

119TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for high gravity violations, to adjust penalties for inflation, to provide rights for victims or their family members, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for high gravity violations, to adjust penalties for inflation, to provide rights for victims or their family members, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Protecting America’s Workers Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—COVERAGE OF PUBLIC EMPLOYEES, AUTHORIZED EMPLOYEE REPRESENTATIVES, VOLUNTARY EMERGENCY RESPONDERS, AND APPLICATION OF ACT

Sec. 101. Coverage of public employees.

Sec. 102. Authorized employee representatives.

Sec. 103. Application of Act.

TITLE II—INCREASING WHISTLEBLOWER PROTECTIONS

Sec. 201. Enhanced protections from retaliation.

TITLE III—IMPROVING REPORTING, INSPECTION, AND ENFORCEMENT

PART A—DUTIES AND STANDARDS

Sec. 301. General duty of employers.

Sec. 302. Occupational safety and health standards.

PART B—INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

Sec. 311. Posting of employee rights.

Sec. 312. Employer reporting of work-related injuries, illness, deaths, and hospitalizations; prohibition on discouraging employee reporting.

Sec. 313. No loss of employee pay for inspections.

Sec. 314. Investigations of fatalities and significant incidents.

Sec. 315. Recordkeeping.

PART C—CITATIONS

Sec. 321. Period for issuance of a citation.

Sec. 322. Prohibition on unclassified citations.

PART D—RIGHTS OF VICTIMS AND FAMILIES

Sec. 331. Rights of Victims and Families.

PART E—PROCEDURE FOR ENFORCEMENT

Sec. 341. Right to contest citations and penalties.

Sec. 342. Correction of serious, willful, or repeated violations pending contest and procedures for a stay.

Sec. 343. Inaction by the Review Commission.

Sec. 344. Conforming amendments.

PART F—PENALTIES

Sec. 351. Civil penalties.

Sec. 352. Criminal penalties.

Sec. 353. Prejudgment interest.

TITLE IV—STATE PLANS

Sec. 401. Concurrent enforcement authority and review of State occupational safety and health plans.

Sec. 402. Evaluation of repeated violations in State plans.

TITLE V—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY  
AND HEALTH

Sec. 501. Health hazard evaluations by the National Institute for Occupational Safety and Health.

Sec. 502. Training and employee education.

TITLE VI—EFFECTIVE DATE

Sec. 601. Effective date.

1 **TITLE I—COVERAGE OF PUBLIC**  
2 **EMPLOYEES, AUTHORIZED**  
3 **EMPLOYEE REPRESENTA-**  
4 **TIVES, VOLUNTARY EMER-**  
5 **GENCY RESPONDERS, AND**  
6 **APPLICATION OF ACT**

7 **SEC. 101. COVERAGE OF PUBLIC EMPLOYEES.**

8 (a) IN GENERAL.—Section 3(5) of the Occupational  
9 Safety and Health Act of 1970 (29 U.S.C. 652(5)) is  
10 amended by striking “but does not include” and all that  
11 follows through the period at the end and inserting “in-  
12 cluding the United States, a State, or a political subdivi-  
13 sion of a State.”.

14 (b) CONSTRUCTION.—Nothing in this Act shall be  
15 construed to affect the application of section 18 of the Oc-  
16 cupational Safety and Health Act of 1970 (29 U.S.C.  
17 667).

1 **SEC. 102. AUTHORIZED EMPLOYEE REPRESENTATIVES.**

2 Section 3 of the Occupational Safety and Health Act  
3 of 1970 (29 U.S.C. 652) is amended by adding at the end  
4 the following:

5 “(15) AUTHORIZED EMPLOYEE REPRESENTA-  
6 TIVE.—The term ‘authorized employee representa-  
7 tive’—

8 “(A) means any person or organization  
9 that for the purposes of this Act represents not  
10 less than one employee at an establishment, fac-  
11 tory, plant, construction site, or other work-  
12 place, or other environment where work is per-  
13 formed by an employee for an employer; and

14 “(B) includes a representative authorized  
15 by employees, a representative of employees, or  
16 any other representative of an employee under  
17 this Act.”.

18 **SEC. 103. APPLICATION OF ACT.**

19 Section 4(b) of the Occupational Safety and Health  
20 Act of 1970 (29 U.S.C. 653(b)) is amended—

21 (1) by redesignating paragraphs (2), (3), and  
22 (4) as paragraphs (5), (6), and (7), respectively; and

23 (2) by striking paragraph (1) and inserting the  
24 following:

25 “(1) If a Federal agency has promulgated and is en-  
26 forcing a standard or regulation affecting occupational

1 safety or health of some or all of the employees within  
2 that agency's regulatory jurisdiction, and the Secretary  
3 determines that such a standard or regulation as promul-  
4 gated and the manner in which the standard or regulation  
5 is being enforced provides protection to those employees  
6 that is at least as effective as the protection provided to  
7 those employees by this Act and the Secretary's enforce-  
8 ment of this Act, the Secretary may publish a certification  
9 notice in the Federal Register. The notice shall set forth  
10 that determination and the reasons for the determination  
11 and certify that the Secretary has ceded jurisdiction to  
12 that Federal agency with respect to the specified standard  
13 or regulation affecting occupational safety or health. In  
14 determining whether to cede jurisdiction to a Federal  
15 agency, the Secretary shall seek to avoid duplication of,  
16 and conflicts between, health and safety requirements.  
17 Such certification shall remain in effect unless and until  
18 rescinded by the Secretary.

19       “(2) The Secretary shall, by regulation, establish pro-  
20 cedures by which any person who may be adversely af-  
21 fected by a decision of the Secretary certifying that the  
22 Secretary has ceded jurisdiction to another Federal agency  
23 pursuant to paragraph (1) may petition the Secretary to  
24 rescind a certification notice under such paragraph. Upon  
25 receipt of such a petition, the Secretary shall investigate

1 the matter involved and shall, not later than 90 days after  
2 the receipt of the petition, publish a decision with respect  
3 to the petition in the Federal Register.

4 “(3) Any person who may be adversely affected by—

5 “(A) a decision of the Secretary certifying that  
6 the Secretary has ceded jurisdiction to another Fed-  
7 eral agency pursuant to paragraph (1); or

8 “(B) a decision of the Secretary denying a peti-  
9 tion to rescind such a certification notice under  
10 paragraph (1),

11 may, not later than 60 days after such decision is pub-  
12 lished in the Federal Register, file a petition challenging  
13 such decision with the United States Court of Appeals for  
14 the circuit in which such person resides or such person  
15 has a principal place of business, for judicial review of  
16 such decision. A copy of the petition shall be forthwith  
17 transmitted by the clerk of the court to the Secretary. The  
18 Secretary’s decision shall be set aside if found to be arbi-  
19 trary, capricious, an abuse of discretion, or otherwise not  
20 in accordance with law.

21 “(4) Nothing in this Act shall apply to working condi-  
22 tions covered by the Federal Mine Safety and Health Act  
23 of 1977 (30 U.S.C. 801 et seq.).”

1                   **TITLE II—INCREASING**  
2 **WHISTLEBLOWER PROTECTIONS**

3 **SEC. 201. ENHANCED PROTECTIONS FROM RETALIATION.**

4           (a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the  
5 Occupational Safety and Health Act of 1970 (29 U.S.C.  
6 660(c)(1)) is amended—

7                   (1) by striking “discharge” and all that follows  
8 through “because such” and inserting the following:  
9 “discharge or cause to be discharged, or in any man-  
10 ner discriminate against or cause to be discriminated  
11 against, any employee because—

12                   “ (A) such”;

13                   (2) by striking “this Act or has” and inserting  
14 the following: “this Act;

15                   “ (B) such employee has”;

16                   (3) by striking “in any such proceeding or be-  
17 cause of the exercise” and inserting the following:  
18 “before Congress or in any Federal or State pro-  
19 ceeding related to safety or health;

20                   “ (C) such employee has refused to violate any  
21 provision of this Act; or

22                   “ (D) of the exercise”; and

23                   (4) by inserting before the period at the end the  
24 following: “, including the reporting of any injury,  
25 illness, or unsafe condition to the employer, agent of

1 the employer, safety and health committee involved,  
2 or employee safety and health representative in-  
3 volved”.

