

113TH CONGRESS  
1ST SESSION

# S. 665

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

MARCH 22, 2013

Mrs. MURRAY (for herself, Mr. BROWN, Mr. FRANKEN, Mr. HARKIN, Mr. LAUTENBERG, Mr. ROCKEFELLER, Mrs. SHAHEEN, Mr. WHITEHOUSE, Mr. CASEY, Ms. WARREN, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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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,*

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. References.

TITLE I—COVERAGE OF PUBLIC EMPLOYEES AND APPLICATION  
OF ACT

Sec. 101. Coverage of public employees.

Sec. 102. Application of Act.

TITLE II—INCREASING WHISTLEBLOWER PROTECTIONS

Sec. 201. Enhanced protections from retaliation.

TITLE III—IMPROVING REPORTING, INSPECTION, AND  
ENFORCEMENT

Sec. 301. Employer duties.

Sec. 302. Recording and reporting of occupational injuries and illnesses.

Sec. 303. Posting of employee rights.

Sec. 304. Employer reporting of work-related deaths and hospitalizations and  
prohibition on discouraging employee reports of injury or ill-  
ness.

Sec. 305. No loss of employee pay for inspections.

Sec. 306. Investigations of fatalities and significant incidents.

Sec. 307. Prohibition on unclassified citations.

Sec. 308. Victims’ rights.

Sec. 309. Right to contest citations and penalties.

Sec. 310. Correction of serious, willful, or repeated violations pending contest  
and procedures for a stay.

Sec. 311. Conforming amendments.

Sec. 312. Civil penalties.

Sec. 313. Criminal penalties.

Sec. 314. Prejudgment interest.

TITLE IV—STATE PLANS

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

TITLE V—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY  
AND HEALTH

Sec. 501. Health Hazard Evaluations by the National Institute for Occupa-  
tional Safety and Health.

## TITLE VI—EFFECTIVE DATE

Sec. 601. Effective date.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, whenever in  
3 this Act an amendment or repeal is expressed in terms  
4 of an amendment to, or repeal of, a section or other provi-  
5 sion, the reference shall be considered to be made to a  
6 section or other provision of the Occupational Safety and  
7 Health Act of 1970 (29 U.S.C. 651 et seq.).

8 **TITLE I—COVERAGE OF PUBLIC**  
9 **EMPLOYEES AND APPLICA-**  
10 **TION OF ACT**

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

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

17 (b) CONSTRUCTION.—Nothing in this Act shall be  
18 construed to affect the application of section 18 of the Oc-  
19 cupational Safety and Health Act of 1970 (29 U.S.C.  
20 667).

21 **SEC. 102. APPLICATION OF ACT.**

22 Section 4(b) (29 U.S.C. 653(b)(1)) is amended—

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

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

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

23          “(2) The Secretary shall, by regulation, establish pro-  
24          cedures by which any person who may be adversely af-  
25          fected by a decision of the Secretary certifying that the

1 Secretary has ceded jurisdiction to another Federal agency  
2 pursuant to paragraph (1) may petition the Secretary to  
3 rescind a certification notice under paragraph (1). Upon  
4 receipt of such a petition, the Secretary shall investigate  
5 the matter involved and shall, within 90 days after receipt  
6 of the petition, publish a decision with respect to the peti-  
7 tion in the Federal Register.

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

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

12 “(B) a decision of the Secretary denying a peti-  
13 tion to rescind such a certification notice under  
14 paragraph (1),

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

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

## 4 **TITLE II—INCREASING** 5 **WHISTLEBLOWER PROTECTIONS**

### 6 **SEC. 201. ENHANCED PROTECTIONS FROM RETALIATION.**

7 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) (29  
 8 U.S.C. 660(c)(1)) is amended—

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

14 “(A) such”;

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

17 “(B) such employee has”;

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

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

24 “(D) of the exercise”; and

1           (4) by inserting before the period at the end the  
 2           following: “, including the reporting of any injury,  
 3           illness, or unsafe condition to the employer, agent of  
 4           the employer, safety and health committee involved,  
 5           or employee safety and health representative in-  
 6           volved”.

