

CHAPTER 45 LAWS OF N. J. 19 62

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ASSEMBLY, No. 299

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# STATE OF NEW JERSEY

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INTRODUCED JANUARY 29, 1962

By Assemblymen CRABIEL, MARAZITI, BRADY,  
MANDELBAUM and LUBETKIN

Referred to Committee on Highways, Transportation and Public Utilities

AN ACT concerning construction safety and establishing a Construction Safety Council in the Department of Labor and Industry, supplementing Title 34 of the Revised Statutes and repealing sections 34:3-1 to 34:3-20, inclusive, section 34:3-23, sections 34:5-1 to 34:5-23, inclusive, sections 34:5-33 to 34:5-162, inclusive, sections 34:5-164 and 34:5-165, of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. This act shall be known and may be cited as the "Construction Safety  
2 Act."

1 2. The following terms wherever used or referred to in this act shall have  
2 the following meanings unless a different meaning clearly appears from the  
3 context;

4 a. "Act" means this act and rules and regulations promulgated and  
5 adopted hereunder.

6 b. "Approved" means approved by the commissioner.

7 c. "Bureau" means Bureau of Engineering and Safety in the Division of  
8 Labor, Department of Labor and Industry.

9 d. "Commissioner" means the Commissioner of the Department of Labor  
10 and Industry, or his authorized representative.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

11 e. "Council" means the Construction Safety Council established under  
12 this act.

13 f. "Department" means the Department of Labor and Industry.

14 g. "Employee" means any person suffered or permitted to work by an  
15 employer, having a specific regard to any of the activities included in section  
16 3 of this act.

17 h. "Employer" means any corporation, partnership, individual proprie-  
18 torship, joint venture, firm, company or other similar legal entity engaged  
19-20 in activities included in section 3 of this act or any person acting in the direct  
21 interest of any of the foregoing in relation to any employee or place of em-  
22 ployment, having specific regard to any of the activities included in section 3  
23 of this act.

24 i. "Place of employment" means any place in or about which an em-  
25 ployee is suffered or permitted to work having specific regard to any of the  
26 activities included in section 3 of this act.

1 3. Any employer engaging in any activity related to the erection, con-  
2 struction, alteration, demolition, repair or maintenance of buildings, struc-  
3 tures, bridges, highways, roadways, dams, tunnels, sewers, underground  
4 buildings or structures, underground pipelines or ducts and all other con-  
5 struction projects or facilities, shall comply with all requirements reason-  
6 ably necessary for the health and safety of employees and the general public.  
7 Such requirements shall be set forth only in rules and regulations adopted  
8 under this act.

1 4. The commissioner shall make and promulgate rules and regulations  
2 reasonably necessary to implement the purposes of this act. Such rules and  
3 regulations shall go into effect 90 days following promulgation or at such  
4 later date as the rules and regulations shall provide unless disapproved by  
5 a majority of the council or there is a vote for disapproval pending as pro-  
6 vided for herein. The commissioner shall consult and seek the advice of  
7 interested and qualified associations, agencies and persons. A notice of intent  
8 to promulgate proposed rules and regulations shall be published by the com-

9 missioner at least 30 days prior to the promulgation of such rules and regu-  
10 lations. This notice of intent shall state briefly the purpose of the proposed  
11 rules and regulations and shall state that a copy of the proposed rules and  
12 regulations may be obtained by any person upon written request to the de-  
13 partment. A copy of the proposed rules and regulations shall be furnished to  
14 every member of the council when such notice is published. Within 30 days  
15 after promulgation of proposed rules and regulations and on 10 days' notice,  
16 the commissioner shall call a meeting of the council for the purpose of dis-  
17 cussing said proposed rules and regulations.

18 At any time within 90 days after promulgation and upon written request  
19 to the commissioner by 2 members of the council asking for a vote of the  
20 council to disapprove a proposed rule or regulation, a meeting shall be called  
21 by the commissioner within 10 days. At any meeting called for such purpose  
22 disapproval shall be by vote of a majority of the members of the council.  
23 Pending such meeting and vote of the council, no rules or regulations the  
24 subject of a vote may become effective.

1 5. The commissioner shall enforce the provisions of this act, make com-  
2 plaints against persons violating its provisions and prosecute violations of  
3 the same.

4 The commissioner shall have the power and authority to examine and  
5 inspect any part of any project or facility included in section 3 of this act,  
6 and to make such investigation as is reasonably necessary to carry out the  
7-9 provisions of this act.

10 No person shall obstruct, hinder or delay or interfere with by force or  
11 otherwise the performance by the commissioner of any duty under the provi-  
12 sions of this act.

