Prohibition of Discharge of Industrial Wastes</i> .....                     | 476  |
| <i>Existing Discharges</i> .....                                               | 477  |
| <i>Reports of Discharges of Industrial Wastes</i> .....                        | 478  |
| <i>Water Survey; Rules and Regulations</i> .....                               | 479  |
| <i>Investigation and Research</i> .....                                        | 480  |
| <i>Protection of Clean Waters</i> .....                                        | 480  |
| <i>Establishments Which May Discharge Industrial Waste in the Future</i> ..... | 481  |
| <i>Approval and Operation of Treatment Works</i> .....                         | 482  |
| <i>Acid Mine Drainage</i> .....                                                | 483  |
| <i>Diversion of Acid Mine Drainage</i> .....                                   | 485  |
| <i>Condemnation Proceedings</i> .....                                          | 486  |
| <i>Approval of Drainage Plans</i> .....                                        | 486  |
| <i>Article IV. Petty Pollution</i> .....                                       | 487  |
| <i>Prohibitions</i> .....                                                      | 487  |
| <i>Nuisance and Abatement</i> .....                                            | 488  |
| <i>Rules and Regulations</i> .....                                             | 488  |
| <i>Article V. Domestic Water Supplies</i> .....                                | 488  |
| <i>Protection of Domestic Water Supplies</i> .....                             | 488  |
| <i>Penalties</i> .....                                                         | 489  |
| <i>Nuisance and Abatement</i> .....                                            | 490  |
| <i>Article VI. Procedure to Enforce the Act</i> .....                          | 490  |
| <i>Abatement of Pollution</i> .....                                            | 490  |
| <i>Preliminary Injunctions</i> .....                                           | 492  |
| <i>Summary Proceedings</i> .....                                               | 492  |
| <i>Complaints and Investigations</i> .....                                     | 492  |
| <i>Appeals from the Sanitary Water Board</i> .....                             | 493  |
| <i>Proceedings Where Pollution is from Many Sources</i> .....                  | 496  |
| <i>Records; Evidence</i> .....                                                 | 496  |
| <i>Effect of Prior Rules and Regulations</i> .....                             | 497  |
| <i>Fees</i> .....                                                              | 497  |
| <i>Article VII. Scope and Purpose of Act</i> .....                             | 497  |
| <i>Preservation of Existing Remedies</i> .....                                 | 497  |
| <i>Sewage</i> .....                                                            | 498  |
| <i>The Clean Streams Act</i> .....                                             | 498  |
| <i>Authority to Construct and Acquire Sewerage Facilities</i> .....            | 503  |
| <i>Operation of Sewerage Systems</i> .....                                     | 509  |
| <i>Financing Sewerage Facilities</i> .....                                     | 510  |
| <i>Provisions in the Codes Governing Political Subdivisions</i> ..             | 510  |
| <i>The Clean Streams Act</i> .....                                             | 514  |
| <i>State Aid</i> .....                                                         | 514  |
| <i>The Sewer Rental Act</i> .....                                              | 515  |
| <i>Municipal Authorities</i> .....                                             | 516  |

## TABLE OF CONTENTS

|                                                                                                                                                  | Page |
|--------------------------------------------------------------------------------------------------------------------------------------------------|------|
| <i>Sewage Disposal System Funds</i> .....                                                                                                        | 520  |
| <i>The Municipal Borrowing Law</i> .....                                                                                                         | 520  |
| <i>Other Laws Regulating Sewage</i> .....                                                                                                        | 521  |
| <i>The Public Utility Law</i> .....                                                                                                              | 522  |
| Industrial Wastes .....                                                                                                                          | 524  |
| <i>The Clean Streams Act</i> .....                                                                                                               | 524  |
| <i>Other Statutes Relating to Pollution by Mines and Oil or Gas Wells</i> .....                                                                  | 529  |
| <i>Regulations of the Department of Health</i> .....                                                                                             | 531  |
| Petty Pollution .....                                                                                                                            | 531  |
| Domestic Water Supplies .....                                                                                                                    | 533  |
| <i>Protection of Public Water Supplies</i> .....                                                                                                 | 533  |
| <i>Public Health Service Drinking Water Standards</i> .....                                                                                      | 537  |
| <i>Fluoridation of Public Water Supplies</i> .....                                                                                               | 538  |
| <i>Acquisition of Water Rights</i> .....                                                                                                         | 541  |
| <i>Political Subdivisions</i> .....                                                                                                              | 542  |
| <i>Creation of Water Supply Districts and Authorities</i> .....                                                                                  | 544  |
| <i>The Public Utility Law</i> .....                                                                                                              | 544  |
| Federal and Interstate Pollution Abatement Programs .....                                                                                        | 546  |
| <i>Water Pollution Control Act</i> .....                                                                                                         | 547  |
| Public Bathing Places .....                                                                                                                      | 550  |
| <i>The Public Bathing Law</i> .....                                                                                                              | 550  |
| Supplement .....                                                                                                                                 | 558  |
| APPENDIX .....                                                                                                                                   | 567  |
| Regulations for Personnel Administration of County Departments of Health .....                                                                   | 567  |
| Regulations for Qualifications of Sanitary Officers of Second Class Townships .....                                                              | 572  |
| Regulations for the Approval of State Financial Aid to Full Time Local Health Departments .....                                                  | 573  |
| Disease Prevention and Control Law of 1955 .....                                                                                                 | 576  |
| Report of Proposed Revision of Pennsylvania Legislation Relating to Hospitals .....                                                              | 588  |
| Rules, Regulations and Minimum Standards for Institutions as Defined in Act 64—1953 .....                                                        | 638  |
| Rules and Regulations Prescribing Standards of Plant, Equipment, Administration, Service, and Care and Treatment for State-Aided Hospitals ..... | 642  |
| Suggested Revision of Article XIV, School Health Article, of the Public School Code .....                                                        | 650  |
| Suggested Revision of Clean Streams Law .....                                                                                                    | 672  |
| 1957 Supplement—1957 Legislation .....                                                                                                           | 695  |
| INDEX .....                                                                                                                                      | 718  |
| TABLE OF CASES .....                                                                                                                             | 760  |

