

105TH CONGRESS
1ST SESSION

S. 461

To amend the Occupational Safety and Health Act of 1970 and the National Labor Relations Act to modify certain provisions, to transfer certain occupational safety and health functions to the Secretary of Labor, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 18, 1997

Mrs. HUTCHISON (for herself, Mr. INHOFE, and Mr. HELMS) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Occupational Safety and Health Act of 1970 and the National Labor Relations Act to modify certain provisions, to transfer certain occupational safety and health functions to the Secretary of Labor, 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; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Occupational Safety and Health Reform Act of 1997”.

6 (b) REFERENCE.—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
 2 shall be considered to be made to a section or other provi-
 3 sion of the Occupational Safety and Health Act of 1970
 4 (29 U.S.C. 651 et seq.).

5 **SEC. 2. USE OF OSHA IN PRIVATE LITIGATION.**

6 Section 4(b)(4) (29 U.S.C. 653(b)(4)) is amended by
 7 adding at the end the following: “An allegation of a viola-
 8 tion, a finding of a violation, or an abatement of an alleged
 9 violation, under this Act or the standards promulgated
 10 under this Act shall not be admissible as evidence in any
 11 civil action or used to increase the amount of payments
 12 received under any workmen’s compensation law for any
 13 work-related injury.”.

14 **SEC. 3. DUTIES OF EMPLOYERS AND EMPLOYEES.**

15 Section 5 (29 U.S.C. 654) is amended by adding at
 16 the end the following:

17 “(c) On multiemployer work sites, an employer may
 18 not be cited for a violation of this section if the employer—

19 “(1) has no employees exposed to the violation;
 20 and

21 “(2) has not created the condition that caused
 22 the violation or assumed responsibility for ensuring
 23 compliance by other employers on the work site.”.

1 **SEC. 4. STANDARD SETTING.**

2 (a) STANDARDS.—Section 6(b)(5) (29 U.S.C.
3 655(b)(5)) is amended to read as follows:

4 “(5) The development of a standard under this
5 section shall be based on the latest scientific data in
6 the field and on research demonstrations, experi-
7 ments, and other information that may be appro-
8 priate. In establishing the standard, the Secretary
9 shall consider, and make findings based on, the fol-
10 lowing factors:

11 “(A) The standard shall be needed to ad-
12 dress a significant risk of material impairment
13 to workers and shall substantially reduce that
14 risk.

15 “(B) The standard shall be technologically
16 and economically feasible.

17 “(C) There shall be a reasonable relation-
18 ship between the costs and benefits of the
19 standard.

20 “(D) The standard shall provide protection
21 to workers in the most cost-effective manner
22 and minimize employment loss due to the
23 standard in the affected industries and sectors
24 of industries.

25 “(E) The standard shall set forth objective
26 criteria and the performance desired.”.

1 (b) VARIANCES.—Section 6(d) (29 U.S.C. 655(d)) is
 2 amended by adding at the end the following: “No citation
 3 shall be issued for a violation of an occupational safety
 4 and health standard that is the subject of a good faith
 5 application for a variance during the period the applica-
 6 tion is pending before the Secretary.”.

7 (c) STANDARD PRIORITIES.—The second sentence of
 8 section 6(g) (29 U.S.C. 655(g)) is amended to read as
 9 follows: “In determining the priority for establishing
 10 standards with regard to toxic materials or the physical
 11 agents of toxic materials, the Secretary shall consider the
 12 number of workers exposed to the substance, the nature
 13 and severity of potential impairment, and the likelihood
 14 of the impairment based on information obtained by the
 15 Secretary from the Environmental Protection Agency, the
 16 Department of Health and Human Services, and other ap-
 17 propriate sources.”.

18 (d) REGULATORY FLEXIBILITY ANALYSIS.—Section
 19 6 (29 U.S.C. 655) is amended by adding at the end the
 20 following:

21 “(h) In promulgating an occupational safety and
 22 health standard under subsection (b), the Secretary shall
 23 perform a regulatory flexibility analysis described in sec-
 24 tions 603 and 604 of title 5, United States Code.