4 (b) PROHIBITION OF RETALIATION.—Section 11(c)  
5 of such Act (29 U.S.C. 660(c)) is amended by striking  
6 paragraph (2) and inserting the following:

7 “(2) PROHIBITION OF RETALIATION.—(A) No person  
8 shall discharge, or cause to be discharged, or in any man-  
9 ner discriminate against, or cause to be discriminated  
10 against, an employee for refusing to perform the employ-  
11 ee’s duties if the employee has a reasonable apprehension  
12 that performing such duties would result in serious injury  
13 to, or serious impairment of the health of, the employee  
14 or other employees.

15 “(B) For purposes of subparagraph (A), the cir-  
16 cumstances causing the employee’s good-faith belief that  
17 performing such duties would pose a safety or health haz-  
18 ard shall be of such a nature that a reasonable person,  
19 under the circumstances confronting the employee, would  
20 conclude that there is such a hazard. In order to qualify  
21 for protection under this paragraph, the employee, when  
22 practicable, shall have communicated or attempted to com-  
23 municate the safety or health concern to the employer and  
24 have not received from the employer a response reasonably  
25 calculated to allay such concern.”.

1 (c) PROCEDURE.—Section 11(c) of such Act (29  
2 U.S.C. 660(c)) is amended by striking paragraph (3) and  
3 inserting the following:

4 “(3) COMPLAINT.—Any employee who believes that  
5 the employee has been discharged, disciplined, or other-  
6 wise discriminated against by any person in violation of  
7 paragraph (1) or (2) may seek relief for such violation  
8 by filing a complaint with the Secretary under paragraph  
9 (5).

10 “(4) STATUTE OF LIMITATIONS.—

11 “(A) IN GENERAL.—An employee may take the  
12 action permitted by paragraph (3) not later than  
13 180 days after the later of—

14 “(i) the date on which an alleged violation  
15 of paragraph (1) or (2) occurs; or

16 “(ii) the date on which the employee knows  
17 or should reasonably have known that such al-  
18 leged violation occurred.

19 “(B) REPEAT VIOLATION.—Except in cases  
20 when the employee has been discharged, a violation  
21 of paragraph (1) or (2) shall be considered to have  
22 occurred on the last date an alleged repeat violation  
23 occurred.

24 “(5) INVESTIGATION.—

1           “(A) IN GENERAL.—An employee may, within  
2           the time period required under paragraph (4)(A),  
3           file a complaint with the Secretary alleging a viola-  
4           tion of paragraph (1) or (2). If the complaint alleges  
5           a prima facie case, the Secretary shall conduct an  
6           investigation of the allegations in the complaint,  
7           which—

8                   “(i) shall include—

9                           “(I) interviewing the complainant;

10                           “(II) providing the respondent an op-  
11                   portunity to—

12                                   “(aa) submit to the Secretary a  
13                                   written response to the complaint; and

14                                   “(bb) meet with the Secretary to  
15                                   present statements from witnesses or  
16                                   provide evidence; and

17                           “(III) providing the complainant an  
18                   opportunity to—

19                                   “(aa) receive any statements or  
20                                   evidence provided to the Secretary;

21                                   “(bb) meet with the Secretary;  
22                   and

23                                   “(cc) rebut any statements or  
24                   evidence; and

1                   “(ii) may include issuing subpoenas for the  
2                   purposes of such investigation.

3                   “(B) DECISION.—Not later than 90 days after  
4                   the filing of the complaint, the Secretary shall—

5                   “(i) determine whether reasonable cause  
6                   exists to believe that a violation of paragraph  
7                   (1) or (2) has occurred; and

8                   “(ii) issue a decision granting or denying  
9                   relief.

10                  “(6) PRELIMINARY ORDER FOLLOWING INVESTIGA-  
11                  TION.—If, after completion of an investigation under  
12                  paragraph (5)(A), the Secretary finds reasonable cause to  
13                  believe that a violation of paragraph (1) or (2) has oc-  
14                  curred, the Secretary shall issue a preliminary order pro-  
15                  viding relief authorized under paragraph (14) at the same  
16                  time the Secretary issues a decision under paragraph  
17                  (5)(B). If a de novo hearing is not requested within the  
18                  time period required under paragraph (7)(A)(i), such pre-  
19                  liminary order shall be deemed a final order of the Sec-  
20                  retary and is not subject to judicial review.

21                  “(7) HEARING.—

22                  “(A) REQUEST FOR HEARING.—

23                  “(i) IN GENERAL.—A de novo hearing on  
24                  the record before an administrative law judge  
25                  may be requested—

1           “(I) by the complainant or respondent  
2           within 30 days after receiving notification  
3           of a decision granting or denying relief  
4           issued under paragraph (5)(B) or a pre-  
5           liminary order under paragraph (6), re-  
6           spectively;

7           “(II) by the complainant within 30  
8           days after the date the complaint is dis-  
9           missed without investigation by the Sec-  
10          retary under paragraph (5)(A); or

11          “(III) by the complainant within 120  
12          days after the date of filing the complaint,  
13          if the Secretary has not issued a decision  
14          under paragraph (5)(B).

15          “(ii) REINSTATEMENT ORDER.—The re-  
16          quest for a hearing shall not operate to stay  
17          any preliminary reinstatement order issued  
18          under paragraph (6).

19          “(B) PROCEDURES.—

20          “(i) IN GENERAL.—A hearing requested  
21          under this paragraph shall be conducted expedi-  
22          tiously and in accordance with rules established  
23          by the Secretary for hearings conducted by ad-  
24          ministrative law judges.

1           “(ii) SUBPOENAS; PRODUCTION OF EVI-  
2           DENCE.—In conducting any such hearing, the  
3           administrative law judge may issue subpoenas.  
4           The respondent or complainant may request the  
5           issuance of subpoenas that require the deposi-  
6           tion of, or the attendance and testimony of, wit-  
7           nesses and the production of any evidence (in-  
8           cluding any books, papers, documents, or re-  
9           cordings) relating to the matter under consider-  
10          ation.

11          “(iii) DECISION.—The administrative law  
12          judge shall issue a decision not later than 90  
13          days after the date on which a hearing was re-  
14          quested under this paragraph and promptly no-  
15          tify, in writing, the parties and the Secretary of  
16          such decision, including the findings of fact and  
17          conclusions of law. If the administrative law  
18          judge finds that a violation of paragraph (1) or  
19          (2) has occurred, the judge shall issue an order  
20          for relief under paragraph (14). If review under  
21          paragraph (8) is not timely requested, such  
22          order shall be deemed a final order of the Sec-  
23          retary that is not subject to judicial review.

24          “(8) ADMINISTRATIVE APPEAL.—

1           “(A) IN GENERAL.—Not later than 30 days  
2 after the date of notification of a decision and order  
3 issued by an administrative law judge under para-  
4 graph (7), the complainant or respondent may file,  
5 with objections, an administrative appeal with an ad-  
6 ministrative review body designated by the Secretary  
7 (referred to in this paragraph as the ‘review board’).

8           “(B) STANDARD OF REVIEW.—In reviewing the  
9 decision and order of the administrative law judge,  
10 the review board shall affirm the decision and order  
11 if it is determined that the factual findings set forth  
12 therein are supported by substantial evidence and  
13 the decision and order are made in accordance with  
14 applicable law.

15           “(C) DECISIONS.—If the review board grants  
16 an administrative appeal, the review board shall  
17 issue a final decision and order affirming or revers-  
18 ing, in whole or in part, the decision under review  
19 by not later than 90 days after receipt of the admin-  
20 istrative appeal. If it is determined that a violation  
21 of paragraph (1) or (2) has occurred, the review  
22 board shall issue a final decision and order providing  
23 relief authorized under paragraph (14). Such deci-  
24 sion and order shall constitute final agency action  
25 with respect to the matter appealed.