## SUPPLEMENT

## CHAPTER X

(Footnotes in Supplement correspond to Chapter footnotes containing statutes affected by 1955-1956 legislation. Where a new footnote is added in the Supplement, it bears a letter to the right of the number (e.g., 1a), and the page and line in the text of the Chapter to which the footnote relates is indicated.)

Page 425--*recent sessions.*<sup>a</sup>

<sup>a</sup> See, e.g., Senate Bill 279, introduced at the 1955 session of the Legislature, which provided for the establishment of a State Air Pollution Control Commission in the Department of Health, and authorized counties or groups of counties to create air pollution control districts for local regulation of air pollution.

Note 1—Under the reorganization of the State Department of Health, effective May 28, 1956, this agency is now the Air Pollution Section in the Division of Industrial Hygiene. See chart at the beginning of Chapter I.

Note 17—Act No. 419, approved March 22, 1956, authorizes second class townships to create sanitary boards or appoint sanitary officers, and grants such townships health powers similar to those of boroughs and first class townships. See Supplement to Chapter I, note 33.

Note 21—Philadelphia's Air Pollution Code is now Title 3 of the Code of General Ordinances of the City of Philadelphia, effective February 28, 1956.

Note 24—The Allegheny County Department of Health, which was established in March, 1956, and which began to operate in 1957, administers the smoke control program in the City of Pittsburgh, which is now under the jurisdiction of the County Department of Health.

Note 26—See note 24, *supra*.

## CHAPTER XI

### INDUSTRIAL HEALTH\*

#### GENERAL

The United States Public Health Service has stated that the principal activities in any successful industrial health program are industrial hygiene, factory inspection and labor regulation, employee compensation, and in-plant medical service.<sup>1</sup> It is recognized that industrial hygiene often has been defined in a broad sense to mean the protection of the health and welfare of the industrial worker. In a more restricted sense, and in the sense in which the term is employed by persons engaged in the field of public health, industrial hygiene is treated as but one segment of a broader concept of public health, namely, industrial health.

The activities comprising the field of industrial health are defined as follows:<sup>2</sup>

*Industrial Hygiene* is the routine reporting and investigation of occupational diseases; the determination of the extent to which dust, fumes, acids, metals or other toxic substances are present in industrial plants; the medical examination of employees to ascertain the effect of environmental factors upon them; the recommendation of measures to control industrial hazards; and the education of employers and employees to the benefits obtainable from an adequate industrial control program.

*Factory Inspection and Labor Regulation* is the periodical inspection of the physical layout of industrial plants, the illumination, sanitation and safety of mechanical devices employed in industrial plants; the working conditions and hours of employment of women and children; and the routine reporting of industrial accidents.

*Employee Compensation* is the arrangement for financial assistance to persons who are injured or who contract certain types of disease in the course of their employment.

*In-plant Medical Service* is the giving of first aid; the periodic physical examination of employees; health education; and the general and community medical service programs for industrial employees.

\* See Supplement at end of Chapter for changes made by 1955-1956 legislation.

<sup>1</sup> United States Public Health Service Bulletin No. 184, "Distribution of Health Services in the Structure of State Governments."

<sup>2</sup> *Id.* at Chapter 8.

This chapter deals mainly with the legislation which affords a legal basis for reducing the incidence of disease among industrial workers. Particular attention is accorded those provisions in the industrial laws which establish minimum standards for illumination, ventilation and sanitation. Safety requirements, however, are also included. The General Safety Act of 1937, the basic State industrial law, contains a broad variety of safety and health provisions and is the first statute summarized in the chapter. The Pennsylvania Occupational Disease Act of 1939,<sup>3</sup> an act designed to compensate employees or their families for disability or death occasioned by specific occupational diseases, is considered at the end of the chapter. Not included in the chapter are the laws relating to the hours of employment of women and children or workmen's compensation legislation.

#### ADMINISTRATION

##### *Department of Labor and Industry*

The Department of Labor and Industry and the Department of Health are the State administrative agencies principally concerned with the regulation of industrial health. The Administrative Code of 1929 grants authority to the Department of Labor and Industry to control industrial health. The Code requires the Department to inspect places of employment, to investigate industrial accidents, and to prescribe safeguards for the prevention of accidents.<sup>4</sup> The Code also authorizes the Department to issue rules and regulations for carrying into effect the laws governing employment and the laws regulating the construction and ventilation of places of employment and the equipment used therein.<sup>5</sup>

##### *Department of Health*

The Department of Health enters the field of industrial health control by virtue of the broad general health powers contained in the Administrative Code of 1929 requiring the Department to

<sup>3</sup> Act of June 21, 1939, P.L. 366, as amended, 77 P.S. §§ 1201 *et seq.*

<sup>4</sup> Administrative Code, § 2202(a)-(g), 71 P.S. § 562(a)-(g).

<sup>5</sup> *Id.* at § 2205, 71 P.S. § 565.