1 “(i) In promulgating any occupational safety and
2 health standard under subsection (b), the Secretary shall
3 minimize the time, effort, and costs involved in the reten-
4 tion, reporting, notification, or disclosure of information
5 to the Secretary, to third parties, or to the public. Compli-
6 ance with the requirement of this subsection may be con-
7 sidered in a review of a petition filed under subsection
8 (f).”.

9 **SEC. 5. INSPECTIONS.**

10 (a) **AUTHORITY OF SECRETARY.**—Section 8(a) (29
11 U.S.C. 657(a)) is amended by striking paragraph (2) and
12 inserting the following:

13 “(2) to inspect and investigate during regular
14 working hours and at other reasonable times, and
15 within reasonable limits and in a reasonable manner,
16 any such place of employment and all pertinent con-
17 ditions, structures, machines, apparatus, devices,
18 equipment, and materials in such place of employ-
19 ment.

20 In conducting inspections and investigations under para-
21 graph (2), the Secretary may question any such employer,
22 owner, operator, agent or employee. An interview of an
23 employee by the Secretary may only be in private with the
24 consent of the employee.”.

25 (b) **RECORDKEEPING.**—

1 (1) GENERAL MAINTENANCE.—The first sen-
2 tence of section 8(c)(1) (29 U.S.C. 657(c)(1)) is
3 amended to read as follows: “Each employer shall
4 make, keep and preserve, and make available, upon
5 reasonable request and within reasonable limits, to
6 the Secretary or the Secretary of Health and
7 Human Services, such records regarding the activi-
8 ties of the employer relating to this Act as the Sec-
9 retary, in cooperation with the Secretary of Health
10 and Human Services, may prescribe by regulation as
11 necessary or appropriate for the enforcement of this
12 Act or for developing information regarding the
13 causes and prevention of occupational accidents and
14 illnesses.”.

15 (2) RECORDS OR REPORTS ON INJURIES.—Sec-
16 tion 8(c) (29 U.S.C. 657(c)) is amended by adding
17 at the end the following:

18 “(4) In prescribing regulations under this subsection,
19 the Secretary may not require employers to maintain
20 records of, or to make reports on, injuries that do not in-
21 volve lost work time or that involve employees of other
22 employers.

23 “(5) In prescribing regulations requiring employers
24 to report work-related deaths and multiple hospitaliza-
25 tions, the Secretary shall include provisions that provide

1 an employer at least 24 hours in which to make the re-
2 port.”.

3 (c) INSPECTIONS BASED ON EMPLOYEE COM-
4 PLAINTS.—Section 8(f) (29 U.S.C. 657(f)) is amended to
5 read as follows:

6 “(f)(1)(A) An employee or representative of an em-
7 ployee who believes that a violation of a safety or health
8 standard promulgated under this Act exists in the place
9 of employment of the employee that threatens physical
10 harm, or that an imminent danger exists in the place of
11 the employment of the employee, may request an inspec-
12 tion by providing notice to the Secretary or an authorized
13 representative of the Secretary of the violation or danger.

14 “(B) The notice under subparagraph (A) shall be re-
15 duced to writing, shall set forth with reasonable particu-
16 larity the grounds for the notice, and shall state that the
17 alleged violation or danger described in this subparagraph
18 has been brought to the attention of the employer and the
19 employer has refused to take any action to correct the al-
20 leged violation or danger.

21 “(C)(i) The notice under subparagraph (A) shall be
22 signed by the employee or representative of the employee
23 and a copy of the notice shall be provided to the employer
24 or the agent of the employer no later than the time of

1 arrival of an occupational safety and health agency inspec-
2 tor to conduct the inspection.

3 “(ii) Upon the request of the employee providing the
4 notice under subparagraph (A), the name of the employee
5 and the names of individual employees referred to in the
6 notice shall not appear in the copy or on any record pub-
7 lished, released, or made available pursuant to subsection
8 (i), except that the name of the employee and the names
9 of individual employees shall not be privileged from discov-
10 ery in a contested case.

11 “(D) The Secretary may not make an inspection
12 under this subsection except upon request by an employee
13 or a representative of an employee.