7           (b) PROHIBITION OF RETALIATION.—Section 11(c)  
 8           (29 U.S.C. 660(c)) is amended by striking paragraph (2)  
 9           and inserting the following:

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

18          “(B) For purposes of subparagraph (A), the cir-  
 19          cumstances causing the employee’s good-faith belief that  
 20          performing such duties would pose a safety or health haz-  
 21          ard shall be of such a nature that a reasonable person,  
 22          under the circumstances confronting the employee, would  
 23          conclude that there is such a hazard. In order to qualify  
 24          for protection under this paragraph, the employee, when  
 25          practicable, shall have communicated or attempted to com-

1 municate the safety or health concern to the employer and  
 2 have not received from the employer a response reasonably  
 3 calculated to allay such concern.”.

4 (c) PROCEDURE.—Section 11(c) (29 U.S.C. 660(c))  
 5 is amended by striking paragraph (3) and inserting the  
 6 following:

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

13 “(4) STATUTE OF LIMITATIONS.—

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

17 “(i) the date on which an alleged vio-  
 18 lation of paragraph (1) or (2) occurs; or

19 “(ii) the date on which the employee  
 20 knows or should reasonably have known  
 21 that such alleged violation occurred.

22 “(B) REPEAT VIOLATION.—Except in  
 23 cases when the employee has been discharged,  
 24 a violation of paragraph (1) or (2) shall be con-



1           sidered to have occurred on the last date an al-  
2           leged repeat violation occurred.

3           “(5) INVESTIGATION.—

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

11                         “(i) shall include—

12                                 “(I) interviewing the complain-  
13                                 ant;

14                                 “(II) providing the respondent an  
15                                 opportunity to—

16   “(aa) submit to the Sec-  
17   retary a written response to the  
18   complaint; and

19   “(bb) meet with the Sec-  
20   retary to present statements from  
21   witnesses or provide evidence;  
22   and

23                                 “(III) providing the complainant  
24                                 an opportunity to—

1 “(aa) receive any statements  
2 or evidence provided to the Sec-  
3 retary;

4 “(bb) meet with the Sec-  
5 retary; and

6 “(cc) rebut any statements  
7 or evidence; and

8 “(ii) may include issuing subpoenas  
9 for the purposes of such investigation.

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

13 “(i) determine whether reasonable  
14 cause exists to believe that a violation of  
15 paragraph (1) or (2) has occurred; and

16 “(ii) issue a decision granting or de-  
17 nying relief.

18 “(6) PRELIMINARY ORDER FOLLOWING INVES-  
19 TIGATION.—If, after completion of an investigation  
20 under paragraph (5)(A), the Secretary finds reason-  
21 able cause to believe that a violation of paragraph  
22 (1) or (2) has occurred, the Secretary shall issue a  
23 preliminary order providing relief authorized under  
24 paragraph (14) at the same time the Secretary  
25 issues a decision under paragraph (5)(B). If a de

1        novo hearing is not requested within the time period  
2        required under paragraph (7)(A)(i), such prelimi-  
3        nary order shall be deemed a final order of the Sec-  
4        retary and is not subject to judicial review.

5            “(7) HEARING.—

6                    “(A) REQUEST FOR HEARING.—

7                            “(i) IN GENERAL.—A de novo hearing  
8                            on the record before an administrative law  
9                            judge may be requested—

10                                    “(I) by the complainant or re-  
11                                    spondent within 30 days after receiv-  
12                                    ing notification of a decision granting  
13                                    or denying relief issued under para-  
14                                    graph (5)(B) or paragraph (6) respec-  
15                                    tively;

16                                    “(II) by the complainant within  
17                                    30 days after the date the complaint  
18                                    is dismissed without investigation by  
19                                    the Secretary under paragraph (5); or

20                                    “(III) by the complainant within  
21                                    120 days after the date of filing the  
22                                    complaint, if the Secretary has not  
23                                    issued a decision under paragraph  
24                                    (5)(B).

1           “(ii) REINSTATEMENT ORDER.—The  
2 request for a hearing shall not operate to  
3 stay any preliminary reinstatement order  
4 issued under paragraph (6).

