

106TH CONGRESS
1ST SESSION

H. R. 1427

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 1999

Mr. TALENT (for himself, Mr. STENHOLM, Mr. PAUL, Mr. GOODE, Mr. HUNTER, Mr. HAYWORTH, Ms. PRYCE of Ohio, Mr. CUNNINGHAM, Mr. NORWOOD, Mr. RYUN of Kansas, Mr. BARRETT of Nebraska, Mr. PETERSON of Pennsylvania, and Mr. HILLEARY) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, 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 “Safety Advancement for Employees Act of 1999” or the
6 “SAFE Act”.

7 (b) REFERENCE.—Whenever in this Act an amend-
8 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. PURPOSE.**

6 Section 2(b) (29 U.S.C. 651(b)) is amended—

7 (1) in paragraph (13), by striking the period
8 and inserting “; and”; and

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

10 “(14) by increasing the joint cooperation of em-
11 ployers, employees, and the Secretary of Labor in
12 the effort to ensure safe and healthful working con-
13 ditions for employees.”.

14 **SEC. 3. EMPLOYEE AND EMPLOYER PARTICIPATION PRO-**
15 **GRAMS.**

16 Section 4 (29 U.S.C. 653) is amended by adding at
17 the end the following:

18 “(c)(1) In order to further carry out the purpose of
19 this Act to encourage employers and employees in their
20 efforts to reduce occupational safety and health hazards,
21 employers may establish employer and employee participa-
22 tion programs which exist for the sole purpose of address-
23 ing safe and healthful working conditions.

24 “(2) An entity created under a program described in
25 paragraph (1) shall not constitute a labor organization for

1 purposes of section 8(a)(2) of the National Labor Rela-
2 tions Act (29 U.S.C. 158(a)(2)) or a representative for
3 purposes of sections 1 and 2 of the Railway Labor Act
4 (45 U.S.C. 151 and 151a).

5 “(3) Nothing in this subsection shall be construed to
6 affect employer obligations under section 8(a)(5) of the
7 National Labor Relations Act (29 U.S.C. 158(a)(5)) to
8 deal with a certified or recognized employee representative
9 with respect to health and safety matters to the extent
10 otherwise required by law.”.

11 **SEC. 4. ESTABLISHMENT OF SPECIAL ADVISORY COM-**
12 **MITTEE.**

13 Section 7 (29 U.S.C. 656) is amended by adding at
14 the end the following:

15 “(d)(1) Not later than 6 months after the date of
16 enactment of this subsection, the Secretary shall establish
17 an advisory committee (pursuant to the Federal Advisory
18 Committee Act (5 U.S.C. App)) to carry out the duties
19 described in paragraph (3).

20 “(2) The advisory committee shall be composed of—

21 “(A) 3 members who are employees;

22 “(B) 3 members who are employers;

23 “(C) 2 members who are members of the gen-
24 eral public; and

1 “(D) 1 member who is a State official from a
2 State plan State.

3 Each member of the advisory committee shall have exper-
4 tise in workplace safety and health as demonstrated by
5 the educational background of the member.

6 “(3) The advisory committee shall advise and make
7 recommendations to the Secretary with respect to the es-
8 tablishment and implementation of a consultation services
9 program under section 8A.”.

10 **SEC. 5. THIRD PARTY CONSULTATION SERVICES PROGRAM.**

11 The Act (29 U.S.C. 651 et seq.) is amended by in-
12 serting after section 8 the following:

13 **“SEC. 8A. THIRD PARTY CONSULTATION SERVICES PRO-**
14 **GRAM.**

15 “(a) PURPOSE.—Recognizing that—

16 “(1) employee safety is of paramount concern;

17 “(2) employers are overburdened by regulations
18 and are unable to read through, understand and ef-
19 fectively comply with the voluminous requirements of
20 this Act; and

21 “(3) the Secretary is unable to individually sat-
22 isfy the compliance needs of each employer and em-
23 ployee within its jurisdiction;

24 it is the purpose of this section to encourage employers
25 to conduct voluntary safety and health audits using the

1 expertise of qualified safety and health consultants and
2 to proactively seek individualized solutions to workplace
3 safety and health concerns.