14 “(E) If upon receipt of the notice under subpara-
15 graph (A), the Secretary determines that the employee or
16 the representative of the employee has brought the alleged
17 violation or danger to the attention of the employer and
18 the employer has refused to take corrective action, and
19 that there are reasonable grounds to believe the alleged
20 violation or danger still exists, the Secretary shall make
21 a special inspection in accordance with this subsection not
22 later than 30 days after the receipt of the notice under
23 subparagraph (A). The special inspection shall be con-
24 ducted for the limited purpose of determining whether the
25 alleged violation or danger exists.

1 “(2) If the Secretary determines either before, or as
2 a result of, an inspection that there are not reasonable
3 grounds to believe a violation or danger described in para-
4 graph (1)(A) exists, the Secretary shall notify the com-
5 plaining employee or the representative of the employee
6 of the determination and, upon request by the employee
7 or the representative of the employee, shall provide a writ-
8 ten statement of the reasons for the determination.”.

9 (d) TRAINING AND ENFORCEMENT.—Section 8 (29
10 U.S.C. 657) is amended—

11 (1) by redesignating subsection (g) as sub-
12 section (j); and

13 (2) by inserting after subsection (f) the follow-
14 ing:

15 “(g) Inspections conducted under this section shall
16 be conducted by at least 1 person who has training in,
17 and is knowledgeable of, the industry or types of hazards
18 being inspected.

19 “(h)(1) Except as provided in paragraph (2), the Sec-
20 retary shall not conduct routine inspections of, or enforce
21 any standard, rule, regulation, or order under this Act
22 with respect to—

23 “(A) an employer who is engaged in a farming
24 operation that does not maintain a temporary labor
25 camp and employs 50 or fewer employees; or

1 “(B) an employer of not more than 50 employ-
2 ees if the employer is included within a category of
3 employers having an occupational injury or a lost
4 workday case rate (determined under the Standard
5 Industrial Classification Code for which such data
6 are published) that is less than the national average
7 rate as most recently published by the Secretary act-
8 ing through the Bureau of Labor Statistics under
9 section 24.

10 “(2) In the case of an employer described in subpara-
11 graph (B) of paragraph (1), such paragraph shall not be
12 construed to prohibit the Secretary, with respect to the
13 employer, from—

14 “(A) providing under this Act consultations,
15 technical assistance, and educational and training
16 services;

17 “(B) conducting under this Act surveys and
18 studies;

19 “(C) conducting inspections or investigations in
20 response to employee complaints, issuing citations
21 for violations of this Act found during an inspection,
22 and assessing a penalty for the violations that are
23 not corrected within a reasonable abatement period;

24 “(D) taking any action authorized by this Act
25 with respect to imminent dangers;

1 “(E) taking any action authorized by this Act
2 with respect to a report of an employment accident
3 that is fatal to at least 1 employee or that results
4 in hospitalization of at least 3 employees and taking
5 any action pursuant to an investigation of such re-
6 port; and

7 “(F) taking any action authorized by this Act
8 with respect to a complaint of discrimination against
9 employees for exercising their rights under this Act.

10 “(i) Any records or other information created by or
11 for an employer for the purpose of conducting safety and
12 health inspections, audits, or reviews not required by this
13 Act shall not be required to be disclosed by the employer
14 or the agent of the employer in any inspection, investiga-
15 tion, or enforcement proceeding conducted pursuant to
16 this Act.”.

17 **SEC. 6. VOLUNTARY COMPLIANCE.**

18 (a) PROGRAM.—The Occupational Safety and Health
19 Act of 1970 (21 U.S.C. 651 et seq.) is amended by insert-
20 ing after section 8 the following:

21 **“SEC. 8A. VOLUNTARY COMPLIANCE.**

22 “(a) IN GENERAL.—The Secretary shall by regula-
23 tion establish a program to encourage voluntary employer
24 and employee efforts to provide safe and healthful working
25 conditions.