5           “(B) PROCEDURES.—

6           “(i) IN GENERAL.—A hearing re-  
7 quested under this paragraph shall be con-  
8 ducted expeditiously and in accordance  
9 with rules established by the Secretary for  
10 hearings conducted by administrative law  
11 judges.

12           “(ii) SUBPOENAS; PRODUCTION OF  
13 EVIDENCE.—In conducting any such hear-  
14 ing, the administrative law judge may issue  
15 subpoenas. The respondent or complainant  
16 may request the issuance of subpoenas  
17 that require the deposition of, or the at-  
18 tendance and testimony of, witnesses and  
19 the production of any evidence (including  
20 any books, papers, documents, or record-  
21 ings) relating to the matter under consid-  
22 eration.

23           “(iii) DECISION.—The administrative  
24 law judge shall issue a decision not later  
25 than 90 days after the date on which a

1 hearing was requested under this para-  
 2 graph and promptly notify, in writing, the  
 3 parties and the Secretary of such decision,  
 4 including the findings of fact and conclu-  
 5 sions of law. If the administrative law  
 6 judge finds that a violation of paragraph  
 7 (1) or (2) has occurred, the judge shall  
 8 issue an order for relief under paragraph  
 9 (14). If review under paragraph (8) is not  
 10 timely requested, such order shall be  
 11 deemed a final order of the Secretary that  
 12 is not subject to judicial review.

13 “(8) ADMINISTRATIVE APPEAL.—

14 “(A) IN GENERAL.—Not later than 30  
 15 days after the date of notification of a decision  
 16 and order issued by an administrative law judge  
 17 under paragraph (7), the complainant or re-  
 18 spondent may file, with objections, an adminis-  
 19 trative appeal with an administrative review  
 20 body designated by the Secretary (referred to in  
 21 this paragraph as the ‘review board’).

22 “(B) STANDARD OF REVIEW.—In review-  
 23 ing the decision and order of the administrative  
 24 law judge, the review board shall affirm the de-  
 25 cision and order if it is determined that the fac-

1 tual findings set forth therein are supported by  
2 substantial evidence and the decision and order  
3 are made in accordance with applicable law.

4 “(C) DECISIONS.—If the review board  
5 grants an administrative appeal, the review  
6 board shall issue a final decision and order af-  
7 firming or reversing, in whole or in part, the  
8 decision under review by not later than 90 days  
9 after receipt of the administrative appeal. If it  
10 is determined that a violation of paragraph (1)  
11 or (2) has occurred, the review board shall issue  
12 a final decision and order providing relief au-  
13 thorized under paragraph (14). Such decision  
14 and order shall constitute final agency action  
15 with respect to the matter appealed.

16 “(9) SETTLEMENT IN THE ADMINISTRATIVE  
17 PROCESS.—

18 “(A) IN GENERAL.—At any time before  
19 issuance of a final order, an investigation or  
20 proceeding under this subsection may be termi-  
21 nated on the basis of a settlement agreement  
22 entered into by the parties.

23 “(B) PUBLIC POLICY CONSIDERATIONS.—  
24 Neither the Secretary, an administrative law  
25 judge, nor the review board conducting a hear-

1           ing under this subsection shall accept a settle-  
 2           ment that contains conditions conflicting with  
 3           the rights protected under this Act or that are  
 4           contrary to public policy, including a restriction  
 5           on a complainant’s right to future employment  
 6           with employers other than the specific employ-  
 7           ers named in a complaint.

8           “(10) INACTION BY THE REVIEW BOARD OR AD-  
 9           MINISTRATIVE LAW JUDGE.—

10           “(A) IN GENERAL.—The complainant may  
 11           bring a de novo action described in subpara-  
 12           graph (B) if—

13           “(i) an administrative law judge has  
 14           not issued a decision and order within the  
 15           90-day time period required under para-  
 16           graph (7)(B)(iii); or

17           “(ii) the review board has not issued  
 18           a decision and order within the 90-day  
 19           time period required under paragraph  
 20           (8)(C).