1       “(9) SETTLEMENT IN THE ADMINISTRATIVE PROC-  
2    ESS.—

3           “(A) IN GENERAL.—At any time before  
4    issuance of a final order, an investigation or pro-  
5    ceeding under this subsection may be terminated on  
6    the basis of a settlement agreement entered into by  
7    the parties.

8           “(B) PUBLIC POLICY CONSIDERATIONS.—Nei-  
9    ther the Secretary, an administrative law judge, nor  
10   the review board conducting a hearing under this  
11   subsection shall accept a settlement that contains  
12   conditions conflicting with the rights protected under  
13   this Act or that are contrary to public policy, includ-  
14   ing a restriction on a complainant’s right to future  
15   employment with employers other than the specific  
16   employers named in a complaint.

17       “(10) INACTION BY THE REVIEW BOARD OR ADMIN-  
18    ISTRATIVE LAW JUDGE.—

19           “(A) IN GENERAL.—The complainant may  
20   bring a de novo action described in subparagraph  
21   (B) if—

22           “(i) an administrative law judge has not  
23   issued a decision and order within the 90-day  
24   time period required under paragraph  
25   (7)(B)(iii); or

1           “(ii) the review board has not issued a de-  
2           cision and order within the 90-day time period  
3           required under paragraph (8)(C).

4           “(B) DE NOVO ACTION.—Such de novo action  
5           may be brought at law or equity in the United  
6           States district court for the district where a violation  
7           of paragraph (1) or (2) allegedly occurred or where  
8           the complainant resided on the date of such alleged  
9           violation. The court shall have jurisdiction over such  
10          action without regard to the amount in controversy  
11          and to order appropriate relief under paragraph  
12          (14). Such action shall, at the request of either  
13          party to such action, be tried by the court with a  
14          jury.

15          “(11) JUDICIAL REVIEW.—

16                 “(A) TIMELY APPEAL TO THE COURT OF AP-  
17                 PEALS.—Any party adversely affected or aggrieved  
18                 by a final decision and order issued under this sub-  
19                 section may obtain review of such decision and order  
20                 in the United States Court of Appeals for the circuit  
21                 where the violation, with respect to which such final  
22                 decision and order was issued, allegedly occurred or  
23                 where the complainant resided on the date of such  
24                 alleged violation. To obtain such review, a party  
25                 shall file a petition for review not later than 60 days

1 after the final decision and order was issued. Such  
2 review shall conform to chapter 7 of title 5, United  
3 States Code. The commencement of proceedings  
4 under this subparagraph shall not, unless ordered by  
5 the court, operate as a stay of the final decision and  
6 order.

7 “(B) LIMITATION ON COLLATERAL ATTACK.—  
8 An order and decision with respect to which review  
9 may be obtained under subparagraph (A) shall not  
10 be subject to judicial review in any criminal or other  
11 civil proceeding.

12 “(12) ENFORCEMENT OF ORDER.—If a respondent  
13 fails to comply with an order issued under this subsection,  
14 the Secretary or the complainant on whose behalf the  
15 order was issued may file a civil action for enforcement  
16 in the United States district court for the district in which  
17 the violation was found to occur to enforce such order.  
18 If both the Secretary and the complainant file such action,  
19 the action of the Secretary shall take precedence. The dis-  
20 trict court shall have jurisdiction to grant all appropriate  
21 relief described in paragraph (14).

22 “(13) BURDENS OF PROOF.—

23 “(A) CRITERIA FOR DETERMINATION.—In mak-  
24 ing a determination or adjudicating a complaint pur-  
25 suant to this subsection, the Secretary, administra-

1       tive law judge, review board, or a court may deter-  
2       mine that a violation of paragraph (1) or (2) has oc-  
3       curred only if the complainant demonstrates that  
4       any conduct described in paragraph (1) or (2) with  
5       respect to the complainant was a contributing factor  
6       in the adverse action alleged in the complaint.

7               “(B) PROHIBITION.—Notwithstanding subpara-  
8       graph (A), a decision or order that is favorable to  
9       the complainant shall not be issued in any adminis-  
10      trative or judicial action pursuant to this subsection  
11      if the respondent demonstrates by clear and con-  
12      vincing evidence that the respondent would have  
13      taken the same adverse action in the absence of such  
14      conduct.

15      “(14) RELIEF.—

16              “(A) ORDER FOR RELIEF.—If the Secretary,  
17      administrative law judge, review board, or a court  
18      determines that a violation of paragraph (1) or (2)  
19      has occurred, the Secretary, administrative law  
20      judge, review board, or court, respectively, shall have  
21      jurisdiction to order all appropriate relief, including  
22      injunctive relief, compensatory and exemplary dam-  
23      ages, including—

24                      “(i) affirmative action to abate the viola-  
25                      tion;

1           “(ii) reinstatement without loss of position  
2 or seniority, and restoration of the terms,  
3 rights, conditions, and privileges associated with  
4 the complainant’s employment, including oppor-  
5 tunities for promotions to positions with equiva-  
6 lent or better compensation for which the com-  
7 plainant is qualified;

8           “(iii) compensatory and consequential  
9 damages sufficient to make the complainant  
10 whole (including back pay, prejudgment inter-  
11 est, and other damages); and

12           “(iv) expungement of all warnings, rep-  
13 rimands, or derogatory references that have  
14 been placed in paper or electronic records or  
15 databases of any type relating to the actions by  
16 the complainant that gave rise to the unfavor-  
17 able personnel action, and, at the complainant’s  
18 direction, transmission of a copy of the decision  
19 on the complaint to any person whom the com-  
20 plainant reasonably believes may have received  
21 such unfavorable information.

22           “(B) ATTORNEYS’ FEES AND COSTS.—If the  
23 Secretary or an administrative law judge, review  
24 board, or court grants an order for relief under sub-  
25 paragraph (A), the Secretary, administrative law

1 judge, review board, or court, respectively, shall as-  
2 sess, at the request of the employee against the em-  
3 ployer—

4 “(i) reasonable attorneys’ fees; and

5 “(ii) costs (including expert witness fees)  
6 reasonably incurred, as determined by the Sec-  
7 retary, administrative law judge, review board,  
8 or court, respectively, in connection with bring-  
9 ing the complaint upon which the order was  
10 issued.

11 “(15) PROCEDURAL RIGHTS.—The rights and rem-  
12 edies provided for in this subsection may not be waived  
13 by any agreement, policy, form, or condition of employ-  
14 ment, including by any pre-dispute arbitration agreement  
15 or collective bargaining agreement.

16 “(16) SAVINGS.—Nothing in this subsection shall be  
17 construed to diminish the rights, privileges, or remedies  
18 of any employee who exercises rights under any Federal  
19 or State law or common law, or under any collective bar-  
20 gaining agreement.

21 “(17) ELECTION OF VENUE.—

22 “(A) IN GENERAL.—An employee of an em-  
23 ployer who is located in a State that has a State  
24 plan approved under section 18 may file a complaint

1 alleging a violation of paragraph (1) or (2) by such  
2 employer with—

3 “(i) the Secretary under paragraph (5); or

4 “(ii) a State plan administrator in such  
5 State.

6 “(B) REFERRALS.—If—

7 “(i) the Secretary receives a complaint  
8 pursuant to subparagraph (A)(i), the Secretary  
9 shall not refer such complaint to a State plan  
10 administrator for resolution; or

11 “(ii) a State plan administrator receives a  
12 complaint pursuant to subparagraph (A)(ii), the  
13 State plan administrator shall not refer such  
14 complaint to the Secretary for resolution.”.

15 (d) RELATION TO ENFORCEMENT.—Section 17(j) of  
16 such Act (29 U.S.C. 666(j)) is amended by inserting be-  
17 fore the period the following: “, including the history of  
18 violations under section 11(c)”.

