

106TH CONGRESS
1ST SESSION

S. 653

To amend the Occupational Safety and Health Act of 1970 to further protect the safety and health of employees.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 1999

Mr. WELLSTONE (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Occupational Safety and Health Act of 1970 to further protect the safety and health of employees.

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.**

4 This Act may be cited as the “Safer Workplaces
5 Act”.

6 **TITLE I—PROTECTING**
7 **EMPLOYEES FROM REPRISALS**

8 **SEC. 101. SHORT TITLE.**

9 This title may be cited as the “Safety and Health
10 Whistleblower Protection Act”.

1 **SEC. 102. EMPLOYEE ACTIONS.**

2 Section 11(c)(1) of the Occupational Safety and
3 Health Act of 1970 (29 U.S.C. 660(c)(1)) is amended by
4 inserting before the period the following: “including re-
5 porting any injury, illness or unsafe condition”.

6 **SEC. 103. PROHIBITION OF DISCRIMINATION.**

7 Section 11(c) of the Occupational Safety and Health
8 Act of 1970 (29 U.S.C. 660(c)) is amended by striking
9 paragraph (2) and inserting the following:

10 “(2) No person shall discharge or in any manner dis-
11 criminate against an employee for refusing to perform the
12 employee’s duties when the employee has a reasonable ap-
13 prehension that performing such duties would result in se-
14 rious injury or serious impairment of health to the em-
15 ployee or other employees. The circumstances causing the
16 employee’s apprehension of serious injury must be of such
17 a nature that a reasonable person would conclude that
18 there is a danger of serious injury or serious impairment
19 of health. This paragraph shall only apply to an employee
20 to the extent that the employee, if possible, communicated
21 to the employer the danger perceived.”.

22 **SEC. 104. PROCEDURE.**

23 Section 11(c) of the Occupational Safety and Health
24 Act of 1970 (29 U.S.C. 660(c)) is amended by striking
25 paragraph (3) and inserting the following:

1 “(3) Any employee who believes that he or she has
2 been discharged, disciplined, or otherwise discriminated
3 against in violation of paragraph (1) or (2) may, within
4 180 days after the date on which such alleged violation
5 occurs, file (or have filed by any person on the employee’s
6 behalf) a complaint with the Secretary alleging such dis-
7 charge, discipline, or discrimination. Upon receipt of such
8 a complaint, the Secretary shall notify the person named
9 in the complaint of the filing of the complaint.

10 “(4)(A) Within 90 days of the receipt of a complaint
11 filed under paragraph (3), the Secretary shall conduct an
12 investigation and determine whether there is reasonable
13 cause to believe that the complaint has merit and shall
14 notify the complainant and the person alleged to have
15 committed the violation of paragraph (1) or (2) of the Sec-
16 retary’s findings. Where the Secretary has determined
17 that there is reasonable cause to believe that a violation
18 has occurred, the Secretary’s findings shall be accom-
19 panied by a preliminary order providing the relief pre-
20 scribed by subparagraph (E).

21 “(B)(i) After a preliminary order is issued under sub-
22 paragraph (A), the person alleged to have committed the
23 violation involved or the complainant may, within 30 days,
24 file objections to the findings or preliminary order, or
25 both, and request a hearing on the record, except that the

1 filing of such objections shall not operate to stay any rein-
2 statement remedy contained in the preliminary order; and

3 “(ii) If a hearing described in clause (i) is not re-
4 quested in a timely manner as provided for under such
5 clause, the preliminary order involved shall be deemed a
6 final order and not be subject to judicial review.

7 “(C) If the Secretary has not issued findings under
8 subparagraph (A) within the 90-day period described in
9 such subparagraph, and the employee or representative of
10 the employee files a request for a hearing with the Sec-
11 retary, the Secretary shall afford an opportunity for a
12 hearing on the record.

13 “(D) If requested under subparagraph (C), a hearing
14 shall be conducted by an administrative law judge and a
15 recommended decision and order issued expeditiously. The
16 legal burdens of proof that prevail under section 1221 of
17 title 5, United States Code, shall govern adjudication of
18 violations under this subsection. The Secretary shall issue
19 a final order within 120 days of the issuance of the rec-
20 ommended decision. In the interim, such proceedings may
21 be terminated at any time on the basis of a settlement
22 agreement entered into by the Secretary, the complainant,
23 and the person alleged to have committed the violation.