Although not directly related to industrial health, the Department of Labor and Industry is charged with the enforcement and administration of the Act of May 27, 1937, P.L. 926, as amended, 35 P.S. §§ 972-984, which regulates the manufacture, sale and lease of new and secondhand mattresses, pillows and other filled bedding, cushions and all types of upholstered furniture.

protect the life and health of the people of the Commonwealth, and authorizing the Department to enter premises in which nuisances are present and to order the abatement of nuisances detrimental to the public health.<sup>6</sup> The Bureau of Industrial Hygiene in the Department of Health performs research services, medical services and engineering services related to the promotion of industrial health. The hazards of occupational diseases are evaluated by the Bureau of Industrial Hygiene and recommendations made for the control or removal of these hazards. The Bureau also offers medical consultation services, assistance and advice in the organization and administration of in-plant medical programs, and studies occupational diseases and other conditions which may affect the health of industrial workers. The engineering services of the Bureau deal principally with the detection and determination of industrial atmospheric contaminants and with the effectiveness of existing or newly established industrial health control systems in industry.

The Division of Air Pollution Control and the Environmental Cancer Section operate under the Bureau of Industrial Hygiene. The Division of Air Pollution Control conducts research on the general problem of industrial air pollution to determine its effect on public health. The Environmental Cancer Section is engaged in statistical studies and environmental evaluation of cancer deaths to determine the relative incidence of cancer in persons employed in this State's industries.

#### *Other Departments*

The Department of Mines also deals with industrial health. However, the work of the Department of Mines is so specialized and the industrial health aspects so interrelated with the over-all supervision of the mining industry, that the legislation governing the mining industry is not included here. The Department of Agriculture and the Department of Public Instruction may require compliance with certain sanitation requirements established by law for specific businesses, as for example, bakeries and beauty shops,<sup>7</sup> as a corollary function to their power to license and regulate these businesses.

<sup>6</sup> *Id.* at § 2102(a)-(c), as amended, 71 P.S. § 532(a)-(c)

<sup>7</sup> The Act of May 22, 1933, P.L. 912, as amended, 43 P.S. §§ 403 *et seq.*, regulates bakeries; the Act of May 3, 1933, P.L. 242, as amended, 63 P.S. §§ 507 *et seq.*, regulates beauty culture establishments.

## LEGISLATION

*Department of Labor and Industry**The General Safety Act of 1937<sup>9</sup>*

This act is the basic industrial law of Pennsylvania. The statute establishes comprehensive health and safety standards for industry, and designates penalties in the form of fines and imprisonment for violation of the required standards. The 1937 act is also preventive and punitive. The safety law is of little importance, however, as a basis for the recovery of damages by an employee injured in consequence of any violation of its provisions for the reason that the Workmen's Compensation Act<sup>8</sup> and the Occupational Disease Act<sup>10</sup> provide in substance that acceptance of these laws by an employer and employee limits the employee disabled by accident or disease as a result of his employment to the remedy afforded in those laws. The act, summarized in section form, follows:

*Section 1* is the definition section. The term "establishment" is defined as any room, building or place within the State, except farms or private dwellings, where persons work for compensation of any kind. The term includes establishments owned or under the control of the Commonwealth, or any of its political subdivisions. The term "department" means the Department of Labor and Industry, the designated enforcement agency for the act.

*Section 2* enumerates general safety and health requirements for industry. The section requires all establishments to be constructed, equipped and operated in a manner which will protect the health and safety of employees. Certain types of machinery must be guarded so as to eliminate dangerous working conditions. Employees who are subject to injuries from flying particles, falling objects, hot, corrosive or poisonous substances, acids or caustic or injurious light rays or harmful radioactive materials, must be provided with and must wear goggles, other head and eye protectors, gloves, leggings, and any other personal protective devices deemed necessary for their safety.

From the standpoint of industrial health, subsection (e) of section 2 is important. This subsection authorizes the Department of Labor and Industry to require the removal at the point of origin

<sup>8</sup> Act of May 18, 1917, P.L. 654, as amended, 43 P.S. §§ 25-1 et seq.

<sup>9</sup> Act of June 2, 1915, P.L. 716, as amended, 77 P.S. §§ 1 et seq.

<sup>10</sup> See note 3, *supra*

of any atmospheric impurities created by industrial processes within any establishment. If removal is impracticable at the point of origin, the Department may require the employer to provide protective devices to be worn by his employees.

*Sections 3, 5, 6 and 8* deal with working conditions in establishments. Section 3 provides that establishments be adequately lighted, heated and ventilated. Sanitary facilities, including toilet and washing facilities, and dressing rooms for women, must be provided in sufficient number for the persons employed in the establishments. Section 5 requires that the floor space of workrooms not be crowded with machinery, and that sufficient floor space be made available for walking between machinery. Section 6 permits the removal of guards from machinery only when it becomes necessary to repair the machinery, and requires the replacement of these guards immediately upon completion of the repairs. Section 8 requires a minimum of 250 cubic feet of air space for each employee in each workroom of the establishment.

*Sections 4, 9 and 11* deal with specific establishments. Section 4 requires plants which manufacture or store fireworks or other explosives to be located a safe distance from other buildings, highways or railroads, and provides that these establishments be located and operated in a manner which will assure adequate and reasonable protection to employees. Section 9 states that canneries and labor camps must be kept in a clean and sanitary condition. Under section 11, industrial homework must be conducted in a manner which will insure the health and safety of the persons engaged in this type of employment.