19 **TITLE III—IMPROVING REPORT-**  
20 **ING, INSPECTION, AND EN-**  
21 **FORCEMENT**

22 **PART A—DUTIES AND STANDARDS**

23 **SEC. 301. GENERAL DUTY OF EMPLOYERS.**

24 Section 5 of the Occupational Safety and Health Act  
25 of 1970 (29 U.S.C. 654) is amended—

1 (1) in subsection (a), by amending paragraph  
2 (1) to read as follows:

3 “(1) shall furnish employment and a place of  
4 employment that are free from recognized hazards  
5 that are causing or are likely to cause death or seri-  
6 ous physical harm and that the employer creates or  
7 controls or to which the employer exposes any em-  
8 ployee of the employer or any other person per-  
9 forming work at the place of employment; and”; and  
10 (2) by adding at the end the following new sub-  
11 section:

12 “(c) Each employee or other person exposed to a haz-  
13 ard in violation of subsection (a) may constitute a separate  
14 violation.”.

15 **SEC. 302. OCCUPATIONAL SAFETY AND HEALTH STAND-**  
16 **ARDS.**

17 Section 6 of the Occupational Safety and Health Act  
18 of 1970 (29 U.S.C. 655) is amended—

19 (1) in subsection (a)—

20 (A) by striking “Without regard” and in-  
21 serting “(1) Without regard”;

22 (B) by striking “chapter 5” and inserting  
23 “chapters 5 and 6”;

24 (C) by striking “shall, as soon as prac-  
25 ticable” and inserting the following: “shall—

1 “(A) as soon as practicable”;

2 (D) by striking “In the” and inserting the  
3 following:

4 “(2) In the”;

5 (E) by striking “designated employees.”  
6 and inserting “designated employees; and”;

7 (F) by adding after paragraph (1) (as des-  
8 ignated by subparagraph (A)) the following:

9 “(B) not later than 2 years after the effec-  
10 tive date in section 601(a) of the Protecting  
11 America’s Workers Act, by rule update any na-  
12 tional consensus standard that has been pro-  
13 mulgated or incorporated by reference pursuant  
14 to this subsection, except that such a standard  
15 shall not be updated pursuant to this subpara-  
16 graph, if—

17 “(i) the standard has been superseded  
18 by a standard promulgated pursuant to  
19 subsection (b); or

20 “(ii) the Secretary determines such  
21 update would not result in improved health  
22 or safety for specifically designated em-  
23 ployees.”; and

24 (G) in paragraph (2) (as designated by  
25 subparagraph (D)), by inserting “including na-



1           “(A) A requirement that employers promptly  
2           notify the Secretary of any work-related death or  
3           work-related injury or illness that results in the in-  
4           patient hospitalization of any employee for medical  
5           treatment, amputation, or loss of an eye.

6           “(B) A prohibition on the adoption or imple-  
7           mentation by employers of policies or practices that  
8           have the effect of discouraging accurate record-  
9           keeping and the reporting of work-related injuries or  
10          illnesses by any employee, or in any manner dis-  
11          criminates or provides for adverse action against any  
12          employee for reporting a work-related injury or ill-  
13          ness.

14          “(C) A requirement that, at a minimum, em-  
15          ployers subject to the requirements of sections  
16          1904.41 and 1902.7(d) of title 29, Code of Federal  
17          Regulations (as amended by the final regulations of  
18          the Department of Labor published in the Federal  
19          Register on May 12, 2016 (81 Fed. Reg. 29624 et  
20          seq.)) shall, on at least an annual basis, electroni-  
21          cally report to the Secretary information from the  
22          records of work-related deaths, injuries, and illnesses  
23          required to be made and maintained under this  
24          paragraph, which shall include the information re-  
25          quired to be made and maintained in accordance

1 with such sections 1904.41 and 1902.7(d), and a re-  
2 quirement that the Secretary make such reports  
3 available to the public in a searchable format.

4 “(D) A requirement that each site-controlling  
5 employer keep, maintain, and make available a site  
6 log for all recordable injuries and illnesses occurring  
7 for any employee at each work site for which the  
8 employer is the site-controlling employer, including  
9 employees of the site-controlling employer and others  
10 who are performing work at such site (including  
11 independent contractors). For purposes of this sub-  
12 paragraph, the term ‘site-controlling employer’  
13 means the employer that has primary control over a  
14 work site at which employees of more than one em-  
15 ployer work, such as by hiring or coordinating the  
16 work of other employers working at the site.”.

17 **SEC. 313. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.**

18 Section 8(e) of such Act (29 U.S.C. 657(e)) is  
19 amended by inserting after the first sentence the fol-  
20 lowing: “Time spent by an employee participating in or  
21 aiding any such inspection shall be deemed to be hours  
22 worked and no employee shall suffer any loss of wages,  
23 benefits, or other terms and conditions of employment for  
24 having participated in or aided any such inspection.”.

1 **SEC. 314. INVESTIGATIONS OF FATALITIES AND SIGNIFI-**  
2 **CANT INCIDENTS.**

3 Section 8 of such Act (29 U.S.C. 657), as amended  
4 by sections 311 through 313, is further amended by add-  
5 ing at the end the following new subsection:

6 “(i) INVESTIGATION OF FATALITIES AND SERIOUS  
7 INCIDENTS.—

8 “(1) IN GENERAL.—The Secretary shall inves-  
9 tigate any significant incident or an incident result-  
10 ing in death that occurs in a place of employment.

11 “(2) EVIDENCE PRESERVATION.—If a signifi-  
12 cant incident or an incident resulting in death oc-  
13 curs in a place of employment, the employer shall  
14 promptly notify the Secretary of the incident in-  
15 volved and shall take appropriate measures to pre-  
16 vent the destruction or alteration of any evidence  
17 that would assist in investigating the incident. The  
18 appropriate measures required by this paragraph do  
19 not prevent an employer from taking action on a  
20 worksite to prevent injury to employees or substan-  
21 tial damage to property or to avoid disruption of es-  
22 sential services necessary to public safety, provided  
23 that if an employer takes such action, the employer  
24 shall notify the Secretary of the action in a timely  
25 fashion.

26 “(3) DEFINITIONS.—In this subsection:

1           “(A) INCIDENT RESULTING IN DEATH.—  
2           The term ‘incident resulting in death’ means an  
3           incident that results in the death of an em-  
4           ployee.

5           “(B) SIGNIFICANT INCIDENT.—The term  
6           ‘significant incident’ means an incident that re-  
7           sults in the in-patient hospitalization of 2 or  
8           more employees for medical treatment.”.

9   **SEC. 315. RECORDKEEPING.**

10       (a) RULE REQUIRED.—Not later than 180 days after  
11 the date of enactment of this Act, the Occupational Safety  
12 and Health Administration shall issue a final rule amend-  
13 ing its recordkeeping regulations under section 8(c) of the  
14 Occupational Safety and Health Act of 1970 (29 U.S.C.  
15 657(c)) to clarify that—

16           (1) the duty to make and maintain accurate  
17 records of work-related injuries and illnesses is an  
18 ongoing obligation;

19           (2) the duty to make and maintain such records  
20 continues for as long as the employer is required to  
21 keep records of the recordable injury or illness; and

22           (3) such duty does not expire solely because the  
23 employer fails to create the necessary records when  
24 first required to do so.

1 (b) AUTHORIZATION.—Subsection (a) shall be consid-  
2 ered a specific authorization by Congress in accordance  
3 with section 801(b)(2) of title 5, United States Code, with  
4 respect to the issuance of a new recordkeeping rule.

## 5 **PART C—CITATIONS**

### 6 **SEC. 321. PERIOD FOR ISSUANCE OF A CITATION.**

7 Section 9(c) of the Occupational Safety and Health  
8 Act of 1970 (29 U.S.C. 658(c)) is amended by adding at  
9 the end the following: “For purposes of this subsection,  
10 a violation continues to occur for as long as an employer  
11 has not satisfied the requirements, rules, standards, or-  
12 ders, and regulations referenced in subsection (a).”.

### 13 **SEC. 322. PROHIBITION ON UNCLASSIFIED CITATIONS.**

14 Section 9 of the Occupational Safety and Health Act  
15 of 1970 (29 U.S.C. 658) is further amended by adding  
16 at the end the following:

17 “(d) No citation for a violation of this Act may be  
18 issued, modified, or settled under this section without a  
19 designation enumerated in section 17 with respect to such  
20 violation.”.