21           “(B) DE NOVO ACTION.—Such de novo ac-  
 22           tion may be brought at law or equity in the  
 23           United States district court for the district  
 24           where a violation of paragraph (1) or (2) alleg-  
 25           edly occurred or where the complainant resided

1 on the date of such alleged violation. The court  
2 shall have jurisdiction over such action without  
3 regard to the amount in controversy and to  
4 order appropriate relief under paragraph (14).  
5 Such action shall, at the request of either party  
6 to such action, be tried by the court with a  
7 jury.

8 “(11) JUDICIAL REVIEW.—

9 “(A) TIMELY APPEAL TO THE COURT OF  
10 APPEALS.—Any party adversely affected or ag-  
11 grieved by a final decision and order issued  
12 under this subsection may obtain review of such  
13 decision and order in the United States Court  
14 of Appeals for the circuit where the violation,  
15 with respect to which such final decision and  
16 order was issued, allegedly occurred or where  
17 the complainant resided on the date of such al-  
18 leged violation. To obtain such review, a party  
19 shall file a petition for review not later than 60  
20 days after the final decision and order was  
21 issued. Such review shall conform to chapter 7  
22 of title 5, United States Code. The commence-  
23 ment of proceedings under this subparagraph  
24 shall not, unless ordered by the court, operate  
25 as a stay of the final decision and order.



1           “(B) LIMITATION ON COLLATERAL AT-  
 2           TACK.—An order and decision with respect to  
 3           which review may be obtained under subpara-  
 4           graph (A) shall not be subject to judicial review  
 5           in any criminal or other civil proceeding.

6           “(12) ENFORCEMENT OF ORDER.—If a re-  
 7           spondent fails to comply with an order issued under  
 8           this subsection, the Secretary or the complainant on  
 9           whose behalf the order was issued may file a civil ac-  
 10          tion for enforcement in the United States district  
 11          court for the district in which the violation was  
 12          found to occur to enforce such order. If both the  
 13          Secretary and the complainant file such action, the  
 14          action of the Secretary shall take precedence. The  
 15          district court shall have jurisdiction to grant all ap-  
 16          propriate relief described in paragraph (14).

17          “(13) BURDENS OF PROOF.—

18               “(A) CRITERIA FOR DETERMINATION.—In  
 19               making a determination or adjudicating a com-  
 20               plaint pursuant to this subsection, the Sec-  
 21               retary or an administrative law judge, review  
 22               board, or court may determine that a violation  
 23               of paragraph (1) or (2) has occurred only if the  
 24               complainant demonstrates that any conduct de-  
 25               scribed in paragraph (1) or (2) with respect to

1 the complainant was a contributing factor in  
 2 the adverse action alleged in the complaint.

3 “(B) PROHIBITION.—Notwithstanding sub-  
 4 paragraph (A), a decision or order that is favor-  
 5 able to the complainant shall not be issued in  
 6 any administrative or judicial action pursuant  
 7 to this subsection if the respondent dem-  
 8 onstrates by clear and convincing evidence that  
 9 the respondent would have taken the same ad-  
 10 verse action in the absence of such conduct.

11 “(14) RELIEF.—

12 “(A) ORDER FOR RELIEF.—If the Sec-  
 13 retary or an administrative law judge, review  
 14 board, or court determines that a violation of  
 15 paragraph (1) or (2) has occurred, the Sec-  
 16 retary, administrative law judge, review board,  
 17 or court, respectively, shall have jurisdiction to  
 18 order all appropriate relief, including injunctive  
 19 relief, compensatory and exemplary damages,  
 20 including—

21 “(i) affirmative action to abate the  
 22 violation;

23 “(ii) reinstatement without loss of po-  
 24 sition or seniority, and restoration of the  
 25 terms, rights, conditions, and privileges as-

1           sociated with the complainant's employ-  
2           ment, including opportunities for pro-  
3           motions to positions with equivalent or bet-  
4           ter compensation for which the complain-  
5           ant is qualified;

6           “(iii) compensatory and consequential  
7           damages sufficient to make the complain-  
8           ant whole, (including back pay, prejudg-  
9           ment interest, and other damages); and

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

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

1           shall assess, at the request of the employee  
2           against the employer—

3                   “(i) reasonable attorneys’ fees; and

4                   “(ii) costs (including expert witness  
5                   fees) reasonably incurred, as determined  
6                   by the Secretary, administrative law judge,  
7                   review board, or court, respectively, in con-  
8                   nection with bringing the complaint upon  
9                   which the order was issued.