*Sections 7, 10, 12 and 13* prescribe the powers and duties of the Department of Labor and Industry for enforcing the provisions of the act. Section 7 authorizes the Department of Labor and Industry to prohibit the use of dangerous machinery. Section 10 authorizes the Department to publish safe practice guides for industry. Section 12 empowers the Department to issue regulations to implement the act. Section 13 authorizes enforcement by the Department of Labor and Industry. It permits any authorized representative of the Secretary of Labor and Industry to enter and inspect places of employment to ascertain compliance with the act or the regulations of the Department.

*Sections 14 and 15* deal with the prosecution of persons who violate the statute and establish penalties for violation. Section 14

permits any authorized agent of the Department of Labor and Industry to institute prosecution for any alleged violation of the act. Section 15 provides that anyone who violates any provision of the act, or any regulation issued by the Department of Labor and Industry to implement the act, shall be sentenced to pay a fine of not more than \$100, or be imprisoned for not more than thirty days if the fine is not paid. Higher graduated fines or periods of imprisonment are set forth for second and third offenses. Any person who injures, delays or interferes with any authorized representative of the Department of Labor and Industry in the enforcement of the act is also subject to similar penalties.

In addition to the General Safety Act of 1937 which governs industry in general, there are several statutes which regulate specific industries. These statutes are considered below.

*Act of 1911—Foundries<sup>11</sup>*

This Act requires employers who operate foundries to provide suitable toilet rooms and water closets, adequately heated, ventilated and maintained in a sanitary condition, for the use of employees. Each toilet room in the foundry must be supplied with wash bowls, sinks or other suitable fixed appliances, which are properly connected and supplied with hot and cold running water. The water closets must be separated from the toilet rooms. The Department of Labor and Industry enforces this statute. Violation of the act is made a misdemeanor for which an employer is subject to a fine of not more than \$100.

*Act of 1913—Lead Manufacturing<sup>12</sup>*

This act establishes minimum sanitation standards which are intended to alleviate illness and disease among persons engaged in the manufacture of lead.

*Section 1* requires every employer to provide, without cost to the employee, reasonably effective devices to prevent illness or disease incident to the manufacture of lead.

*Section 2* declares every process in the manufacture of white lead, red lead, litharge, sugar of lead, arsonite of lead, lead chromate, lead sulfate, lead nitrate or fluo-silicate, to be dangerous to the health of employees exposed to lead dust, lead fumes or lead solutions.

<sup>11</sup> Act of June 7, 1911, P.L. 673, as amended, 43 P.S. §§ 1 et seq.

<sup>12</sup> Act of July 26, 1913, P.L. 1363, 43 P.S. §§ 471 et seq.

*Section 3* provides in detail the protective devices and methods to be utilized by an employer to protect the health of an employee engaged in the manufacture of lead. The employer must provide workrooms, adequately lighted and ventilated, and arranged so that there is a continuous and sufficient change of air. Devices which will protect an employee as far as possible from contact with lead dust or lead fumes also must be provided. Washrooms must be separated from workrooms, and must be adequately lighted and ventilated. A shower bath, with ample soap and clean towels, is required for each ten employees. Kettles, vessels, or furnaces in which lead is being melted or treated, must be provided with hoods connected with an efficient air exhaust. Eating rooms within the plant must be separate from workrooms.

*Section 3* further requires the employer to allow his employees not less than ten minutes before the lunch hour and at the close of the day's work for the use of the washroom facilities. The employer must further permit employees ten minutes at least twice weekly to take a shower bath.

Violation of this section or of section 1 constitutes a misdemeanor for which the employer may be sentenced to pay a fine of not less than \$100 nor more than \$200. If the fine and costs are not paid the employer may be imprisoned. Graduated fines are imposed for subsequent violations of these sections.

*Section 4* is rather unusual in that it spells out the duty of an employee to use the facilities required to be furnished by the employer under section 3. The section requires each employee to use the washing facilities provided by the employer. If an employee desires to eat his lunch in the plant he must eat in the eating room provided by the employer. Each employee must remove his overalls before leaving at the close of a day's work and must keep his street clothes and working clothes in separate lockers. An employee who violates this section is guilty of a misdemeanor and may be sentenced to pay a fine of not less than \$10 nor more than \$20, or he may be imprisoned if he fails to pay the fine and costs. Graduated fines are imposed for subsequent violations of this section.

*Section 5* requires the employer to post a notice of any known dangers arising from industrial processes within the plant in each workroom, washroom, dressing room and eating room. In addition, the employer must post copies of the act in each of the rooms enumerated above.

*Section 6* compels employers to provide a monthly physical examination for each employee who is exposed to lead dust, lead fumes or lead solutions to ascertain the symptoms of lead poisoning. The examination, which is given during working hours, must be made by a licensed physician, designated and paid by the employer.

Although it is the duty of the employer to employ a licensed physician, the employee is required to submit himself to such examination and to any other examination which the employer reasonably may request and to answer truthfully all questions bearing on lead poisoning asked him by the examining physician.

*Section 7* requires the physician making the examination, if he discovers what he believes to be symptoms of lead poisoning, to make a complete record of the examination, indicating the name and address of the employee examined, the particular work or process in which the employee is engaged, the date, place and findings of the examination, and the directions given in each case by the physician. The record of the physician is open to inspection by the Department of Labor and Industry and the Department of Health.

*Section 7* also requires the examining physician to report any findings of symptoms of lead poisoning to the Department of Labor and Industry and to the Department of Health within 48 hours of the examination. Within the same time limit, the examining physician must report the findings of his examination to the employer. After this notification, an employer may not employ the particular employee in any work or process where he will continue to be exposed to lead dust, lead fumes or lead solutions.