4 “(b) ESTABLISHMENT OF PROGRAM.—

5 “(1) IN GENERAL.—Not later than 18 months
6 after the date of enactment of this section, the Sec-
7 retary, in consultation with the advisory committee
8 established under section 7(d), shall establish and
9 implement, by regulation, a program that qualifies
10 individuals to provide consultation services to em-
11 ployers to assist employers in the identification and
12 correction of safety and health hazards in the work-
13 places of employers.

14 “(2) ELIGIBILITY.—The following individuals
15 shall be eligible to be qualified under the program
16 under paragraph (1) as certified safety and health
17 consultants:

18 “(A) An individual who is licensed by a
19 State authority as a physician, industrial hy-
20 gienist, professional engineer, safety engineer,
21 safety professional, or occupational nurse.

22 “(B) An individual who has been employed
23 as an inspector for a State plan State or as a
24 Federal occupational safety and health inspec-
25 tor for not less than a 5-year period.

1 “(C) An individual who is qualified in an
2 occupational health or safety field by an organi-
3 zation whose program has been accredited by a
4 nationally recognized private accreditation orga-
5 nization or by the Secretary.

6 “(D) Other individuals determined to be
7 qualified by the Secretary.

8 “(3) GEOGRAPHICAL SCOPE OF CONSULTATION
9 SERVICES.—A consultant qualified under the pro-
10 gram under paragraph (1) may provide consultation
11 services in any State.

12 “(4) LIMITATION BASED ON EXPERTISE.—A
13 consultant qualified under the program under para-
14 graph (1) may only provide consultation services to
15 an employer with respect to a worksite if the work
16 performed at that worksite coincides with the par-
17 ticular expertise of the individual.

18 “(c) SAFETY AND HEALTH REGISTRY.—The Sec-
19 retary shall develop and maintain a registry that includes
20 all consultants that are qualified under the program under
21 subsection (b)(1) to provide the consultation services de-
22 scribed in subsection (b) and shall publish and make such
23 registry readily available to the general public.

24 “(d) DISCIPLINARY ACTIONS.—

1 “(1) IN GENERAL.—The Secretary may revoke
2 the status of an individual qualified under subsection
3 (b) if the Secretary determines that the individual—

4 “(A) has failed to meet the requirements
5 of the program; or

6 “(B) has committed malfeasance, gross
7 negligence, or fraud in connection with any con-
8 sultation services provided by the qualified indi-
9 vidual.

10 “(e) CONSULTATION SERVICES.—

11 “(1) SCOPE OF CONSULTATION SERVICES.—The
12 consultation services described in subsection (b), and
13 provided by an individual qualified under the pro-
14 gram, shall include an evaluation of the workplace of
15 an employer to determine if the employer is in com-
16 pliance with the requirements of this Act, including
17 any regulations promulgated pursuant to this Act.

18 “(2) CONSULTATION REPORT.—Not later than
19 10 business days after an individual qualified under
20 the program provides the consultation services de-
21 scribed in subsection (b) to an employer, the indi-
22 vidual shall prepare and submit a written report to
23 the employer that includes an identification of any
24 violations of this Act and requirements with respect
25 to corrective measures the employer needs to carry

1 out in order for the workplace of the employer to be
2 in compliance with the requirements of this Act.

3 “(3) REINSPECTION.—Not later than 30 days
4 after an individual qualified under the program sub-
5 mits a report to an employer under paragraph (2),
6 or on a date agreed on by the individual and the em-
7 ployer, the individual shall reinspect the workplace
8 of the employer to verify that any occupational safe-
9 ty or health violations identified in the report have
10 been corrected and the workplace of the employer is
11 in compliance with this Act. If, after such reinspec-
12 tion, the individual determines that the workplace is
13 in compliance with the requirements of this Act, the
14 individual shall provide the employer a declaration of
15 compliance.

16 “(4) GUIDELINES.—The Secretary, in consulta-
17 tion with an advisory committee established in sec-
18 tion 7(d), shall develop model guidelines for use in
19 evaluating a workplace under paragraph (1).