10           “(15) PROCEDURAL RIGHTS.—The rights and  
11           remedies provided for in this subsection may not be  
12           waived by any agreement, policy, form, or condition  
13           of employment, including by any pre-dispute arbitra-  
14           tion agreement or collective bargaining agreement.

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

20           “(17) ELECTION OF VENUE.—

21                   “(A) IN GENERAL.—An employee of an  
22                   employer who is located in a State that has a  
23                   State plan approved under section 18 may file  
24                   a complaint alleging a violation of paragraph  
25                   (1) or (2) by such employer with—

1 “(i) the Secretary under paragraph  
2 (5); or

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

5 “(B) REFERRALS.—If—

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

10 “(ii) a State plan administrator re-  
11 ceives a complaint pursuant to subpara-  
12 graph (A)(ii), the State plan administrator  
13 shall not refer such complaint to the Sec-  
14 retary for resolution.”.

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

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

### 22 **SEC. 301. EMPLOYER DUTIES.**

23 Section 5(a)(1) (29 U.S.C. 654(a)(1)) is amended to  
24 read as follows:

1           “(1) shall furnish employment and a place of  
 2           employment which are free from recognized hazards  
 3           that are causing or are likely to cause death or seri-  
 4           ous physical harm to each employee of the employer  
 5           or any other individual performing work at the place  
 6           of employment; and”.

7   **SEC. 302. RECORDING AND REPORTING OF OCCUPATIONAL**  
 8                           **INJURIES AND ILLNESSES.**

9           Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended—  
 10           (1) by striking “The Secretary,” and inserting  
 11           “(A) The Secretary,”; and  
 12           (2) by adding at the end the following:

13           “(B) Not later than 180 days after the date of enact-  
 14           ment of the Protecting America’s Workers Act, the Sec-  
 15           retary shall revise the regulations in part 1904 of title 29,  
 16           Code of Federal Regulations, concerning the recording  
 17           and reporting of occupational injuries and illnesses under  
 18           this Act, to require site-controlling employers to keep a  
 19           site log for all recordable injuries and illnesses occurring  
 20           among all employees on the particular site, including em-  
 21           ployees of the site-controlling employer or others who are  
 22           performing work at the particular site (including inde-  
 23           pendent contractors).

24           “(C) As used in this paragraph, the term ‘site-con-  
 25           trolling employer’ means the employer that has primary

1 control over a worksite at which employees of more than  
 2 one employer work, such as by hiring or coordinating the  
 3 work of other employers working at the site.”.

4 **SEC. 303. POSTING OF EMPLOYEE RIGHTS.**

5 Section 8(c)(1) (29 U.S.C. 657(c)(1)) is amended by  
 6 adding at the end the following new sentence: “Such regu-  
 7 lations shall include provisions requiring employers to post  
 8 for employees information on the protections afforded  
 9 under section 11(c).”.

10 **SEC. 304. EMPLOYER REPORTING OF WORK-RELATED**  
 11 **DEATHS AND HOSPITALIZATIONS AND PROHI-**  
 12 **BITION ON DISCOURAGING EMPLOYEE RE-**  
 13 **PORTS OF INJURY OR ILLNESS.**

14 Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended by  
 15 adding at the end the following new sentences: “Such reg-  
 16 ulations shall require employers to promptly notify the  
 17 Secretary of any work-related death or work-related injury  
 18 or illness that results in the in-patient hospitalization of  
 19 an employee for medical treatment. Such regulations shall  
 20 also prohibit the employer from adopting or implementing  
 21 policies or practices by the employer that have the effect  
 22 of discouraging accurate recordkeeping and the reporting  
 23 of work-related injuries or illnesses by any employee or  
 24 in any manner discriminates or provides for adverse action

1 against any employee for reporting a work-related injury  
2 or illness.”.