Any employer who fails to comply with sections 5, 6 or 7, and any employee who fails to submit to the physical examinations required by section 6, is guilty of a misdemeanor and may be sentenced to pay a fine of not less than \$10 nor more than \$20. There is no provision for imprisonment in lieu of payment of the fine and costs. There is also no provision for the imposition of graduated fines for subsequent violations of these sections.

*Section 8* authorizes the Department of Labor and Industry to enforce the provisions of the act, and sets forth the penalty provisions for violation. Any authorized representative of the Department of Labor and Industry has the right at any reasonable time to inspect any establishment which manufactures lead.

*Act of 1917—Compressed Air*<sup>13</sup>

This act regulates the working conditions of persons engaged in any occupation carried on in compressed air. *Section 2* provides that every tunnel, caisson or compartment must be constructed, equipped and operated in a manner which will protect the health and safety of the employees.

*Section 3* specifies the type of equipment to be used in plants where persons are employed in compressed air and *section 5* specifies the manner in which the equipment must be inspected. Subsection 8 of section 3 requires the employer to provide dressing rooms for the use of employees, with benches, individual lockers, shower baths, hot and cold running water and sanitary water closets. These dressing rooms must be properly heated, lighted and ventilated. In accordance with section 5, an inspector employed by the employer must inspect all equipment within the plant at least once each day, and, if any defect in the equipment is found, the inspector must immediately make a written report of the nature of the defect to the employer in order that the defect might be repaired.

*Section 6* provides that every employer of persons working in compressed air must employ one or more licensed physicians who shall be present to render all necessary medical assistance at the place where the work is in progress. Should the maximum air pressure in the plant exceed 17 pounds, the employer must also employ one or more registered nurses, or one or more competent persons selected by the physician, to handle cases of compressed-air illness.

*Section 7* prohibits the employment of any person known to be addicted to the excessive use of intoxicants.

*Section 8* prohibits the employment in compressed air of any person who has not been examined by the plant medical officer and found to be physically qualified for the work. In addition, this section prohibits continuation of the employment of any person who has worked regularly in compressed air for three months without a re-examination by the physician.

*Section 9* requires the plant medical officer to keep a record of all physical examinations made, such physical records to be kept in the place where the work is in progress. The record must contain the name, age, address, and full description of each person examined, the date on which each examination was made, the physical condi-

<sup>13</sup> Act of July 19, 1917, P.L. 1088, 43 P.S. §§ 441 *et seq.*

tion on the date of examination and the total time the person examined has worked in compressed air, including prior employment in another plant.

*Sections 10 and 11* specify the number of hours that a person may work in various air pressures, and the rate and time of decompression.

*Section 12* authorizes enforcement by the Department of Labor and Industry. Any authorized representative of the Department may enter any place of employment covered by the Act to determine whether the employer is complying with the statute.

*Section 13* is the penalty section. Each person who violates any provision of the act may be sentenced to pay a fine of \$50 for the first offense, \$100 for the second offense and \$300 for all subsequent violations.

*Industrial Homework Law of 1937<sup>14</sup>*

This act is intended to remove the dangerous consequences of industrial homework to the consumer. It tends also to eliminate many of the occupational hazards faced by persons engaged in this type of industrial employment. Sections 3, 4, 5, 7, 8, 9, 11 and 17 of the act are significant in this respect.

*Section 3* is the definition section. The following definitions are important:

"Contractor" is defined as any person who, for the benefit of an employer, representative contractor or other person, distributes to a home-worker articles or materials to be manufactured in a home, and thereafter returned to the contractor or otherwise disposed of according to his directions.

"Representative contractor" is defined as any person who receives from an out-of-State employer or contractor articles or materials to be distributed by him to any home-worker, which are thereafter returned to the contractor or otherwise disposed of in accordance with his directions.

"Employer" is defined as any person who, for his own benefit, delivers or causes to be delivered to another person any articles or materials to be manufactured in a home and returned to him.

"Home" is defined as any room, house, apartment or other premises used, in whole or in part, as a place of dwelling.

"Home-worker" is defined as any person engaged in manufactur-

<sup>14</sup> Act of May 18, 1937, P.L. 665, as amended, 43 P.S. §§ 491-1 et seq.

ing in a home any article or material for an employer, a representative contractor, or a contractor.

"Industrial homework" is defined as any manufacture in a home of articles or materials for an employer, a representative contractor, or a contractor.

"Manufacture" is defined as the preparation, alteration, repair, finishing or processing of any article or material.

*Section 4* prohibits the manufacture in a home for an employer, contractor, or representative contractor of any articles of food or drink, articles to be used in the serving of food or drink, toys and dolls, tobacco, drugs and poisons, bandages and other sanitary goods, explosives or fireworks, and any articles, the processing of which requires exposure to substances which are determined by the Department of Labor and Industry to be hazardous to the health or safety of the persons exposed to them.

*Section 5* provides that if the Department of Labor and Industry, the enforcement agency for the Industrial Homework Law, determines that industrial homework may not be conducted within any given industry without injuring the health and welfare of the worker, or without rendering unduly difficult the maintenance of existing labor standards, it may require all employers, contractors, or representative contractors in that industry to discontinue furnishing articles or materials to home-workers.

*Sections 7 and 9* require each employer, contractor, or representative contractor to obtain a permit from the Department of Labor and Industry before articles or materials may be delivered by them to a home-worker. This permit is valid for one year from the date of issuance, unless sooner revoked by the Department of Labor and Industry in accordance with section 17 of the act.