13 If upon inspection the commissioner discovers a condition which exists  
14 in violation of the provisions of this act he shall be authorized to order such  
15 violation to cease and to take such steps necessary to enforce such an order.  
16 Said order shall state the items which are in violation of the provisions of  
17 this act and shall provide a reasonable specified time within which the viola-

18 tions must cease. The person responsible shall make the corrections neces-  
19 sary to comply with the requirements of this act within the time specified  
20 in the order.

21 If the violation constitutes an imminent hazard and the commissioner's  
22 order is not obeyed, he shall forthwith order the cessation of work and shall  
23 prohibit the employment of any persons within the hazardous area except for  
24 the purpose of eliminating the imminent hazard. Upon notice received from  
25 the person responsible that the imminent hazard has been eliminated, a re-  
26 inspection shall be made within 1 working day. If upon reinspection the  
27 commissioner determines that the imminent hazard has been eliminated,  
28 work may be resumed immediately. If the reinspection is not made within  
29 1 working day following said notice, work may be resumed. Where the per-  
30 son responsible denies that a violation constituting an imminent hazard  
31 exists, he shall have the right to apply to the commissioner for a hearing  
32 which must be afforded and a decision rendered within 48 hours of the re-  
33 quest for a hearing. If the commissioner rules against the petitioning party,  
34 he shall have the right to apply for injunctive relief against the order to cease  
35 work. Jurisdiction for such injunctive relief shall be in the Law Division of  
36 the Superior Court of New Jersey, but the only issue to be determined shall  
37 be the existence of a violation constituting an imminent hazard. Such relief  
38 may be sought by an Order to Show Cause and may be granted ex parte pend-  
39-42 ing a hearing of the matter.

43 Nothing herein shall be deemed to prevent the commissioner from  
44 prosecuting any violation of this act, notwithstanding that such violations are  
45 corrected in accordance with his order.

1 6. The commissioner shall have the power and authority to grant ex-  
2 ceptions from the literal requirements of rules and regulations promulgated  
3 under this act. Such exception shall be granted in any particular case only  
4 where it is clearly evident that it is necessary to prevent undue hardship or  
5 where existing conditions prevent compliance. In no case shall any exception  
6 be granted unless in the opinion of the commissioner reasonable protection

7 of the health and safety of workers and the public will be maintained thereby.  
8 An application for an exception shall be filed in writing with the commis-  
9 sioner, setting forth specifically the requirements of the rules and regulations  
10 from which an exception is desired and the reason why enforcement of the  
11 applicable provisions of the rules and regulations is unreasonable. The com-  
12 missioner shall grant or deny the exception within 30 days from the date of  
13 receipt by him of the application. The commissioner shall maintain a record  
14 of all exceptions granted and shall make such record reasonably available for  
15 public examination and shall mail a copy of all rulings granting exceptions  
16 to the members of the council.

1 7. There is hereby established within the department a Construction  
2 Safety Council. The council shall consist of 15 members; 14 appointed by  
3 the Governor, and the commissioner who shall serve as chairman. Members  
4 appointed by the Governor shall be appointed for a 4-year term commenc-  
5 ing on July 1 of the year of appointment except that of those first ap-  
6 pointed, 4 shall be appointed for a term of 1 year, 4 for a term of 2 years, 3  
7 for a term of 3 years and 3 for a term of 4 years, which terms shall com-  
8 mence on July 1, 1962. Each member shall hold over after the expiration  
9 of his term until his successor has been appointed and has qualified.

10 Of the members appointed by the Governor; 2 members shall be selected  
11 to represent the public, 1 member shall be selected from a list of names sub-  
12 mitted by the Associated General Contractors Association of New Jersey, 1  
13 member from a list of names submitted by the Building Contractors Asso-  
14 ciation of New Jersey, 1 member from a list of names submitted by the Na-  
15 tional Electrical Contractors Association, New Jersey Chapter, Inc., 1 member  
16 from a list of names submitted by the Mechanical Contractors Association of  
17 N. J., Inc., 1 member from a list of names submitted by the New Jersey Home  
18 Builders Association, 1 member from a list of names submitted by  
18A the Structural Steel & Ornamental Iron Association, 4 members from  
18B a list of names submitted by the New Jersey State Building  
19 and Construction Trades Council, 1 member from a list of names

19A submitted by the New Jersey Society of Professional Engineers  
19B and 1 member from a list of names submitted by the New Jersey Society of  
19C Architects. At least 3 names shall be submitted by each organization for each  
19D member that is to be appointed from its list.