3 **SEC. 305. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.**

4 Section 8(e) (29 U.S.C. 657(e)) is amended by insert-  
5 ing after the first sentence the following: “Time spent by  
6 an employee participating in or aiding any such inspection  
7 shall be deemed to be hours worked and no employee shall  
8 suffer any loss of wages, benefits, or other terms and con-  
9 ditions of employment for having participated in or aided  
10 any such inspection.”.

11 **SEC. 306. INVESTIGATIONS OF FATALITIES AND SIGNIFI-**  
12 **CANT INCIDENTS.**

13 Section 8 (29 U.S.C. 657) is amended by adding at  
14 the end the following new subsection:

15 “(i) INVESTIGATION OF FATALITIES AND SERIOUS  
16 INCIDENTS.—

17 “(1) IN GENERAL.—The Secretary shall investigate  
18 any significant incident or an incident resulting in death  
19 that occurs in a place of employment.

20 “(2) APPROPRIATE MEASURES.—If a significant inci-  
21 dent or an incident resulting in death occurs in a place  
22 of employment, the employer shall promptly notify the  
23 Secretary of the incident involved and shall take appro-  
24 priate measures to prevent the destruction or alteration  
25 of any evidence that would assist in investigating the inci-



1 dent. The appropriate measures required by this para-  
2 graph do not prevent an employer from taking action on  
3 a worksite to prevent injury to employees or substantial  
4 damage to property or to avoid disruption of essential  
5 services necessary to public safety. If an employer takes  
6 such action, the employer shall notify the Secretary of the  
7 action in a timely fashion.

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

9 “(A) INCIDENT RESULTING IN DEATH.—The  
10 term ‘incident resulting in death’ means an incident  
11 that results in the death of an employee.

12 “(B) SIGNIFICANT INCIDENT.—The term ‘sig-  
13 nificant incident’ means an incident that results in  
14 the in-patient hospitalization of 2 or more employees  
15 for medical treatment.”.

16 **SEC. 307. PROHIBITION ON UNCLASSIFIED CITATIONS.**

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

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

23 **SEC. 308. VICTIMS’ RIGHTS.**

24 The Act is amended by inserting after section 9 (29  
25 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 a 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   **SEC. 309. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

10       Section 10(c) (29 U.S.C. 659(c)) is amended—

11           (1) in the first sentence—

12               (A) by inserting after “that he intends to  
 13               contest a citation issued under section (9)(a)”  
 14               the following: “(or a modification of a citation  
 15               issued under this section)”;

16               (B) by inserting after “the issuance of a  
 17               citation under section 9(a)” the following: “(in-  
 18               cluding a modification of a citation issued  
 19               under this section)”;

20               (C) by inserting after “files a notice with  
 21               the Secretary alleging” the following: “that the  
 22               citation fails properly to designate the violation  
 23               as serious, willful, or repeated, that the pro-  
 24               posed penalty is not adequate, or”;

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

6           (3) by amending the last sentence—

7                   (A) by inserting “employers and” after  
 8           “Commission shall provide”; and

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

12 **SEC. 310. CORRECTION OF SERIOUS, WILLFUL, OR RE-**  
 13 **PEATED VIOLATIONS PENDING CONTEST AND**  
 14 **PROCEDURES FOR A STAY.**

15           Section 10 (29 U.S.C. 659) is amended by adding  
 16           at the end the following:

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

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

22           For each violation which the Secretary designates as  
 23           serious, willful, or repeated, the period permitted for  
 24           the correction of the violation shall begin to run  
 25           upon receipt of the citation.