*Section 11* requires each industrial home-worker to procure from the Department of Labor and Industry a home-worker's certificate, which certificate is issued without cost to the home-worker. This certificate is valid for one year from the date of its issuance, unless sooner revoked or suspended in accordance with section 17 of the act. A home-worker's certificate may not be issued to any person under the age of 16 years, to any person known to be suffering from an infectious, contagious, or communicable disease, or to a person known to be living in a home that is unsanitary or in which there is any communicable disease.

*Section 17* authorizes the Department of Labor and Industry to

revoke any employer's or contractor's permit whenever it has reason to believe that the holder of such a permit is not observing the provisions of the act or the regulations issued to implement the act.

*Section 8* authorizes the court of common pleas of the county in which an employer or representative contractor has a place of business, upon application of the Department of Labor and Industry, to enjoin the continued operation of the business if it be shown that such employer or representative contractor has twice been found guilty of conducting his business without an employer's permit as required by section 7.

#### *Department of Health*

No legislation has thus far been enacted expressly delegating any duties to the Department of Health in the field of industrial health. However, as indicated in the general material preceding the summary of industrial statutes, the State Department of Health, and more particularly the Bureau of Industrial Hygiene in that Department, performs valuable research and renders medical and engineering services, all of which are designed to safeguard the health of industrial workers.

#### *Occupational Disease Act<sup>18</sup>*

The legislation considered previously in this chapter provides a basis for administrative action to compel compliance with certain minimum standards of health and safety for the prevention of occupational hazards and the safeguard of industrial health. The Pennsylvania Occupational Disease Act of 1939, considered below, is a different type of industrial health statute. Whereas the laws discussed previously are preventive and penal in nature, the occupational disease law is invoked only after an employee has been disabled or has died from a compensable occupational disease. Because it is natural that an employer, aware of a potential financial loss from an occupational disability or disease suffered by an employee, will attempt to lessen this financial burden by incorporating sound industrial health procedures within his plant, it may be said that there is probably a greater effort by industry at this time to prevent the occurrence of compensable diseases than those diseases which are not compensable under the existing Occupational Disease Act.

<sup>18</sup> See note 3, *supra*.

Occupational diseases first were made compensable in this State in 1937.<sup>16</sup> The 1937 statute was an amendment to the Workmen's Compensation Act of 1915, and specified particular occupational diseases which were to be compensable. The 1937 law was repealed in 1939, and the present Occupational Disease Act enacted in the same year.

The Occupational Disease Act of 1939 is separate and apart from the Workmen's Compensation Act of 1915. The Workmen's Compensation Act undertakes to compensate an employee or his family for disability or death which results from an accidental injury in the course of his employment. The term "accidental injury" has been defined by the Pennsylvania courts to contemplate a specific unexpected and unforeseen occurrence or event.<sup>17</sup> The Occupational Disease Act, on the other hand, contemplates a disease resulting from the gradual effect of specific poisons or other deleterious substances in any employment involving direct contact with or exposure to such substances.

The Occupational Disease Act of 1939<sup>18</sup> provides compensation for the following diseases only in any occupation involving direct contact, handling or exposure to the poisons or other substances specifically named:

- a. Poisoning by arsenic, lead, mercury, manganese, or beryllium, their preparations or compounds;
- b. Poisoning by phosphorus, its preparations or compounds;
- c. Poisoning by methanol, carbon disulphide, hydrocarbon distillates (naphthas and others), halogenated hydrocarbons, or any preparations containing these chemicals;
- d. Poisoning by benzol, or by nitro, amido, or amino derivative of benzol (dinitro-benzol, anilin, and others), or their preparations or compounds;
- e. Caisson disease (compressed air illness) resulting from engaging in any occupation carried on in compressed air;
- f. Radium poisoning or disability, due to radioactive properties of substances or to roentgen-rays (x-rays);
- g. Poisoning by, or ulceration from, chromic acid, or dichromate of ammonium, dichromate of potassium, or by chromate of sodium, or their preparations;

<sup>16</sup> Act of July 2, 1937, P.L. 2714.

<sup>17</sup> See, e.g., *Lacey v. Washburn & Williams Co.*, 309 Pa. 574, 164 Atl. 724 (1933), *Sachs v. Mitchell*, 131 Pa. Super. 138, 199 Atl. 229 (1938).

<sup>18</sup> § 108, as amended, 77 P.S. § 1208.

h. Epitheliomatous cancer or ulceration due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product or residue of any of those substances;

i. Infection or inflammation of the skin due to oils, cutting compounds, lubricants, dusts, liquids, fumes, gases, or vapor;

j. Anthrax occurring in any occupation involving the handling of or exposure to wool, hair, thistles, hides, or skins, or bodies of animals either alive or dead;

k. Silicosis or anthraco-silicosis (commonly known as Miner's asthma) in any occupation involving direct contact with, handling of or exposure to dust of silicon dioxide ( $\text{SiO}_2$ );

l. Asbestosis in any occupation involving direct contact with, handling of, or exposure to the dust of asbestos; and

m. Tuberculosis in the occupation of nursing in hospitals or sanitarium involving exposure to such disease.

Since the act specifies the particular poisons or other substances which are included in the term "occupational disease," an employee who is disabled or who dies from the effect of a disease not specified in the statute would not be entitled to the compensation afforded by the act. This does not mean, however, that the employee or the employee's family in case of his death would be without any remedy at all. Pennsylvania case law recognizes the right of an employee to bring an action for injury occasioned by disease, provided that the disease was contracted in his employment and was due to the negligence of the employer.<sup>19</sup> It is true, of course, that the remedy is often unattainable because of the defenses of contributory negligence and assumption of risk which may be asserted against the employee, and also because of the difficulty of proving that the disease resulted in the course of employment.