1 “(b) EXEMPTION.—In establishing a program under
 2 subsection (a), the Secretary shall, in accordance with sub-
 3 section (c), provide an exemption from all safety and
 4 health inspections and investigations with respect to a
 5 place of employment maintained by the employer partici-
 6 pating in the program, except that this subsection shall
 7 not apply to inspections and investigations conducted for
 8 the purpose of—

9 “(1) determining the cause of a workplace acci-
 10 dent that resulted in the death of 1 or more employ-
 11 ees or the hospitalization of 3 or more employees; or

12 “(2) responding to a request for an inspection
 13 pursuant to section (8)(f)(1).

14 “(c) REQUIREMENTS FOR EXEMPTION.—In order to
 15 qualify for the exemption provided under subsection (b),
 16 an employer shall provide to the Secretary evidence that—

17 “(1) the place of employment of the employer
 18 or conditions of employment have, during the pre-
 19 ceding year, been reviewed or inspected under—

20 “(A) a consultation program provided by
 21 any State agency relating to occupational safety
 22 and health;

23 “(B) a certification or consultation pro-
 24 gram provided by an insurance carrier or other

1 private business entity pursuant to a State pro-
2 gram, law, or regulation; or

3 “(C) a workplace consultation program
4 provided by any other person certified by the
5 Secretary for purposes of providing workplace
6 consultations; or

7 “(2) the place of employment has an exemplary
8 safety record and the employer maintains a safety
9 and health program for the workplace that—

10 “(A) includes—

11 “(i) procedures for assessing hazards
12 to the employees of the employer that are
13 inherent to the operations or business of
14 the employer;

15 “(ii) procedures for correcting or con-
16 trolling the hazards in a timely manner
17 based on the severity of the hazard; and

18 “(iii) employee participation in the
19 program including, at a minimum—

20 “(I) regular consultation between
21 the employer and the nonsupervisory
22 employees of the employer regarding
23 safety and health issues; and

24 “(II) the opportunity for the non-
25 supervisory employees of the employer

1 to make recommendations regarding
2 hazards in the workplace and to re-
3 ceive responses or to implement im-
4 provements in response to the rec-
5 ommendations; and

6 “(B) that requires that participating non-
7 supervisory employees of the employer have
8 training or expertise on safety and health issues
9 consistent with the responsibilities of the em-
10 ployees.

11 A program under subparagraph (A) or (B) of paragraph
12 (1) shall include methods that ensure that serious hazards
13 identified in the consultation are corrected within an ap-
14 propriate time.

15 “(d) CERTIFICATION.—The Secretary may require
16 that an employer in order to claim the exemption under
17 subsection (b) provides certification to the Secretary, and
18 notice to the employees of the employer, of the eligibility
19 of the employer for an exemption.”.

20 (b) DEFINITION.—Section 3 (29 U.S.C. 652) is
21 amended by adding at the end the following:

22 “(15) The term ‘exemplary safety record’
23 means that an employer has had, in the most recent
24 annual reporting of the employer required by the Oc-
25 cupational Safety and Health Administration, no

1 employee death caused by occupational injury and
2 fewer lost workdays due to occupational injury and
3 illness than the average for the industry of which
4 the employer is a part.”.

5 **SEC. 7. EMPLOYER DEFENSES.**

6 Section 9 (29 U.S.C. 658) is amended by adding at
7 the end the following:

8 “(d) No citation may be issued under subsection (a)
9 to an employer unless the employer knew or with the exer-
10 cise of reasonable diligence would have known of the pres-
11 ence of an alleged violation. No citation shall be issued
12 under subsection (a) to an employer for an alleged viola-
13 tion of section 5, any standard, rule, or order promulgated
14 pursuant to section 6, any other regulation promulgated
15 under this Act, or any other occupational safety and
16 health standard, if the employer demonstrates that—

17 “(1) employees of the employer have been pro-
18 vided with the proper training and equipment to pre-
19 vent such a violation;

20 “(2) work rules designed to prevent such a vio-
21 lation have been established and adequately commu-
22 nicated to employees by the employer; and

23 “(3) the failure of employees to observe work
24 rules led to the violation.

1 “(e) A citation issued under subsection (a) to an em-
 2 ployer that violates the requirements of any standard,
 3 rule, or order promulgated pursuant to section 6 or any
 4 other regulation promulgated under this Act shall be va-
 5 cated if the employer demonstrates that employees of the
 6 employer were protected by alternative methods that were
 7 equally or more protective of the safety and health of the
 8 employees than the methods required by the standard,
 9 rule, order, or regulation in the factual circumstances un-
 10 derlying the citation.