24 “(E) If, in response to a complaint filed under para-
25 graph (3), the Secretary determines that a violation of

1 paragraph (1) or (2) has occurred, the Secretary shall
2 order as appropriate—

3 “(i) the person who committed such violation to
4 correct the violation;

5 “(ii) the person to reinstate the complainant to
6 the complainant’s former position together with the
7 compensation (including back pay), terms, condi-
8 tions, and privileges of the position;

9 “(iii) compensatory damages; and

10 “(iv) exemplary damages.

11 Upon issuance of such an order, the Secretary may assess
12 against the person against whom the order is issued a sum
13 equal to the aggregate amount of all costs and expenses
14 (including attorney’s fees and expert witness fees) reason-
15 ably incurred, as determined by the Secretary, by the com-
16 plainant for, or in connection with, the bringing of the
17 complaint upon which the order was issued, including
18 costs and expenses incurred upon review before a court
19 of appeals.

20 “(F) In conducting an investigation or adjudication
21 under this paragraph, the provisions of section 8(b) shall
22 apply.

23 “(5)(A) Any person adversely affected or aggrieved
24 by a final order issued under paragraph (4)(D) may obtain
25 review of the order before the United States court of ap-

1 peals for the circuit in which the violation, with respect
2 to which the order was issued, occurred, or the circuit in
3 which such person resided on the date of such violation.
4 The petition for review must be filed within 60 days from
5 the date on which the Secretary's order was issued. Such
6 review shall be in accordance with the provisions of chap-
7 ter 7 of title 5, United States Code. An order of the Sec-
8 retary subject to review under this subsection is not sub-
9 ject to judicial review in a criminal or other civil pro-
10 ceeding. The commencement of proceedings under this
11 subsection shall not, unless ordered by the court, operate
12 as a stay of the order of the Secretary.

13 “(B) When a person has failed to comply with a final
14 order or an order of reinstatement issued under paragraph
15 (4), the Secretary or the person on behalf of whom the
16 order was issued may file a civil action in the United
17 States district court for the district in which the violation
18 was found to occur in order to enforce such order. In ac-
19 tions brought under this subparagraph, the district court
20 shall have jurisdiction to grant additional appropriate re-
21 lief in light of the noncompliance.”.

22 **SEC. 105. RELATION TO ENFORCEMENT.**

23 Section 17(j) of the Occupational Safety and Health
24 Act of 1970 (29 U.S.C. 666(j)) is amended by inserting

1 before the period the following: “, including the history
2 of violation under section 11(c)”.

3 **SEC. 106. EFFECTIVE DATE.**

4 The amendments made by this title shall take effect
5 90 days after the date of enactment of this Act.

6 **TITLE II—MISCELLANEOUS**
7 **AMENDMENTS**

8 **SEC. 201. COVERAGE OF FEDERAL, STATE AND POLITICAL**
9 **SUBDIVISION EMPLOYEES.**

10 Section 3(5) of the Occupational Safety and Health
11 Act of 1970 (29 U.S.C. 652(5)) is amended to read as
12 follows:

13 “(5) The term ‘employer’ means a person en-
14 gaged in a business affecting commerce who has em-
15 ployees, including the United States and the United
16 States Postal Service and any State or political sub-
17 division of a State.”.

18 **SEC. 202. OSHA CRIMINAL PENALTIES.**

19 Section 17 of the Occupational Safety and Health Act
20 of 1970 (29 U.S.C. 666) is amended—

21 (1) in subsection (e)—

22 (A) by striking “fine of not more than
23 \$10,000” and inserting “fine in accordance
24 with section 3571 of title 18, United States
25 Code,”;

1 (B) by striking “six months” and inserting
2 “10 years”;

3 (C) by striking “fine of not more than
4 \$20,000” and inserting “fine in accordance
5 with section 3571 of title 18, United States
6 Code,”;

7 (D) by striking “one year” and inserting
8 “20 years”; and

9 (E) by inserting “under this subsection or
10 subsection (i)” after “first conviction of such
11 person”;

12 (2) in subsection (f), by striking “fine of not
13 more than \$1,000 or by imprisonment for not more
14 than six months,” and inserting “fine in accordance
15 with section 3571 of title 18, United States Code, or
16 by imprisonment for not more than 2 years,”; and

17 (3) in subsection (g), by striking “fine of not
18 more than \$10,000, or by imprisonment for not
19 more than six months,” and inserting “fine in ac-
20 cordance with section 3571 of title 18, United States
21 Code, or by imprisonment for not more than 1
22 year,”.

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