Sections 306 and 307 of the Act set forth the amount of compensation payable for disability or death. The employee, to be entitled to compensation, must have suffered disability or death in the course of his employment from direct contact with or exposure to the particular occupational disease. In order for compensation to be granted it is necessary that the employer and the employee accept the provisions of the act.<sup>20</sup> The manner of acceptance of

<sup>19</sup> *Billo v. Allegheny Steel Co.*, 328 Pa. 97, 195 Atl. 110 (1937). See also, Bohlen, *The Common Law Right of Action for Occupational Disease in Pennsylvania*, 63 U. of Pa. L. Rev. (1914).

<sup>20</sup> Occupational Disease Act, § 301(a), as amended, 77 P.S. § 1401(a).

the act, and the presumptions of acceptance in the absence of express rejection, are dealt with in Section 302.<sup>21</sup>

The provisions of the act which deal with silicosis, anthraco-silicosis and asbestosis are particularly stringent. In order for compensation to be granted for total disability or death resulting from silicosis, anthraco-silicosis or asbestosis, the employee must have worked four years in this State during a period of eight years preceding the date of disability, in an occupation having a silica or asbestos hazard. It is also necessary that the disability or death be caused by silicosis, anthraco-silicosis or asbestosis, or by silicosis, anthraco-silicosis or asbestosis, when accompanied by pulmonary tuberculosis. The more stringent requirement that the disability or death result "solely" from silicosis, anthraco-silicosis or asbestosis, as contained in the act as originally enacted, was removed by an amendment of 1952. No compensation is payable for partial disability from silicosis, anthraco-silicosis or asbestosis.<sup>22</sup>

The act imposes a joint liability upon the Commonwealth and the employer where the occupational disease develops to the point of disablement only after an exposure of five or more years. This particular requirement of the act has been construed to preclude an employer who makes voluntary compensation payments prior to an award from recovering the amount owed by the Commonwealth for such payments. Each employer who is liable to pay compensation must be insured in the State Workmen's Insurance Fund or an authorized insurance company, unless the employer is able to satisfy the Department of Labor and Industry that he has the necessary financial resources to meet any payment without insurance coverage.<sup>23</sup>

An employee entitled to compensation under the Occupational Disease Act may forfeit his rights by failing to give the employer notice of his condition within the time required by the law, or by failing to file a timely claim petition whenever the employer and employee are unable to agree upon the amount of compensation payable. Until notice is given to the employer of the disability, no compensation is payable at all. Although the act states that failure to notify an employer within 90 days after the beginning of the disability bars the right to compensation, this provision has been judicially construed to mean that notice is properly given if the employee

<sup>21</sup> *Id.* at § 302, 77 P.S. § 1402.

<sup>22</sup> *Id.* at § 301(d)-(e), 77 P.S. § 1401(d)-(e).

<sup>23</sup> *Id.* at § 308, as amended, and § 305, 77 P.S. § 1408 and § 1405

notifies the employer within 90 days from the time the employee discovers that he is disabled.<sup>24</sup> While the claim of an employee may be barred by the failure to give notice as specified in the act, this failure has been construed not to bar the claim of the employee's family. The right of the family under the Occupational Disease act is independent and not derivative. This construction is the same as that given to the comparable notice provisions in the Workmen's Compensation Act.

The employee is barred of his right to compensation unless within one year after the disability begins the parties have agreed upon the compensation payable or unless one of the parties has filed a claim petition before the Workmen's Compensation Board. This one year time limitation is also applicable to death resulting from occupational disease.<sup>25</sup>

The administration of the act is the function of the Workmen's Compensation Board, the Workmen's Compensation Referees, and the Workmen's Compensation Bureau in the Department of Labor and Industry. The Workmen's Compensation Board is a quasi-judicial, administrative body, which was created under the authority granted by the Workmen's Compensation Act of 1915. The Board hears and determines petitions and appeals from the decisions of the referees in contested workmen's compensation cases. The Board consists of three members appointed by the Governor. The Secretary of Labor and Industry is an ex officio member who does not participate in the cases presented to the Board for its decision. Cases are presented initially to a referee. Claimants may appeal a decision of the referee to the Workmen's Compensation Board. Petitions, other than claim petitions, are heard by one or more members of the Board, or assigned to the referee for a hearing.<sup>26</sup>

#### ADMINISTRATIVE RULES AND REGULATIONS

Many administrative rules and regulations have been promulgated by the Department of Labor and Industry to implement the several industrial health statutes which the Department enforces.<sup>27</sup> A

<sup>24</sup> *Id.* at § 311, 77 PS. § 1411. See *Tracey v. M. & S. Coal Co.*, 165 Pa. Super. 569, 69 A. 2d 184 (1949), and *Valent v. Berwind-White Coal Mining Co.*, 172 Pa. Super. 305, 94 A. 2d 197 (1953), as upholding rule that the ninety-day limitation begins to run from time that employee definitely knows that he is disabled.

<sup>25</sup> *Id.* at § 315, 77 PS. § 1415.

<sup>26</sup> *Id.* at §§ 403 to 434, 77 PS. §§ 1503 to 1534.

<sup>27</sup> As of 1950 some sixty "safety regulations" had been promulgated by the De-

complete listing of the regulations issued by the Department of Labor and Industry is not made here. Two regulations deserve mention.