11 “(f) Subsections (d) and (e) shall not be construed
 12 to eliminate or modify other defenses that may exist to
 13 any citation.”.

14 **SEC. 8. THE OCCUPATIONAL SAFETY AND HEALTH REVIEW**
 15 **COMMISSION.**

16 (a) PROCEDURE FOR ENFORCEMENT.—

17 (1) NOTIFICATION.—The first sentence of sec-
 18 tion 10(b) (29 U.S.C. 659(b)) is amended to read as
 19 follows: “If the Secretary has reason to believe an
 20 employer has failed to correct a violation, for which
 21 a citation has been issued, within the period per-
 22 mitted for the correction of the violation, the Sec-
 23 retary shall notify the employer by certified mail of
 24 such failure and of the penalty proposed to be as-
 25 sessed under section 17 by reason of such failure,

1 and that the employer has 15 working days after
2 the receipt of such a notification to notify the Sec-
3 retary that the employer desires to contest the noti-
4 fication of the Secretary or the proposed assessment
5 of penalty. The period for the correction of the viola-
6 tion described in the first sentence shall not begin
7 to run until the time for contestation has expired
8 or the entry of a final order by the Commission in
9 a contested case initiated by the employer in good
10 faith and not solely for delay or avoidance of pen-
11 alties.”.

12 (2) BURDEN OF PROOF.—Section 10 (29
13 U.S.C. 659) is amended by adding at the end the
14 following:

15 “(d) In all hearings before the Commission relating
16 to a contested citation, there shall be no presumption of
17 a violation of standard, or an existence of a hazard, under
18 this Act. In such cases, the Secretary shall have the bur-
19 den of proving by a preponderance of the evidence—

20 “(1) the existence of a violation;

21 “(2) that the violation for which the citation
22 was issued constitutes a realistic hazard to the safe-
23 ty and health of the affected employees;

24 “(3) that there is a likelihood that the hazard
25 will result in employee injury;

1 “(4) that the employer knew or with the exer-
 2 cise of reasonable diligence should have known of the
 3 hazard and violation; and

4 “(5) that a technically and economically feasible
 5 method of compliance exists.”.

6 (b) JUDICIAL REVIEW.—Section 11(a) (29 U.S.C.
 7 660(a)) is amended by inserting after “conclusive.” at the
 8 end of the sixth sentence the following: “The court shall
 9 make its own determination as to questions of law, includ-
 10 ing the reasonable interpretation of standards promul-
 11 gated under this Act, and shall not accord deference to
 12 either the Commission or the Secretary.”.

13 **SEC. 9. DISCRIMINATION.**

14 (a) COMPLAINT.—Section 11(c)(2) (29 U.S.C.
 15 660(c)(2)) is amended to read as follows:

16 “(2)(A)(i) Any employee who believes that such em-
 17 ployee has been discharged or otherwise discriminated
 18 against by the employer of the employee in violation of
 19 this subsection may, within 30 days after such violation
 20 occurs, file a complaint with the Secretary alleging the dis-
 21 crimination.

22 “(ii) A complaint may not be filed under clause (i)
 23 after the expiration of the 30-day period described in such
 24 clause.

1 “(B)(i) Upon receipt of a complaint under subpara-
2 graph (A) and as the Secretary considers appropriate, the
3 Secretary shall conduct an investigation.

4 “(ii) If upon such investigation, the Secretary deter-
5 mines that the provisions of this subsection have been vio-
6 lated, the Secretary shall attempt to eliminate the alleged
7 violation by informal methods.

8 “(iii) Nothing stated or done, during the use of the
9 informal methods applied under clause (ii) may be made
10 public by the Secretary or used as evidence in any subse-
11 quent proceeding.

12 “(iv) The Secretary shall make a determination con-
13 cerning the complaint as soon as possible and, in any
14 event, not later than 90 days after the date of the filing
15 of the complaint.