## 21 **PART D—RIGHTS OF VICTIMS AND FAMILIES**

### 22 **SEC. 331. RIGHTS OF VICTIMS AND FAMILIES.**

23 The Occupational Safety and Health Act of 1970 (29  
24 U.S.C. 651 et seq.) is amended by inserting after section  
25 9 (29 U.S.C. 658) the following:

1 **“SEC. 9A. VICTIMS’ RIGHTS.**

2 “(a) RIGHTS BEFORE THE SECRETARY.—A victim,  
3 or the representative of a victim, shall be afforded the  
4 right, with respect to an inspection or investigation con-  
5 ducted under section 8 to—

6 “(1) meet with the Secretary regarding the in-  
7 spection or investigation conducted under such sec-  
8 tion before the Secretary’s decision to issue a cita-  
9 tion or take no action;

10 “(2) receive, at no cost, a copy of any citation  
11 or report, issued as a result of such inspection or in-  
12 vestigation, at the same time as the employer re-  
13 ceives such citation or report;

14 “(3) be informed of any notice of contest or ad-  
15 dition of parties to the proceedings filed under sec-  
16 tion 10(c); and

17 “(4) be provided notification of the date and  
18 time or any proceedings, service of pleadings, and  
19 other relevant documents, and an explanation of the  
20 rights of the employer, employee, and employee rep-  
21 resentative, and victim to participate in proceedings  
22 conducted under section 10(c).

23 “(b) RIGHTS BEFORE THE COMMISSION.—Upon re-  
24 quest, a victim or representative of a victim shall be af-  
25 farded the right with respect to a work-related bodily in-  
26 jury or death to—

1           “(1) be notified of the time and date of any  
2           proceeding before the Commission;

3           “(2) receive pleadings and any decisions relat-  
4           ing to the proceedings; and

5           “(3) be provided an opportunity to appear and  
6           make a statement in accordance with the rules pre-  
7           scribed by the Commission.

8           “(c) MODIFICATION OF CITATION.—Before entering  
9           into an agreement to withdraw or modify a citation issued  
10          as a result of an inspection or investigation of an incident  
11          under section 8, the Secretary shall notify a victim or rep-  
12          resentative of a victim and provide the victim or represent-  
13          ative of a victim with an opportunity to appear and make  
14          a statement before the parties conducting settlement nego-  
15          tiations. In lieu of an appearance, the victim or represent-  
16          ative of the victim may elect to submit a letter to the Sec-  
17          retary and the parties.

18          “(d) SECRETARY PROCEDURES.—The Secretary shall  
19          establish procedures—

20                 “(1) to inform victims of their rights under this  
21                 section; and

22                 “(2) for the informal review of any claim of a  
23                 denial of such a right.

24          “(e) COMMISSION PROCEDURES AND CONSIDER-  
25          ATIONS.—The Commission shall—

1           “(1) establish procedures relating to the rights  
2 of victims to be heard in proceedings before the  
3 Commission; and

4           “(2) in rendering any decision, provide due con-  
5 sideration to any statement or information provided  
6 by any victim before the Commission.

7           “(f) FAMILY LIAISONS.—The Secretary shall des-  
8 ignate at least 1 employee at each area office of the Occu-  
9 pational Safety and Health Administration to serve as a  
10 family liaison to—

11           “(1) keep victims informed of the status of in-  
12 vestigations, enforcement actions, and settlement ne-  
13 gotiations; and

14           “(2) assist victims in asserting their rights  
15 under this section.

16           “(g) DEFINITION.—In this section, the term ‘victim’  
17 means—

18           “(1) an employee, including a former employee,  
19 who has sustained a work-related injury or illness  
20 that is the subject of an inspection or investigation  
21 conducted under section 8; or

22           “(2) a family member (as further defined by  
23 the Secretary) of a victim described in paragraph  
24 (1), if—

1           “(A) the victim dies as a result of an inci-  
2           dent that is the subject of an inspection or in-  
3           vestigation conducted under section 8; or

4           “(B) the victim sustains a work-related in-  
5           jury or illness that is the subject of an inspec-  
6           tion or investigation conducted under section 8,  
7           and the victim because of incapacity cannot rea-  
8           sonably exercise the rights under this section.”.

9           **PART E—PROCEDURE FOR ENFORCEMENT**

10          **SEC. 341. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

11          Section 10(c) of the Occupational Safety and Health  
12          Act of 1970 (29 U.S.C. 659(c)) is amended—

13                 (1) in the first sentence—

14                         (A) by inserting after “that he intends to  
15                         contest a citation issued under section (9)(a)”  
16                         the following: “(including a modification of a ci-  
17                         tation issued under such section)”;

18                         (B) by inserting after “the issuance of a  
19                         citation under section 9(a)” the following: “(in-  
20                         cluding a modification of a citation issued  
21                         under such section)”; and

22                         (C) by inserting after “files a notice with  
23                         the Secretary alleging” the following: “that the  
24                         citation fails properly to designate the violation

1 as serious, willful, or repeated, that the pro-  
2 posed penalty is not adequate, or”;

3 (2) by inserting after the first sentence, the fol-  
4 lowing: “The pendency of a contest before the Com-  
5 mission shall not bar the Secretary from inspecting  
6 a place of employment or from issuing a citation  
7 under section 9.”; and

8 (3) by amending the last sentence—

9 (A) by inserting “employers and” after  
10 “Commission shall provide”; and

11 (B) by inserting “, and notification of any  
12 modification of a citation” before the period at  
13 the end.

14 **SEC. 342. CORRECTION OF SERIOUS, WILLFUL, OR RE-**  
15 **PEATED VIOLATIONS PENDING CONTEST AND**  
16 **PROCEDURES FOR A STAY.**

17 Section 10 of the Occupational Safety and Health Act  
18 of 1970 (29 U.S.C. 659) is further amended by adding  
19 at the end the following:

20 “(d) CORRECTION OF SERIOUS, WILLFUL, OR RE-  
21 PEATED VIOLATIONS PENDING CONTEST AND PROCE-  
22 DURES FOR A STAY.—

23 “(1) PERIOD PERMITTED FOR CORRECTION OF  
24 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—

25 For each violation which the Secretary designates as

1 serious, willful, or repeated, the period permitted for  
2 the correction of the violation shall begin to run  
3 upon receipt of the citation.

4 “(2) FILING OF A MOTION OF CONTEST.—The  
5 filing of a notice of contest by an employer—

6 “(A) shall not operate as a stay of the pe-  
7 riod for correction of a violation designated as  
8 serious, willful, or repeated; and

9 “(B) may operate as a stay of the period  
10 for correction of a violation not designated by  
11 the Secretary as serious, willful, or repeated.

12 “(3) CRITERIA AND RULES OF PROCEDURE FOR  
13 STAYS.—

14 “(A) MOTION FOR A STAY.—An employer  
15 that receives a citation alleging a violation des-  
16 ignated as serious, willful, or repeated and that  
17 files a notice of contest to the citation asserting  
18 that the time set for abatement of the alleged  
19 violation is unreasonable or challenging the ex-  
20 istence of the alleged violation may file with the  
21 Commission a motion to stay the period for the  
22 abatement of the violation.

23 “(B) CRITERIA.—In determining whether  
24 a stay should be issued on the basis of a motion  
25 filed under subparagraph (A), the Commission

1           may grant a stay only if the employer has dem-  
2           onstrated—

3                   “(i) a substantial likelihood of success  
4                   on the areas contested under subparagraph  
5                   (A); and

6                   “(ii) that a stay will not adversely af-  
7                   fect the health and safety of workers.