The first deals with industrial sanitation and is applicable to every factory in this State.<sup>28</sup> A factory is defined as "any building or part thereof which is used as a workshop for one or more employees, where the work is performed or where a product is manufactured or assembled, including the making, altering, repairing, finishing, bottling, canning, cleaning, or dyeing of any article or thing in whole or in part."

All factories must be maintained in a clean, safe and sanitary condition. The regulation specifies the type and number of retiring rooms and dressing facilities for women employees; the physical layout of toilet rooms, water closet compartments and urinal compartments; the number of water closets to be provided in a plant; the required ventilation for toilet rooms or washrooms; and the washing facilities required. Cool, pure, and wholesome water of a quality approved by the State Department of Health must be supplied for the employees. In each industry in which the worker is exposed to heat, humidity or dust, the employer is required to provide a sufficient number of shower baths. Dressing facilities for workers who are engaged in handling poisonous materials, or who are exposed to injurious dust, fumes, heat, humidity, or fatigue, also must be provided.

The second regulation concerns nitro amido.<sup>29</sup> This regulation requires that each applicant for employment as a process man must be physically examined by a licensed physician at least once every 30 days, and also before resuming work after an absence from the plant due to sickness, accident or other cause. The regulation requires the examining physician to request the factory manager or a superintendent to suspend from work any worker who is believed to be suffering from poison. It is the further duty of the physician to report a case of poison to the Department of Labor and Industry. There is no provision in the regulation which requires a copy of the report to be sent to the State Department of Health.

partment of Labor and Industry. These regulations cover, among others, foundries, compressed air apparatus, plants manufacturing or using explosives, industrial lighting, labor camps and industrial homework.

<sup>28</sup> This regulation was promulgated in 1950.

<sup>29</sup> This regulation was promulgated in 1938.

## SUPPLEMENT

## CHAPTER XI

(Footnotes in Supplement correspond to Chapter footnotes containing statutes affected by 1955-1956 legislation. Where a new footnote is added in the Supplement, it bears a letter to the right of the number (e.g., 1a), and the page and line in the text of the Chapter to which the footnote relates is indicated.)

Note 3—The Occupational Disease Act was extensively revised by Act No. 355, approved February 28, 1956.

Page 439—the public health.<sup>4</sup> *The Bureau of Industrial Hygiene*<sup>6a</sup> in the Depart-

<sup>6a</sup> Under the reorganization of the State Department of Health, effective May 28, 1956, this agency is now the Division of Industrial Hygiene in the Bureau of Environmental Health. This Division contains an Air Pollution Section and an Industrial Health and Sanitation Section. The latter unit now performs the work of the former Environmental Cancer Section. See chart at the beginning of Chapter I.

Page 439—Cancer Section operate under the Bureau of Industrial Hygiene.<sup>13</sup>

<sup>13b</sup> See note 6a, *supra*.

Note 9—The Workmen's Compensation Act was extensively revised by Act No. 356, approved February 28, 1956.

Note 10—See note 3, *supra*.

Page 448—more particularly the Bureau of Industrial Hygiene<sup>14a</sup> in that Depart-

<sup>14a</sup> See note 6a, *supra*.

Note 15—See note 3, *supra*.

Page 448—Disease Act.<sup>15a</sup>

<sup>15a</sup> Act No. 355, approved February 28, 1956, adds the following provision to the schedule of compensable occupational diseases under the statute:

"All other occupational diseases (1) to which the claimant is exposed by reason of his employment, and (2) which are peculiar to the industry for occupation, and (3) which are not common to the general population. For the purposes of this clause, partial loss of hearing due to noise shall not be considered an occupational disease."

By virtue of this amendment, an employee may now be eligible for compensation for any occupational disease contracted as a result of his employment where the disease is peculiar to the particular occupation. The amendment serves to make the Pennsylvania statute conform to the majority of state occupational disease laws.

Note 18—See note 15a, *supra*, for the broadening of this statute by Act No. 355, approved February 28, 1956, which provides for compensation for additional occupational diseases not specifically listed in the law.

The provision relating to tuberculosis was amended by Act No. 488, approved April 20, 1956, to read as follows:

"(m) Tuberculosis in the occupation of nursing or auxiliary services involving exposure to such disease."

See Supplement to Chapter IV, note 139.

Page 450—by the act.<sup>18a</sup> This does not mean, however, that the employee or the

<sup>18a.</sup> See notes 15a and 18, *supra*.

Page 450—sation payable for disability or death.<sup>19a</sup> The employee, to be entitled

<sup>19a.</sup> Act No. 355, approved February 28, 1956, increased the amount of compensation payable for disability or death.

Page 451—worked four years in this State during a period of eight years<sup>21a</sup>

<sup>21a.</sup> Act No. 355 provides that an employee must have worked only two years in Pennsylvania during a period of ten years next preceding the date of disability in order to be eligible for compensation for silicosis or asbestosis.

Page 451—notify an employer within 90 days<sup>22a</sup> after the beginning of the disability

<sup>22a.</sup> The time within which notice must be given was increased to 120 days by Act No. 355.

Note 25—The period for filing of claims for compensation was increased to 16 months after the compensable disability begins or 16 months after death resulting from an occupational disease by Act No. 355

For the judicial interpretation of the period of time within which claims must be made for compensation resulting from disability or death from an occupational disease, see *Ciabattoni v. Birdsboro Steel Foundry & Machine Co.*, 386 Pa. 179, 125 A.2d 365 (1956).