16 “(C) If the Secretary is unable to resolve the alleged
17 violation through informal methods, the Secretary shall
18 notify the parties in writing that conciliation efforts have
19 failed.

20 “(D)(i) Not later than 90 days after the date on
21 which the Secretary notifies the parties under subpara-
22 graph (C) in writing that conciliation efforts have failed,
23 the Secretary may bring an action in any appropriate
24 United States district court against an employer described
25 in subparagraph (A).

1 “(ii) The employer against whom an action under
2 clause (i) is brought may demand that the issue of dis-
3 crimination be determined by jury trial.

4 “(E) Upon a showing of discrimination in an action
5 brought under subparagraph (D)(i), the Secretary may
6 seek, and the court may award, any and all of the follow-
7 ing types of relief:

8 “(i) An injunction to enjoin a continued viola-
9 tion of this subsection.

10 “(ii) Reinstatement of the employee to the same
11 or equivalent position.

12 “(iii) Reinstatement of full benefits and senior-
13 ity rights.

14 “(iv) Compensation for lost wages and benefits.

15 “(F) This subsection shall be the exclusive means of
16 securing a remedy for any aggrieved employee.”.

17 (b) ACCESS TO RECORDS.—Section 11(c)(3) (29
18 U.S.C. 660(c)(3)) is amended to read as follows:

19 “(3) Any records of the Secretary, including the files
20 of the Secretary, relating to investigations and enforce-
21 ment proceedings pursuant to this subsection shall not be
22 subject to inspection and examination by the public while
23 such inspections and proceedings are pending in the Unit-
24 ed States district court.”.

1 **SEC. 10. INJUNCTION AGAINST IMMINENT DANGER.**

2 Section 13 (29 U.S.C. 662) is amended—

3 (1) by striking subsection (c);

4 (2) by redesignating subsections (a) and (b) as
5 subsections (b) and (c), respectively; and

6 (3) by inserting before subsection (b) (as so re-
7 designated by paragraph (2)) the following:

8 “(a)(1)(A)(i) If the Secretary determines, on the
9 basis of an inspection or investigation under this section,
10 that a condition or practice in a place of employment is
11 such that an imminent danger to safety or health exists
12 that could reasonably be expected to cause death or seri-
13 ous physical harm or permanent impairment of the health
14 or functional capacity of employees if not corrected imme-
15 diately or before the imminence of such danger can be
16 eliminated through the enforcement procedures otherwise
17 provided by this Act, the Secretary—

18 “(I) may inform the employer, and provide no-
19 tice, by posting at the place of employment, to the
20 affected employees of the danger; and

21 “(II) shall request the employer that the condi-
22 tion or practice be corrected immediately or that the
23 affected employees be immediately removed from ex-
24 posure to such danger.

25 “(ii) A notice under clause (i) shall be removed by
26 the Secretary from the place of employment not later than

1 72 hours after the notice was first posted unless a court
 2 in a proceeding under subsection (c) requires that the no-
 3 tice be maintained.

4 “(B) The Secretary shall not prevent the continued
 5 activity of the employees of the employer whose presence
 6 in the place of employment is necessary—

7 “(i) to avoid, correct, or remove the imminent
 8 danger;

9 “(ii) to maintain the capacity of a continuous
 10 process operation to resume the normal operations
 11 of the employer without a cessation of the oper-
 12 ations; or

13 “(iii) to permit the cessation of the operations
 14 of the employer to be accomplished in a safe and or-
 15 derly manner, where the cessation of the operations
 16 is necessary.

17 “(2) No employer shall discharge, or in any manner
 18 discriminate against any employee, because the employee
 19 has refused to perform a duty that has been identified as
 20 the source of an imminent danger by a notice posted pur-
 21 suant to paragraph (1).”.

22 **SEC. 11. SMALL BUSINESS ASSISTANCE AND TRAINING.**

23 Section 16 (29 U.S.C. 665) is amended—

24 (1) by inserting “(a)” after “16.”; and

25 (2) by adding at the end the following:

1 “(b) The Secretary shall publish and make available
 2 to employers a model injury prevention program that if
 3 completed by the employer shall be deemed to meet the
 4 requirement for an exemption under section 8A or a re-
 5 duction in penalty under section 17(a)(3)(B).