8                   “(C) RULES OF PROCEDURE.—The Com-  
9                   mission shall develop rules of procedure for con-  
10                  ducting a hearing on a motion filed under sub-  
11                  paragraph (A) on an expedited basis. At a min-  
12                  imum, such rules shall provide:

13                   “(i) That a hearing before an admin-  
14                   istrative law judge shall occur not later  
15                   than 15 days following the filing of the  
16                   motion for a stay (unless extended at the  
17                   request of the employer), and shall provide  
18                   for a decision on the motion not later than  
19                   15 days following the hearing (unless ex-  
20                   tended at the request of the employer).

21                   “(ii) That a decision of an administra-  
22                   tive law judge on a motion for stay is ren-  
23                   dered on a timely basis.

24                   “(iii) That if a party is aggrieved by  
25                   a decision issued by an administrative law

1 judge regarding the stay, such party has  
2 the right to file an objection with the Com-  
3 mission not later than 5 days after receipt  
4 of the administrative law judge's decision.  
5 Within 10 days after receipt of the objec-  
6 tion, a Commissioner, if a quorum is seat-  
7 ed pursuant to section 12(f), shall decide  
8 whether to grant review of the objection.  
9 If, within 10 days after receipt of the ob-  
10 jection, no decision is made on whether to  
11 review the decision of the administrative  
12 law judge, the Commission declines to re-  
13 view such decision, or no quorum is seated,  
14 the decision of the administrative law  
15 judge shall become a final order of the  
16 Commission. If the Commission grants re-  
17 view of the objection, the Commission shall  
18 issue a decision regarding the stay not  
19 later than 30 days after receipt of the ob-  
20 jection. If the Commission fails to issue  
21 such decision within 30 days, the decision  
22 of the administrative law judge shall be-  
23 come a final order of the Commission.

24 “(iv) For notification to employees or  
25 representatives of affected employees of re-

1                   quests for such hearings and shall provide  
2                   affected employees or representatives of af-  
3                   fected employees an opportunity to partici-  
4                   pate as parties to such hearings.”.

5 **SEC. 343. INACTION BY THE REVIEW COMMISSION.**

6           Section 10 of the Occupational Safety and Health Act  
7 of 1970 (29 U.S.C. 659), as amended by sections 341 and  
8 342, is further amended by adding at the end the fol-  
9 lowing:

10           “(e) INACTION BY REVIEW COMMISSION.—

11                   “(1) IN GENERAL.—A decision or order issued  
12 by an administrative law judge of the Commission  
13 for which a petition for review has been filed in a  
14 timely manner, and for which 1 year after the Com-  
15 mission has accepted such petition and directed that  
16 such petition be reviewed by the Commission, the  
17 Commission has failed to issue a final decision or  
18 order because the Commission lacks a quorum—

19                   “(A) shall be deemed a final decision or  
20 order of the Commission; and

21                   “(B) may be appealed pursuant to section  
22 11(a).

23                   “(2) EXCEPTION.—Paragraph (1) shall not  
24 apply with respect to motions to stay filed under  
25 subsection (d)(3).”.

1 **SEC. 344. CONFORMING AMENDMENTS.**

2 (a) VIOLATIONS DESIGNATED AS SERIOUS, WILL-  
3 FUL, OR REPEATED.—The first sentence of section 10(b)  
4 of the Occupational Safety and Health Act of 1970 (29  
5 U.S.C. 659(b)) is amended by inserting “, with the excep-  
6 tion of violations designated as serious, willful, or re-  
7 peated,” after “(which period shall not begin to run”.

8 (b) JUDICIAL REVIEW.—The first sentence of section  
9 11(a) of the Occupational Safety and Health Act of 1970  
10 (29 U.S.C. 660(a)) is amended—

11 (1) by inserting “(or the failure of the Commis-  
12 sion, including an administrative law judge, to make  
13 a timely decision on a petition for a stay or other  
14 review)” after “an order”;

15 (2) by striking “subsection (c)” and inserting  
16 “subsection (c), (d), or (e)”; and

17 (3) by inserting “(or in the case of a petition  
18 from a final Commission order regarding a stay  
19 under section 10(d), 15 days)” after “sixty days”.

20 (c) FAILURE TO CORRECT VIOLATIONS.—Section  
21 17(d) of the Occupational Safety and Health Act of 1970  
22 (29 U.S.C. 666(d)) is amended to read as follows:

23 “(d) Any employer who fails to correct a violation  
24 designated by the Secretary as serious, willful, or repeated  
25 and for which a citation has been issued under section 9(a)  
26 within the period permitted for its correction (and a stay

1 has not been issued by the Commission under section  
2 10(d)) may be assessed a civil penalty of not more than  
3 \$7,000 for each day during which such failure or violation  
4 continues. Any employer who fails to correct any other vio-  
5 lation for which a citation has been issued under section  
6 9(a) within the period permitted for its correction (which  
7 period shall not begin to run until the date of the final  
8 order of the Commission in the case of any review pro-  
9 ceeding under section 10 initiated by the employer in good  
10 faith and not solely for delay of avoidance of penalties)  
11 may be assessed a civil penalty of not more than \$7,000  
12 for each day during which such failure or violation con-  
13 tinues.”.

14 **PART F—PENALTIES**

15 **SEC. 351. CIVIL PENALTIES.**

16 (a) IN GENERAL.—Section 17 of the Occupational  
17 Safety and Health Act of 1970 (29 U.S.C. 666) is further  
18 amended—

19 (1) in subsection (a)—

20 (A) by striking “\$70,000” and inserting  
21 “\$700,000”;

22 (B) by striking “\$5,000” and inserting  
23 “\$50,000”; and

24 (C) by adding at the end the following: “In  
25 determining whether a violation is repeated, the

1 Secretary or the Commission shall consider the  
2 employer's history of violations under this Act  
3 and under State occupational safety and health  
4 plans established under section 18.”;

5 (2) in subsection (b), by striking “\$7,000 for  
6 each such violation.” and inserting “\$70,000 for  
7 each such violation, but not less than \$20,000 for  
8 each such violation.”;

9 (3) in subsection (c), by striking “\$7,000 for  
10 each violation.” and inserting “\$30,000 for each vio-  
11 lation, but not less than \$10,000 for each viola-  
12 tion.”;

13 (4) in subsection (d), as amended by section  
14 344(c), by striking “not more than \$7,000” each  
15 place it appears and inserting “not more than  
16 \$70,000, but not less than \$10,000,”;

17 (5) by redesignating subsections (e) through (i)  
18 and subsections (j) through (l), as subsections (f)  
19 through (j) and subsections (l) through (n), respec-  
20 tively; and

21 (6) in subsection (j) (as so redesignated) by  
22 striking “\$7,000 for each violation.” and inserting  
23 “\$25,000 for each violation, but not less than  
24 \$5,000 for each violation.”.

1 (b) INFLATION ADJUSTMENT.—Section 17 of such  
2 Act (29 U.S.C. 666), as amended by subsection (a), is fur-  
3 ther amended by inserting after subsection (d) the fol-  
4 lowing:

5 “(e) Amounts provided under this section for civil  
6 penalties shall be adjusted by the Secretary once each  
7 year, not later than January 15 of such year, to account  
8 for the percentage increase or decrease in the Consumer  
9 Price Index for all urban consumers during such period,  
10 consistent with the requirements of the Federal Civil Pen-  
11 alties Inflation Adjustment Act of 1990 (28 U.S.C. 2461  
12 note).”.

13 **SEC. 352. CRIMINAL PENALTIES.**

14 (a) IN GENERAL.—Section 17 of the Occupational  
15 Safety and Health Act of 1970 (29 U.S.C. 666) (as  
16 amended by section 351) is further amended—

17 (1) by amending subsection (f) (as redesignated  
18 by section 351(a)(5)) to read as follows:

19 “(f)(1) Any employer who knowingly violates any  
20 standard, rule, or order promulgated under section 6 of  
21 this Act, or of any regulation prescribed under this Act,  
22 and that violation caused or significantly contributed to  
23 the death of any employee, shall, upon conviction, be pun-  
24 ished by a fine in accordance with title 18, United States  
25 Code, or by imprisonment for not more than 10 years, or

1 both, except that if the conviction is for a violation com-  
2 mitted after a first conviction of such person under this  
3 subsection or subsection (i), punishment shall be by a fine  
4 in accordance with title 18, United States Code, or by im-  
5 prisonment for not more than 20 years, or by both.