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

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

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

9           “(3) CRITERIA AND RULES OF PROCEDURE FOR  
10       STAYS.—

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

20           “(B) CRITERIA.—In determining whether  
21       a stay should be issued on the basis of a motion  
22       filed under subparagraph (A), the Commission  
23       may grant a stay only if the employer has dem-  
24       onstrated—

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

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

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

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

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

22 “(iii) That if a party is aggrieved by  
23 a decision issued by an administrative law  
24 judge regarding the stay, such party has  
25 the right to file an objection with the Com-



mission not later than 5 days after receipt of the administrative law judge's decision. Within 10 days after receipt of the objection, a Commissioner, if a quorum is seated pursuant to section 12(f), shall decide whether to grant review of the objection. If, within 10 days after receipt of the objection, no decision is made on whether to review the decision of the administrative law judge, the Commission declines to review such decision, or no quorum is seated, the decision of the administrative law judge shall become a final order of the Commission. If the Commission grants review of the objection, the Commission shall issue a decision regarding the stay not later than 30 days after receipt of the objection. If the Commission fails to issue such decision within 30 days, the decision of the administrative law judge shall become a final order of the Commission.

“(iv) For notification to employees or representatives of affected employees of requests for such hearings and shall provide affected employees or representatives of af-

1                    fected employees an opportunity to partici-  
 2                    pate as parties to such hearings.”.

3 **SEC. 311. CONFORMING AMENDMENTS.**

4            (a) VIOLATIONS DESIGNATED AS SERIOUS, WILL-  
 5   FUL, OR REPEATED.—The first sentence of section 10(b)  
 6   of the Act (29 U.S.C. 659(b)) is amended by inserting  
 7   “, with the exception of violations designated as serious,  
 8   willful, or repeated,” after “(which period shall not begin  
 9   to run”.

10          (b) JUDICIAL REVIEW.—The first sentence of section  
 11   11(a) (29 U.S.C. 660(a)) is amended—

12            (1) by inserting “(or the failure of the Commis-  
 13   sion, including an administrative law judge, to make  
 14   a timely decision on a request for a stay under sec-  
 15   tion 10(d))” after “an order of the Commission”;

16            (2) by striking “subsection (c)” and inserting  
 17   “subsection (c) or (d)”; and

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

21          (c) FAILURE TO CORRECT VIOLATIONS.—Section  
 22   17(d) (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)

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

15 **SEC. 312. CIVIL PENALTIES.**

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

18 (1) in subsection (a)—

19 (A) by striking “\$70,000” and inserting  
 20 “\$120,000”;

21 (B) by striking “\$5,000” and inserting  
 22 “\$8,000”; and

23 (C) by adding at the end the following: “In  
 24 determining whether a violation is repeated, the  
 25 Secretary or the Commission shall consider the

1 employer's history of violations under this Act  
2 and under State occupational safety and health  
3 plans established under section 18. If such a  
4 willful or repeated violation caused or contrib-  
5 uted to the death of an employee, such civil  
6 penalty amounts shall be increased to not more  
7 than \$250,000 for each such violation, but not  
8 less than \$50,000 for each such violation, ex-  
9 cept that for an employer with 25 or fewer em-  
10 ployees such penalty shall not be less than  
11 \$25,000 for each such violation.”;

12 (2) in subsection (b)—

13 (A) by striking “\$7,000” and inserting  
14 “\$12,000”; and

15 (B) by adding at the end the following: “If  
16 such a violation caused or contributed to the  
17 death of an employee, such civil penalty  
18 amounts shall be increased to not more than  
19 \$50,000 for each such violation, but not less  
20 than \$20,000 for each such violation, except  
21 that for an employer with 25 or fewer employ-  
22 ees such penalty shall not be less than \$10,000  
23 for each such violation.”;

24 (3) in subsection (c), by striking “\$7,000” and  
25 inserting “\$12,000”;

1           (4) in subsection (d), as amended by section  
 2           311(c), by striking “\$7,000” each place it occurs  
 3           and inserting “\$12,000”;

4           (5) by redesignating subsections (e) through (i)  
 5           and (j) through (l), as subsections (f) through (j)  
 6           and (l) through (n), respectively; and

7           (6) in subsection (j) (as so redesignated) by  
 8           striking “\$7,000” and inserting “\$12,000”.

9           (b) INFLATION ADJUSTMENT.—Section 17 (29  
 10          U.S.C. 666) is further amended by inserting after sub-  
 11          section (d) the following:

12          “(e) Amounts provided under this section for civil  
 13          penalties shall be adjusted by the Secretary at least once  
 14          during each 4-year period beginning January 1, 2015, to  
 15          account for the percentage increase or decrease in the  
 16          Consumer Price Index for all urban consumers during  
 17          such period.”.