6 “(c) The Secretary shall establish and implement a
 7 program to provide technical assistance and consultative
 8 services for employers and employees, either directly or by
 9 grant or contract, concerning work site safety and health
 10 and compliance with this Act. The assistance shall be tar-
 11 geted at small employers and the most hazardous indus-
 12 tries.

13 “(d) Consultative services shall be provided to em-
 14 ployers through cooperative agreements between the
 15 States and the Occupational Safety and Health Adminis-
 16 tration. The consultative services provided under a cooper-
 17 ative agreement under this subsection shall be the same
 18 type of services described in part 1908 of title 39 of the
 19 Code of Federal Regulations.

20 “(e) Not less than one-fourth of the annual appro-
 21 priation made to the Secretary to carry out this Act shall
 22 be expended for the activities described in this section.”.

23 **SEC. 12. PENALTIES.**

24 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) is
 25 amended—

1 (1) by striking subsections (a), (b), (c), (f), (i),
2 (j), and (k);

3 (2) by redesignating subsections (d), (e), (g),
4 (h), and (l) as subsections (b), (c), (d), (e), and (f),
5 respectively; and

6 (3) by inserting after “17.” the following:

7 “(a)(1) Any employer who violates the requirements
8 of section 5, any standard, rule, or order promulgated pur-
9 suant to section 6, or any other regulation promulgated
10 under this Act may be assessed a civil penalty of not more
11 than \$7,000. The Commission shall have authority to as-
12 sess all civil penalties provided for in this section, giving
13 due consideration to the appropriateness of the penalty
14 with respect to—

15 “(A) the size of the employer;

16 “(B) the number of employees exposed to a vio-
17 lation;

18 “(C) the likely severity of any injuries directly
19 resulting from the violation;

20 “(D) the probability that the violation could re-
21 sult in injury or illness;

22 “(E) the good faith of the employer in correct-
23 ing the violation after the violation has been identi-
24 fied;

1 “(F) the extent to which employee misconduct
2 was responsible for the violation; and

3 “(G) the effect of the penalty on the ability of
4 the employee to stay in business.

5 “(2) In assessing penalties for violations under this
6 section, the Commission shall have authority to determine
7 whether violations should be classified as willful, repeated,
8 serious, other than serious, or de minimus. Regardless of
9 the classification of a violation, there shall be only 1 pen-
10 alty assessed for each violation. The Commission may not
11 enhance the penalty based on the number of employees
12 exposed to the violation or the number of instances of the
13 same violation.

14 “(3)(A) A penalty assessed under paragraph (1) shall
15 be reduced by 25 percent in any case in which the em-
16 ployer—

17 “(i) maintains a written safety and health pro-
18 gram for the work site where the violation, for which
19 the penalty was assessed, occurred; or

20 “(ii) shows that the work site where the viola-
21 tion, for which the penalty was assessed, occurred
22 has an exemplary safety record.

23 “(B) If the employer maintains a program described
24 in subparagraph (A)(i) and has the record described in

1 subparagraph (A)(ii), the penalty shall be reduced by 50
2 percent.

3 “(4) No penalty shall be assessed against an em-
4 ployer for a violation other than a violation previously
5 cited by the Secretary, a violation that creates an immi-
6 nent danger, a violation that has caused death, or a willful
7 violation that has caused serious injury to an employee,
8 unless the Secretary provides—

9 “(A) the employer with a written notification of
10 the violation; and

11 “(B) the employer a reasonable time (but not
12 less than 10 days after the receipt by the employer
13 of the written notification) to correct the violation.”.

14 (b) CRIMINAL PENALTIES.—Section 17(c) (29 U.S.C.
15 666(c)) (as so redesignated by subsection (a)) is amended
16 by adding at the end the following: “No employer shall
17 be subject to any State or Federal criminal prosecution
18 arising out of a workplace accident other than under this
19 subsection.”.