20 Vacancies shall be filled only for the unexpired term and in the manner  
21 provided for the original appointment.

22 The members of the council shall serve without compensation except for  
23 the actual expenses incurred while engaged in their duties as members of the  
24 council. It shall be the duty of the council to advise the commissioner in  
25 matters relating to the administration of this act. The council shall meet at  
26 least every 6 months and at such time as the commissioner may designate at  
27 the time and place selected by him. A meeting of the council shall be called by  
28 the commissioner when requested by any 3 members of the council. The head  
29 of the Bureau of Engineering and Safety shall serve as secretary of the  
30 council.

1 8. There is hereby created a Construction Safety Section in the  
2 Bureau of Engineering and Safety in the Division of Labor, Department of  
3 Labor and Industry, the function of which shall be, under the direction of  
4 the commissioner, to administer and enforce the provisions of this act, and  
5 to perform such other duties as the commissioner may direct or as may be  
6 provided by law.

1 9. The commissioner shall appoint a licensed professional engineer  
2 of this State who has had 5 years experience in any of the construction activi-  
3 ties listed in section 3 of this act as chief engineer in charge of the Con-  
4 struction Safety Section established in this act. Construction safety inspec-  
5 tors shall have a minimum of 5 years experience in construction work. All  
6 such appointments shall be made in accordance with the provisions of Title  
7 11 of the Revised Statutes, Civil Service.

1 10. Whenever loss of life or serious accident shall occur at a place of  
2 employment covered by this act, the commissioner may require the person  
3 in charge to report such loss of life or serious accident to the department

4 in the quickest manner possible, and, in addition, to report in writing the  
5 pertinent facts concerning the accident and the injured or deceased persons  
6 within 24 hours after such occurrence in a manner prescribed by the com-  
7 missioner.

1 11. The record or determination of any proceeding under this act or any  
2 statement or report of any kind whatsoever obtained or received in connection  
3 with the administration or enforcement of the provisions of this act shall be  
4 privileged and not admissible as evidence in a court of law in a civil action  
5 for any purpose whatsoever, except such actions that may be brought for the  
6 enforcement of this act.

1 12. This act shall not in any way increase the burden of care ordinarily  
2 imposed by the common law of the State upon those within its jurisdiction.

1 13. Any employer or any officer, agent or employee thereof who violates  
2 any of the provisions of this act shall be liable to a penalty of not less than  
3 \$25.00 nor more than \$500.00 to be collected in a civil action by a summary  
4 proceeding under the penalty enforcement law (N. J. S. 2A:58-1 et seq.). Any  
5 violation of the act by an officer, agent or employee shall also be a violation of  
6 the act by his employer if he had actual control over the cause of such viola-  
7 tion. Where the violation is of a continuing nature, each day during which  
8 it continues after the date given by which the violation must be eliminated  
9 in accordance with the order of the commissioner shall constitute an addi-  
10 tional separate and distinct offense, except during the time an appeal from  
10A said order may be taken or is pending.

11 The commissioner is hereby authorized and empowered to compromise  
12 and settle any claim for a penalty under this section in such amount in the  
13 discretion of the commissioner as may appear appropriate and equitable  
14 under all of the circumstances.

1 14. This act is not intended to alter in any way the duties of per-  
2 sons to take precautions in the proximity of high voltage lines imposed by  
3 P. L. 1948, c. 249.

1 15. This act shall not apply to any employer subject to the provisions of

2 section 34:6-141 of the Revised Statutes, to any employer subject to the pro-  
3 visions of chapter 197 of the laws of 1954, to any public utility subject to  
4 the jurisdiction of, control, supervision and regulation by the Board of Public  
5 Utility Commissioners in the Department of Public Utilities of this State,  
6 to any public utility subject to the jurisdiction of, control, supervision  
7 and regulation by a Federal regulatory body, or to natural gas pipeline utili-  
8 ties subject to the provisions of the New Jersey Natural Gas Safety Act  
9 (chapter 166 of the laws of 1952).

1     16. Sections 34:3-1 to 34:3-20, inclusive, section 34:3-23, sections 34:5-1  
2 to 34:5-23, inclusive, sections 34:5-33 to 34:5-162, inclusive, sections 34:5-164  
3 and 34:5-165 of the Revised Statutes are hereby repealed; provided, how-  
4 ever, that any rules and regulations adopted pursuant to the provisions of  
5 any section repealed herein shall remain in force and effect until 6 months  
6 following the effective date of this act or until sooner replaced by rules and  
7 regulations adopted under the provisions of this act.

1     17. This act shall take effect immediately.