6 “(2) For the purpose of this subsection, the term ‘em-  
7 ployer’ means, in addition to the definition contained in  
8 section 3 of this Act, any officer or director.”;

9 (2) by amending subsection (g) (as redesignated  
10 by section 351(a)(5)) to read as follows:

11 “(g) Unless otherwise authorized by this Act, any  
12 person that knowingly gives, causes to give, or attempts  
13 to give or cause to give, advance notice of any inspection  
14 conducted under this Act with the intention of impeding,  
15 interfering with, or adversely affecting the results of such  
16 inspection, shall be fined under title 18, United States  
17 Code, imprisoned for not more than 5 years, or both.”;

18 (3) in subsection (h) (as redesignated by section  
19 351(a)(5)), by striking “fine of not more than  
20 \$10,000, or by imprisonment for not more than six  
21 months,” and inserting “fine in accordance with title  
22 18, United States Code, or by imprisonment for not  
23 more than 5 years,”; and

24 (4) by inserting after subsection (j) (as redesign-  
25 nated by section 351(a)(5)) the following:

1       “(k)(1) Any employer who knowingly violates any  
2 standard, rule, or order promulgated under section 6, or  
3 any regulation prescribed under this Act, and that viola-  
4 tion caused or significantly contributed to serious bodily  
5 harm to any employee but does not cause death to any  
6 employee, shall, upon conviction, be punished by a fine in  
7 accordance with title 18, United States Code, or by impris-  
8 onment for not more than 5 years, or by both, except that  
9 if the conviction is for a violation committed after a first  
10 conviction of such person under this subsection or sub-  
11 section (f), punishment shall be by a fine in accordance  
12 with title 18, United States Code, or by imprisonment for  
13 not more than 10 years, or by both.

14       “(2) For the purpose of this subsection, the term ‘em-  
15 ployer’ means, in addition to the definition contained in  
16 section 3 of this Act, any officer or director.

17       “(3) For purposes of this subsection, the term ‘seri-  
18 ous bodily harm’ means bodily injury or illness that in-  
19 volves—

20               “(A) a substantial risk of death;

21               “(B) protracted unconsciousness;

22               “(C) protracted and obvious physical disfigure-  
23               ment; or

1           “(D) protracted loss or impairment, either tem-  
2           porary or permanent, of the function of a bodily  
3           member, organ, or mental faculty.”.

4           (b) JURISDICTION FOR PROSECUTION UNDER STATE  
5 AND LOCAL CRIMINAL LAWS.—Such section 17 (29  
6 U.S.C. 666) is further amended by adding at the end the  
7 following:

8           “(o) Nothing in this Act shall preclude a State or  
9 local law enforcement agency from conducting criminal  
10 prosecutions in accordance with the laws of such State or  
11 locality.”.

12 **SEC. 353. PREJUDGMENT INTEREST.**

13           Section 17(n) of the Occupational Safety and Health  
14 Act of 1970 (29 U.S.C. 666(n)) (as redesignated by sec-  
15 tion 351(a)(5)) is amended by adding at the end the fol-  
16 lowing: “Pre-final order interest on such penalties shall  
17 begin to accrue on the date the party contests a citation  
18 issued under this Act, and shall end upon the issuance  
19 of the final order. Such pre-final order interest shall be  
20 calculated at the current underpayment rate determined  
21 by the Secretary of the Treasury pursuant to section 6621  
22 of the Internal Revenue Code of 1986, and shall be com-  
23 pounded daily. Post-final order interest shall begin to ac-  
24 crue 30 days after the date a final order of the Commis-

1 sion or the court is issued, and shall be charged at the  
2 rate of 8 percent per year.”.

### 3 **TITLE IV—STATE PLANS**

#### 4 **SEC. 401. CONCURRENT ENFORCEMENT AUTHORITY AND** 5 **REVIEW OF STATE OCCUPATIONAL SAFETY** 6 **AND HEALTH PLANS.**

7 Section 18 of the Occupational Safety and Health Act  
8 of 1970 (29 U.S.C. 667) is amended—

9 (1) by amending subsection (f) to read as fol-  
10 lows:

11 “(f)(1) The Secretary shall, on the basis of reports  
12 submitted by the State agency and the Secretary’s own  
13 inspections, make a continuing evaluation of the manner  
14 in which each State that has a plan approved under this  
15 section is carrying out such plan. Such evaluation shall  
16 include an assessment of whether the State continues to  
17 meet the requirements of subsection (c) of this section and  
18 any other criteria or indices of effectiveness specified by  
19 the Secretary in regulations. Whenever the Secretary  
20 finds, on the basis of such evaluation, that in the adminis-  
21 tration of the State plan there is a failure to comply sub-  
22 stantially with any provision of the State plan (or any as-  
23 surance contained therein), the Secretary shall make an  
24 initial determination of whether the failure is of such a  
25 nature that the plan should be withdrawn or whether the

1 failure is of such a nature that the State should be given  
2 the opportunity to remedy the deficiencies, and provide no-  
3 tice of the Secretary's findings and initial determination.  
4       “(2) If the Secretary makes an initial determination  
5 to reassert and exercise concurrent enforcement authority  
6 while the State is given an opportunity to remedy the defi-  
7 ciencies, the Secretary shall afford the State an oppor-  
8 tunity for a public hearing within 15 days of such request,  
9 provided that such request is made not later than 10 days  
10 after the Secretary's notice to the State. The Secretary  
11 shall review and consider the testimony, evidence, or writ-  
12 ten comments, and not later than 30 days following such  
13 hearing, make a determination to affirm, reverse, or mod-  
14 ify the Secretary's initial determination to reassert and ex-  
15 ercise concurrent enforcement authority under sections 8,  
16 9, 10, 13, and 17 with respect to standards promulgated  
17 under section 6 and obligations under section 5(a). Fol-  
18 lowing such a determination by the Secretary, or in the  
19 event that the State does not request a hearing within the  
20 timeframe set forth in this paragraph, the Secretary may  
21 reassert and exercise such concurrent enforcement author-  
22 ity, while a final determination is pending under para-  
23 graph (3) or until the Secretary has determined that the  
24 State has remedied the deficiencies as provided under  
25 paragraph (4). Such determination shall be published in

1 the Federal Register. The procedures set forth in sub-  
2 section (g) shall not apply to a determination by the Sec-  
3 retary to reassert and exercise such concurrent enforce-  
4 ment authority.

5       “(3) If the Secretary makes an initial determination  
6 that the plan should be withdrawn, the Secretary shall  
7 provide due notice and the opportunity for a hearing. If  
8 based on the evaluation, comments, and evidence, the Sec-  
9 retary makes a final determination that there is a failure  
10 to comply substantially with any provision of the State  
11 plan (or any assurance contained therein), he shall notify  
12 the State agency of the withdrawal of approval of such  
13 plan and upon receipt of such notice such plan shall cease  
14 to be in effect, but the State may retain jurisdiction in  
15 any case commenced before the withdrawal of the plan in  
16 order to enforce standards under the plan whenever the  
17 issues involved do not relate to the reasons for the with-  
18 drawal of the plan.