20 “(f) ACCESS TO RECORDS.—Any records relating to
21 consultation services (as described in subsection (b) pro-
22 vided by an individual qualified under the program shall
23 not be admissible in a court of law or administrative pro-
24 ceeding against the employer except that such records may

1 be used as evidence for purposes of a disciplinary action
2 under subsection (d).

3 “(g) EXEMPTION.—

4 “(1) IN GENERAL.—If an employer enters into
5 a contract with an individual qualified under the
6 program, to provide consultation services described
7 in subsection (b), and receives a declaration of com-
8 pliance under subsection (e)(3), the employer shall
9 be exempt from the assessment of any civil penalty
10 under section 17 for a period of 2 years after the
11 date the employer receives the declaration.

12 “(2) EXCEPTIONS.—Paragraph (1) shall not
13 apply—

14 “(A) if the employer involved has not made
15 a good faith effort to remain in compliance as
16 required under the declaration of compliance; or

17 “(B) to the extent that there has been a
18 fundamental change in the hazards of the work-
19 place.

20 “(h) DEFINITION.—In this section, the term ‘pro-
21 gram’ means the program established by the Secretary
22 under subsection (b).

23 “(i) RIGHT TO INSPECT.—Nothing in this section
24 shall be construed to affect the rights of the Secretary to

1 inspect and investigate worksites covered by a certificate
2 of compliance.

3 “(j) NON-FIXED WORK SITES.—With respect to em-
4 ployer worksites that do not have a fixed location, a certifi-
5 cate of compliance shall only apply to that worksite which
6 satisfies the criteria under this section and such certificate
7 shall not be portable to any other worksite. This section
8 shall not apply to service establishments that utilize essen-
9 tially the same work equipment at each non-fixed work-
10 site.”.

11 **SEC. 6. CONTINUING EDUCATION AND PROFESSIONAL CER-**
12 **TIFICATION FOR CERTAIN OCCUPATIONAL**
13 **SAFETY AND HEALTH ADMINISTRATION PER-**
14 **SONNEL.**

15 Section 8 (29 U.S.C. 657) is amended by adding at
16 the end the following:

17 “(h) Any Federal employee responsible for enforcing
18 this Act shall (not later than 2 years after the date of
19 enactment of this subsection or 2 years after the initial
20 employment of the employee) meet the eligibility require-
21 ments prescribed under subsection (b)(2) of section 8A.

22 “(i) The Secretary shall ensure that any Federal em-
23 ployee responsible for enforcing this Act who carries out
24 inspections or investigations under this section, receive

1 professional education and training at least every 5 years
2 as prescribed by the Secretary.”.

3 **SEC. 7. EXPANDED INSPECTION METHODS.**

4 (a) PURPOSE.—It is the purpose of this section to
5 empower the Secretary of Labor to achieve increased em-
6 ployer compliance by using, at the Secretary’s discretion,
7 more efficient and effective means for conducting inspec-
8 tions.

9 (b) GENERAL.—Section 8(f) of the Act (29 U.S.C.
10 657(f) is amended by adding at the end the following:

11 “(3) The Secretary or an authorized representative
12 of the Secretary may, as a method of investigating an al-
13 leged violation or danger under this subsection, attempt,
14 if feasible, to contact an employer by telephone, facsimile,
15 or other appropriate methods to determine whether—

16 “(A) the employer has taken corrective actions
17 with respect to the alleged violation or danger; or

18 “(B) there are reasonable grounds to believe
19 that a hazard exists.

20 “(4) The Secretary is not required to conduct an in-
21 spection under this subsection if the Secretary determines
22 that a request for an inspection was made for reasons
23 other than the safety and health of the employees of an
24 employer or that the employees of an employer are not
25 at risk.”.

1 **SEC. 8. WORKSITE-SPECIFIC COMPLIANCE METHODS.**

2 (a) Section 9 (29 U.S.C. 658) is amended by adding
3 at the end the following:

4 “(d) A citation issued under subsection (a) to an em-
5 ployer who violates section 5, any standard, rule, or order
6 promulgated pursuant to section 6, or any other regulation
7 promulgated under this Act shall be vacated if such em-
8 ployer demonstrates that the employees of such employer
9 were protected by alternative methods that are equally or
10 more protective of the safety and health of the employees
11 than the methods required by such standard, rule, order,
12 or regulation in the factual circumstances underlying the
13 citation.

