

SENATE No. 1638

The Commonwealth of Massachusetts

SENATE, April 26, 1988.

The committee on Commerce and Labor, to whom was referred the petition (accompanied by bill, Senate, No. 1431) of Lois G. Pines; Sheet Metal Workers, Local 17, by Robert D. Spinney, financial secretary-treasurer; Painters District, Council 35, by Joseph Calsi, president; Asbestos Workers, Local 6, by Leo F. Santa Maria, business manager, and Ralph Worsencroft, business agent; Martin V. Foley; SEIU 285, by Cecilia A. Weislo, president; Denis Lawrence and John A. Businger for legislation to protect employees who are disciplined or discriminated against relative to the removal, containment or encapsulation of asbestos, reports the accompanying bill (Senate, No. 1638).

For the committee,

LOIS G. PINES.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Eight.

AN ACT TO PROTECT EMPLOYEES WHO ARE DISCIPLINED OR DISCRIMINATED AGAINST IN VIOLATION OF SECTION 6D OF CHAPTER 149 OF THE GENERAL LAWS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 6D of chapter 149 of the General Laws as created by
2 chapter 706 of the Acts of 1986 is hereby amended by striking
3 the text and replacing it with the following:

4 No person shall discharge or cause to be discharged or otherwise
5 discipline or in any manner penalize or discriminate against any
6 employee for the reason that such person has provided notice to
7 the department in regard to the occupational health and safety
8 of such employee or other workers in the use, handling, removal
9 or disposal of asbestos or materials containing asbestos or has
10 exercised any right, made any claim or filed any complaint or suit
11 or has instituted, or caused to be instituted, any proceeding under
12 sections 6A through 6F of this chapter, or has testified, or is about
13 to testify in any proceeding in his own behalf or on behalf of
14 others; nor shall any pay, seniority or other benefits be lost or
15 denied to any such employee who has notified the department or
16 exercised any right provided by sections 6A through 6F of this
17 chapter.

18 An employee who believes that he has been penalized, dis-
19 charged, disciplined or in any other manner discriminated against
20 by his employer for reason or reasons of notifying the department
21 or exercising rights under sections 6A through 6F of this chapter
22 may, within one hundred and eighty days of such violation or
23 within one hundred and eighty days after obtaining knowledge
24 that a violation did occur, file a verified complaint with the
25 commission of DLI. A copy of the verified complaint shall also
26 be sent by certified mail, return receipt requested, by the employee
27 or his attorney to the employer at the time of filing with the
28 commissioner of DLI. The employer, if he so chooses, may file

29 with the commissioner of DLI an answer to the verified complaint,
30 but must do so within twenty days of the receipt of the verified
31 complaint from the employee or his attorney.

32 Upon receipt of a verified complaint and an answer, if one is
33 so filed within the time period set forth in this section, the commis-
34 sioner of DLI shall undertake an investigation of the alleged
35 violation. If after a preliminary investigation, the commissioner
36 determines that there is insufficient cause to believe a violation
37 occurred, he shall so notify the complainant and employer within
38 ten days of such determination. The employee or his attorney may,
39 within ten days of such notice, request in writing with a copy to
40 the employer an adjudicatory hearing pursuant to the provisions
41 of chapter thirty A of the General Laws. It shall be the
42 responsibility of the employee or his attorney to present a case
43 in support of his complaint at such hearing.

44 If after a preliminary investigation, the commissioner of DLI
45 determines that there is cause to believe a violation occurred, he
46 or she shall so notify the complainant and employer within ten
47 days, and shall conduct an adjudicatory hearing pursuant to
48 chapter thirty A of the General Laws. If after such a hearing, the
49 commissioner determines that the employer did violate the
50 provisions of this section, he may take such remedial action as
51 is appropriate, including the issuance of a cease or desist order
52 or the ordering of any other affirmative steps to correct the
53 violation and prevent its recurrence including but not limited to
54 reinstatement of the aggrieved worker with full back pay, benefits
55 and seniority.

56 Any person aggrieved by the determination of the commissioner
57 may appeal such determination in the Superior court for the
58 county in which the employer's workplace is located. Such
59 determination shall be reviewed in accordance with the standards
60 for review provided in section fourteen of chapter thirty A.

61 A copy of General Law chapter 149, section 6, 6A, 6B, 6C, 6D,
62 6E and 6F shall be posted in a prominent location at any work
63 site where asbestos or materials containing asbestos are used,
64 handled, removed or disposed. Copies will be posted in all
65 languages that ten (10) or more workers speak.