19       “(4) If the Secretary makes a determination that the  
20 State should be provided the opportunity to remedy the  
21 deficiencies, the Secretary shall provide the State an op-  
22 portunity to respond to the Secretary’s findings and the  
23 opportunity to remedy such deficiencies within a time pe-  
24 riod established by the Secretary, not to exceed 1 year.  
25 The Secretary may extend and revise the time period to

1 remedy such deficiencies, if the State’s legislature is not  
2 in session during this 1-year time period, or if the State  
3 demonstrates that it is not feasible to correct the defi-  
4 ciencies in the time period set by the Secretary, and the  
5 State has a plan to correct the deficiencies within a rea-  
6 sonable time period. If the Secretary finds that the State  
7 agency has failed to remedy such deficiencies within the  
8 time period specified by the Secretary and that the State  
9 plan continues to fail to comply substantially with a provi-  
10 sion of the State plan, the Secretary shall withdraw the  
11 State plan as provided for in paragraph (3).”;

12           (2) by adding at the end the following new sub-  
13           section:

14           “(i) Not later than 18 months after the date of enact-  
15 ment of this subsection, and again 5 years thereafter, the  
16 Comptroller General shall complete and issue a review of  
17 the effectiveness of State plans to develop and enforce  
18 safety and health standards to determine if they are at  
19 least as effective as the Federal program and to evaluate  
20 whether the Secretary’s oversight of State plans is effec-  
21 tive. The Comptroller General’s evaluation shall assess—

22           “(1) the effectiveness of the Secretary’s over-  
23           sight of State plans, including the indices of effec-  
24           tiveness used by the Secretary;

1           “(2) whether the Secretary’s investigations in  
2 response to Complaints About State Plan Adminis-  
3 tration (CASPA) are adequate, whether significant  
4 policy issues have been identified by headquarters,  
5 and whether corrective actions are fully implemented  
6 by each State;

7           “(3) whether the formula for the distribution of  
8 funds described in section 23(g) to State programs  
9 is fair and adequate; and

10           “(4) whether State plans are as effective as the  
11 Federal program in preventing occupational injuries,  
12 illnesses, and deaths, and investigating discrimina-  
13 tion complaints, through an evaluation of at least 20  
14 percent of approved State plans, and which shall  
15 cover—

16           “(A) enforcement effectiveness, including  
17 handling of fatalities, serious incidents and  
18 complaints, compliance with inspection proce-  
19 dures, hazard recognition, verification of abate-  
20 ment, violation classification, citation and pen-  
21 alty issuance, including appropriate use of will-  
22 ful and repeat citations, and employee involve-  
23 ment;

24           “(B) inspections, the number of pro-  
25 grammed health and safety inspections at pri-

1           vate and public sector establishments, and  
2           whether the State targets the highest hazard  
3           private sector work sites and facilities in that  
4           State;

5           “(C) budget and staffing, including wheth-  
6           er the State is providing adequate budget re-  
7           sources to hire, train, and retain sufficient  
8           numbers of qualified staff, including timely fill-  
9           ing of vacancies;

10          “(D) administrative review, including the  
11          quality of decisions, consistency with Federal  
12          precedent, transparency of proceedings, whether  
13          decisions and records are available to the pub-  
14          lic, adequacy of State defense, and whether the  
15          State appropriately appeals adverse decisions;

16          “(E) anti-discrimination, including whether  
17          discrimination complaints are processed in a  
18          timely manner, whether supervisors and inves-  
19          tigators are properly trained to investigate dis-  
20          crimination complaints, whether a case file re-  
21          view indicates merit cases are properly identi-  
22          fied consistent with Federal policy and proce-  
23          dure, whether employees are notified of their  
24          rights, and whether there is an effective process

1 for employees to appeal the dismissal of a com-  
2 plaint;

3 “(F) program administration, including  
4 whether the State’s standards and policies are  
5 at least as effective as the Federal program and  
6 are updated in a timely manner, and whether  
7 National Emphasis Programs that are applica-  
8 ble in such States are adopted and implemented  
9 in a manner that is at least as effective as the  
10 Federal program;

11 “(G) whether the State plan satisfies the  
12 requirements for approval set forth in this sec-  
13 tion and its implementing regulations; and

14 “(H) other such factors identified by the  
15 Comptroller General, or as requested by the  
16 Committee on Education and Workforce of the  
17 House of Representatives or the Committee on  
18 Health, Education, Labor, and Pensions of the  
19 Senate.”.

20 **SEC. 402. EVALUATION OF REPEATED VIOLATIONS IN**  
21 **STATE PLANS.**

22 Section 18(c) of the Occupational Safety and Health  
23 Act of 1970 (29 U.S.C. 667(c)) is amended—

24 (1) in paragraph (7), by striking “, and” and  
25 inserting a comma;

1           (2) in paragraph (8), by striking the period at  
2           the end and inserting “, and”; and

3           (3) by adding after paragraph (8) the following  
4           new paragraph:

5           “(9) provides that in determining whether a  
6           violation is repeated, the State shall consider the  
7           employer’s violations within the State, in conjunction  
8           with the employer’s history of violations under other  
9           States’ occupational safety and health plans ap-  
10          proved by the Secretary and the employer’s history  
11          of violations in those States where the Secretary has  
12          jurisdiction under this Act, in a manner that is at  
13          least as effective as provided under section 17.”.

14 **TITLE V—NATIONAL INSTITUTE**  
15 **FOR OCCUPATIONAL SAFETY**  
16 **AND HEALTH**

17 **SEC. 501. HEALTH HAZARD EVALUATIONS BY THE NA-**  
18 **TIONAL INSTITUTE FOR OCCUPATIONAL**  
19 **SAFETY AND HEALTH.**

20          Section 20(a)(6) of the Occupational Safety and  
21          Health Act of 1970 (29 U.S.C. 669(a)(6)) is amended by  
22          striking the second sentence and inserting the following:  
23          “The Secretary shall determine following a written request  
24          by any employer, authorized representative of current or  
25          former employees, physician, other Federal agency, or

1 State or local health department, specifying with reason-  
2 able particularity the grounds on which the request is  
3 made, whether any substance normally found in the place  
4 of employment has potentially toxic effects in such con-  
5 centrations as used or found or whether any physical  
6 agents, equipment, or working condition found or used has  
7 potentially hazardous effects; and shall submit such deter-  
8 mination both to employers and affected employees as  
9 soon as possible.”.

10 **SEC. 502. TRAINING AND EMPLOYEE EDUCATION.**

11 Paragraph (1) of section 21(c) of the Occupational  
12 Safety and Health Act of 1970 (29 U.S.C. 670(c)) is  
13 amended to read as follows: “(1) provide for the establish-  
14 ment and supervision of programs for the education and  
15 training of employers and employees in the recognition,  
16 avoidance, and prevention of unsafe or unhealthful work-  
17 ing conditions, and employee rights and employer respon-  
18 sibilities under this Act, which shall include grant pro-  
19 grams to provide grants for nonprofit organizations (in-  
20 cluding grants to develop or expand the capacity of such  
21 organizations to provide safety and health training, edu-  
22 cation, and related assistance to the targeted audiences,  
23 grants for the training of employees and employers on oc-  
24 cupational safety and health hazards of particular concern  
25 or for particular industries, or groups of workers at high

1 risk of injury, illness, or exposure to hazards, and grants  
2 for the development of training materials on particular  
3 topics), and”.

## 4 **TITLE VI—EFFECTIVE DATE**

### 5 **SEC. 601. EFFECTIVE DATE.**

6 (a) GENERAL RULE.—Except as provided for in sub-  
7 section (b), this Act and the amendments made by this  
8 Act shall take effect on the date that is 90 days after the  
9 date of the enactment of this Act.

10 (b) EXCEPTION FOR STATES AND POLITICAL SUB-  
11 DIVISIONS.—The following are exceptions to the effective  
12 date described in subsection (a):

13 (1) A State that has a State plan approved  
14 under section 18 of the Occupational Safety and  
15 Health Act of 1970 (29 U.S.C. 667) shall amend its  
16 State plan to conform with the requirements of this  
17 Act and the amendments made by this Act not later  
18 than 12 months after the date of the enactment of  
19 this Act. The Secretary of Labor may extend the pe-  
20 riod for a State to make such amendments to its  
21 State plan by not more than 12 months, if the  
22 State’s legislature is not in session during the 12-  
23 month period beginning with the date of the enact-  
24 ment of this Act. Such amendments to the State

1 plan shall take effect not later than 90 days after  
2 the adoption of such amendments by such State.

3 (2) This Act and the amendments made by this  
4 Act shall take effect on the date that is 36 months  
5 after the date of the enactment of this Act with re-  
6 spect to a workplace of a State, or a political sub-  
7 division of a State, that does not have a State plan  
8 approved under such section 18 (29 U.S.C. 667).