14 “(e) Subsection (d) shall not be construed to elimi-
15 nate or modify other defenses that may exist to any cita-
16 tion.”.

17 **SEC. 9. REDUCED PENALTIES FOR PAPERWORK VIOLA-**
18 **TIONS.**

19 Section 17(i) (29 U.S.C. 666) is amended to read as
20 follows:

21 “(i) Any employer who violates any of the posting or
22 paperwork requirements, other than fraudulent reporting
23 requirement deficiencies, prescribed under this Act shall
24 not be assessed a civil penalty for such a violation unless
25 the Secretary determines that the employer has violated

1 subsection (a) or (d) with respect to the posting or paper-
2 work requirements.”.

3 **SEC. 10. REVIEW BY THE COMMISSION.**

4 Section 17(j) (29 U.S.C. 666) is amended to read as
5 follows:

6 “(j) The Commission shall have authority to assess
7 all civil penalties under this section. In assessing a penalty
8 under this section for a violation, the Commission shall
9 give due consideration to the appropriateness of the pen-
10 alty with respect to—

11 “(1) the size of an employer;

12 “(2) the number of employees exposed to the
13 violation;

14 “(3) the likely severity of any injuries directly
15 resulting from the violation;

16 “(4) the probability that the violation could re-
17 sult in injury or illness;

18 “(5) the good faith of an employer in correcting
19 the violation after the violation has been identified;

20 “(6) the history of previous violations by an em-
21 ployer; and

22 “(7) whether the violation is the sole result of
23 the failure of an employer to meet a requirement
24 under this Act, or prescribed by regulation, with re-
25 spect to the posting of notices, the preparation or

1 maintenance of occupational safety and health
2 records, or the preparation, maintenance, or submis-
3 sion of any written information.”.

4 **SEC. 11. TECHNICAL ASSISTANCE PROGRAM.**

5 (a) IN GENERAL.—Section 21(c) (29 U.S.C. 670(c))
6 is amended—

7 (1) by striking “(c) The” and inserting “(c)(1)
8 The”;

9 (2) by striking “(1) provide” and inserting “(A)
10 provide”;

11 (3) by striking “(2) consult” and inserting “(B)
12 consult”; and

13 (4) by adding at the end the following:

14 “(2)(A) The Secretary shall, through the authority
15 granted under section 7(c) and paragraph (1), enter into
16 cooperative agreements with States for the provision of
17 consultation services by such States to employers con-
18 cerning the provision of safe and healthful working condi-
19 tions.

20 “(B)(i) Except as provided in clause (ii), the Sec-
21 retary shall reimburse a State that enters into a coopera-
22 tive agreement under subparagraph (A) in an amount that
23 equals 90 percent of the costs incurred by the State for
24 the provision of consultation services under such agree-
25 ment.

1 “(ii) A State shall be reimbursed by the Secretary
2 for 90 percent of the costs incurred by the State for the
3 provision of—

4 “(I) training approved by the Secretary for
5 State personnel operating under a cooperative agree-
6 ment; and

7 “(II) specified out-of-State travel expenses in-
8 curred by such personnel.

9 “(iii) A reimbursement paid to a State under this
10 subparagraph shall be limited to costs incurred by such
11 State for the provision of consultation services under this
12 paragraph and the costs described in clause (ii).

13 “(C) Notwithstanding any other provisions of law,
14 not less than 15 percent of the total amount of funds ap-
15 propriated for the Occupational Safety and Health Admin-
16 istration for a fiscal year shall be used for education, con-
17 sultation, and outreach efforts.

18 “(D) A State may not require that an employer pay
19 a fee in order to participate in any program operated by
20 the State under this paragraph.”.