20 **SEC. 13. TRANSFER OF CERTAIN OCCUPATIONAL SAFETY**
21 **AND HEALTH FUNCTIONS.**

22 (a) TRANSFER OF FUNCTIONS; REPEAL.—

23 (1) NATIONAL INSTITUTE OF OCCUPATIONAL
24 SAFETY AND HEALTH.—The functions and authori-
25 ties provided to the National Institute of Occupa-

1 tional Safety and Health under section 22 of the Oc-
 2 cupational Safety and Health Act of 1970 (29
 3 U.S.C. 671) are transferred to the Secretary of
 4 Labor.

5 (2) SECRETARY OF HEALTH AND HUMAN SERV-
 6 ICES.—The responsibilities and authorities of the
 7 Secretary of Health and Human Services under sec-
 8 tions 20, 21, and 22 of the Occupational Safety and
 9 Health Act of 1970 (29 U.S.C. 669, 670, and 671)
 10 are transferred to the Secretary of Labor.

11 (3) REPEAL.—Section 22 (29 U.S.C. 671) is
 12 repealed.

13 (b) ADDITIONAL FUNCTIONS.—In carrying out the
 14 functions transferred under subsection (a), the Secretary
 15 of Labor shall take such actions as are necessary to avoid
 16 duplication of programs and to maximize training, edu-
 17 cation, and research under the Occupational Safety and
 18 Health Act of 1970 (29 U.S.C. 671 et seq.).

19 (c) REFERENCES.—

20 (1) IN GENERAL.—Each reference in any other
 21 Federal law, Executive order, rule, regulation, or
 22 delegation of authority, or any document of or relat-
 23 ing to—

24 (A) the head of the transferred office, or
 25 the Secretary of Health and Human Services,

1 with regard to functions transferred under sub-
 2 section (a), shall be deemed to refer to the Sec-
 3 retary of Labor; and

4 (B) a transferred office with regard to
 5 functions transferred under subsection (a), shall
 6 be deemed to refer to the Department of Labor.

7 (2) DEFINITION.—For the purpose of this sub-
 8 section, the term “office” includes any office, admin-
 9 istration, agency, institute, unit, organizational en-
 10 tity, or component thereof.

11 (d) CONFORMING AMENDMENTS.—Not later than
 12 180 days after the effective date of this Act, if the Sec-
 13 retary of Labor determines (after consultation with the
 14 appropriate committees of Congress and the Director of
 15 the Office of Management and Budget) that technical and
 16 conforming amendments to Federal statutes are necessary
 17 to carry out the changes made by this section, the Sec-
 18 retary of Labor shall prepare and submit to Congress rec-
 19 ommended legislation containing the amendments.

20 **SEC. 14. ECONOMIC IMPACT ANALYSIS.**

21 The Secretary of Labor shall conduct a continuing
 22 comprehensive analysis of the costs and benefits of each
 23 standard in effect under section 6 of the Occupational
 24 Safety and Health Act of 1970 (29 U.S.C. 655). The Sec-
 25 retary shall report the results of the analysis to Congress

1 upon the expiration of the 2-year period beginning on the
 2 date of enactment of this Act and every 2 years thereafter.

3 **SEC. 15. LABOR RELATIONS.**

4 (a) DEFINITIONS.—Paragraph (5) of section 2 of the
 5 National Labor Relations Act (29 U.S.C. 152(5)) is
 6 amended by adding at the end the following: “The term
 7 does not include a safety committee that is comprised of
 8 an employer and the employees of the employer and that
 9 is jointly established by the employer and the employees
 10 of the employer, or by the employer and a labor organiza-
 11 tion representing the employees of the employer, to carry
 12 out efforts to reduce injuries and disease arising out of
 13 employment.”.

14 (b) UNFAIR LABOR PRACTICES.—Section 8(a)(2) of
 15 the National Labor Relations Act (29 U.S.C. 158(a)(2))
 16 is amended by inserting before the semicolon at the end
 17 the following: “: *Provided further*, That it shall not con-
 18 stitute an unfair practice under this paragraph for an em-
 19 ployer and the employees of the employer, or for an em-
 20 ployer and a labor organization representing the employ-
 21 ees of the employer, to jointly establish a safety committee
 22 in which the employer and the employees of the employer
 23 carry out efforts to reduce injuries and disease arising out
 24 of employment”.

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