21 (b) PILOT PROGRAM.—Section 21 (29 U.S.C. 670)
22 is amended by adding at the end the following:

23 “(d)(1) Not later than 90 days after the date of en-
24 actment of this subsection, the Secretary shall establish
25 and carry out a pilot program in 3 States to provide expe-

1 dited consultation services, with respect to the provision
2 of safe and healthful working conditions, to employers that
3 are small businesses (as the term is defined by the Admin-
4 istrator of the Small Business Administration). The Sec-
5 retary shall carry out the program for a period not to ex-
6 ceed 2 years.

7 “(2) The Secretary shall provide consultation services
8 under paragraph (1) not later than 4 weeks after the date
9 on which the Secretary receives a request from an em-
10 ployer.

11 “(3) The Secretary may impose a nominal fee to an
12 employer requesting consultation services under para-
13 graph (1). The fee shall be in an amount determined by
14 the Secretary. Employers paying a fee shall receive pri-
15 ority consultation services by the Secretary.

16 “(4) In lieu of issuing a citation under section 9 to
17 an employer for a violation found by the Secretary during
18 a consultation under paragraph (1), the Secretary shall
19 permit the employer to carry out corrective measures to
20 correct the conditions causing the violation. The Secretary
21 shall conduct not more than 2 visits to the workplace of
22 the employer to determine if the employer has carried out
23 the corrective measures. The Secretary shall issue a cita-
24 tion as prescribed under section 5 if, after such visits, the
25 employer has failed to carry out the corrective measures.

1 “(5) Not later than 90 days after the termination of
 2 the program under paragraph (1), the Secretary shall pre-
 3 pare and submit a report to the appropriate committees
 4 of Congress that contains an evaluation of the implemen-
 5 tation of the pilot program.”.

6 **SEC. 12. VOLUNTARY PROTECTION PROGRAMS.**

7 (a) COOPERATIVE AGREEMENTS.—The Secretary of
 8 Labor shall establish cooperative agreements with employ-
 9 ers to encourage the establishment of comprehensive safe-
 10 ty and health management systems that include—

11 (1) requirements for systematic assessment of
 12 hazards;

13 (2) comprehensive hazard prevention, mitiga-
 14 tion, and control programs;

15 (3) active and meaningful management and em-
 16 ployee participation in the voluntary program de-
 17 scribed in subsection (b); and

18 (4) employee safety and health training.

19 (b) VOLUNTARY PROTECTION PROGRAM.—

20 (1) IN GENERAL.—The Secretary of Labor shall
 21 establish and carry out a voluntary protection pro-
 22 gram (consistent with subsection (a)) to encourage
 23 and recognize the achievement of excellence in both
 24 the technical and managerial protection of employees
 25 from occupational hazards. The Secretary of Labor

1 shall encourage small businesses (as the term is de-
2 fined by the Administrator of the Small Business
3 Administration) to participate in the voluntary pro-
4 tection program by carrying out outreach and assist-
5 ance initiatives and developing program require-
6 ments that address the needs of small businesses.

7 (2) PROGRAM REQUIREMENT.—The voluntary
8 protection program shall include the following:

9 (A) APPLICATION.—Employers who volun-
10 teer under the program shall be required to
11 submit an application to the Secretary of Labor
12 demonstrating that the worksite with respect to
13 which the application is made meets such re-
14 quirements as the Secretary of Labor may re-
15 quire for participation in the program.

16 (B) ONSITE EVALUATIONS.—There shall
17 be onsite evaluations by representatives of the
18 Secretary of Labor to ensure a high level of
19 protection of employees. The onsite visits shall
20 not result in enforcement of citations under the
21 Occupational Safety and Health Act of 1970
22 (29 U.S.C. 651 et seq.).

23 (C) INFORMATION.—Employers who are
24 approved by the Secretary of Labor for partici-
25 pation in the program shall assure the Sec-

1 retary of Labor that information about the
2 safety and health program of the employers
3 shall be made readily available to the Secretary
4 of Labor to share with employees.

5 (D) REEVALUATIONS.—Periodic reevalua-
6 tions by the Secretary of Labor of the employ-
7 ers shall be required for continued participation
8 in the program.

9 (3) EXEMPTIONS.—A site with respect to which
10 a program has been approved shall, during partici-
11 pation in the program be exempt from inspections or
12 investigations and certain paperwork requirements
13 to be determined by the Secretary of Labor, except
14 that this paragraph shall not apply to inspections or
15 investigations arising from employee complaints, fa-
16 talities, catastrophes, or significant toxic releases.

17 (4) INCREASED SMALL BUSINESS PARTICIPA-
18 TION.—The Secretary of Labor shall establish and
19 implement, by regulation, a program to increase par-
20 ticipation by small businesses (as the term is defined
21 by the Administrator of the Small Business Admin-
22 istration) in the voluntary protection program
23 through outreach and assistance initiatives and de-
24 veloping program requirements that address the
25 needs of small businesses.

1 **SEC. 13. PREVENTION OF ALCOHOL AND SUBSTANCE**
2 **ABUSE.**

3 The Occupational Safety and Health Act of 1970 (29
4 U.S.C. 651 et seq.) is amended—

5 (1) by striking sections 29, 30, and 31;

6 (2) by redesignating sections 32, 33, and 34 as
7 sections 30, 31, and 32, respectively; and

8 (3) by inserting after section 28 (29 U.S.C.
9 676) the following:

10 **“SEC. 29. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

11 “(a) PROGRAM PURPOSE.—In order to secure a safe
12 workplace, employers may establish and carry out an alco-
13 hol and substance abuse testing program in accordance
14 with subsection (b).

15 “(b) FEDERAL GUIDELINES.—An alcohol and sub-
16 stance abuse testing program described in subsection (a)
17 shall meet the following requirements:

18 “(1) SUBSTANCE ABUSE.—A substance abuse
19 testing program shall permit the use of an onsite or
20 offsite urine screening or other recognized screening
21 methods, so long as the confirmation tests are per-
22 formed in accordance with the mandatory guidelines
23 for Federal workplace testing programs published by
24 the Secretary of Health and Human Services on
25 April 11, 1988, at section 11979 of title 53, Code
26 of Federal Regulations (including any amendments

1 to such guidelines), in a lab that is subject to the
2 requirements of subpart B of such mandatory guide-
3 lines.

4 “(2) ALCOHOL.—The alcohol testing component
5 of the program shall take the form of alcohol breath
6 analysis and shall conform to any guidelines devel-
7 oped by the Secretary of Transportation for alcohol
8 testing of mass transit employees under the Depart-
9 ment of Transportation and Related Agencies Ap-
10 propriations Act, 1992.

11 “(c) TEST REQUIREMENTS.—This section shall not
12 be construed to prohibit an employer from requiring—

13 “(1) an applicant for employment to submit to
14 and pass an alcohol or substance abuse test before
15 employment by the employer; or

16 “(2) an employee, including managerial per-
17 sonnel, to submit to and pass an alcohol or sub-
18 stance abuse test—

19 “(A) on a for-cause basis or where the em-
20 ployer has reasonable suspicion to believe that
21 such employee is using or is under the influence
22 of alcohol or a controlled substance;

23 “(B) where such test is administered as
24 part of a scheduled medical examination;

1 “(C) in the case of an accident or incident,
2 involving the actual or potential loss of human
3 life, bodily injury, or property damage;

4 “(D) during the participation of an em-
5 ployee in an alcohol or substance abuse treat-
6 ment program, and for a reasonable period of
7 time (not to exceed 5 years) after the conclu-
8 sion of such program; or

9 “(E) on a random selection basis in work
10 units, locations, or facilities.

11 “(d) CONSTRUCTION.—Nothing in this section shall
12 be construed to require an employer to establish an alcohol
13 and substance abuse testing program for applicants or em-
14 ployees or make employment decisions based on such test
15 results.

16 “(e) PREEMPTION.—The provisions of this section
17 shall preempt any provision of State law to the extent that
18 such State law is inconsistent with this section.

19 “(f) INVESTIGATIONS.—The Secretary is authorized
20 to conduct testing of employees (including managerial per-
21 sonnel) of an employer for use of alcohol or controlled sub-
22 stances during any investigations of a work-related fatality
23 or serious injury.”.

○