18       **SEC. 313. CRIMINAL PENALTIES.**

19          (a) IN GENERAL.—Section 17 (29 U.S.C. 666) (as  
 20          amended by section 312) is further amended—

21               (1) by amending subsection (f) (as redesignated  
 22               by section 312) to read as follows:

23               “(f)(1) Any employer who knowingly violates any  
 24               standard, rule, or order promulgated under section 6 of  
 25               this Act, or of any regulation prescribed under this Act,

1 and that violation caused or significantly contributed to  
2 the death of any employee, shall, upon conviction, be pun-  
3 ished by a fine in accordance with title 18, United States  
4 Code, or by imprisonment for not more than 10 years, or  
5 both, except that if the conviction is for a violation com-  
6 mitted after a first conviction of such person under this  
7 subsection or subsection (j), punishment shall be by a fine  
8 in accordance with title 18, United States Code, or by im-  
9 prisonment for not more than 20 years, or by both.

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

13 (2) by amending subsection (g) (as redesignated  
14 by section 312) to read as follows:

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

22 (3) in subsection (h) (as redesignated by section  
23 312), by striking “fine of not more than \$10,000, or  
24 by imprisonment for not more than six months,”  
25 and inserting “fine in accordance with title 18,

1 United States Code, or by imprisonment for not  
2 more than 5 years,”; and

3 (4) by inserting after subsection (j) (as redesignated by section 312) the following:

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

18 “(2) For the purpose of this subsection, the term ‘employer’ means, in addition to the definition contained in  
19 section 3 of this Act, any officer or director.

21 “(3) For purposes of this subsection, the term ‘serious bodily harm’ means bodily injury or illness that involves—

24 “(A) a substantial risk of death;

25 “(B) protracted unconsciousness;

1           “(C) protracted and obvious physical disfigure-  
2           ment; or

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

6           (b) JURISDICTION FOR PROSECUTION UNDER STATE  
7           AND LOCAL CRIMINAL LAWS.—Section 17 is further  
8           amended by adding at the end the following:

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

13       **SEC. 314. PREJUDGMENT INTEREST.**

14          Section 17(n) (29 U.S.C. 666(n)) (as redesignated by  
15          section 312) 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 (29 U.S.C. 668) is amended—

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

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

1 the opportunity to remedy the deficiencies, and provide no-  
2 tice of the Secretary's findings and initial determination.

3       “(2) If the Secretary makes an initial determination  
4 to reassert and exercise concurrent enforcement authority  
5 while the State is given an opportunity to remedy the defi-  
6 ciencies, the Secretary shall afford the State an oppor-  
7 tunity for a public hearing within 15 days of such request,  
8 provided that such request is made not later than 10 days  
9 after Secretary's notice to the State. The Secretary shall  
10 review and consider the testimony, evidence, or written  
11 comments, and not later than 30 days following such hear-  
12 ing, make a determination to affirm, reverse, or modify  
13 the Secretary's initial determination to reassert and exer-  
14 cise concurrent enforcement authority under sections 8, 9,  
15 10, 13, and 17 with respect to standards promulgated  
16 under section 6 and obligations under section 5(a). Fol-  
17 lowing such a determination by the Secretary, or in the  
18 event that the State does not request a hearing within the  
19 time frame set forth in this paragraph, the Secretary may  
20 reassert and exercise such concurrent enforcement author-  
21 ity, while a final determination is pending under para-  
22 graph (3) or until the Secretary has determined that the  
23 State has remedied the deficiencies as provided under  
24 paragraph (4). Such determination shall be published in  
25 the Federal Register. The procedures set forth in sub-

1 section (g) shall not apply to a determination by the Sec-  
2 retary to reassert and exercise such concurrent enforce-  
3 ment authority.

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

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

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

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

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

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

24 “(2) whether the Secretary’s investigations in  
25 response to Complaints About State Plan Adminis-

1       tration (CASPA) are adequate, whether significant  
2       policy issues have been identified by headquarters  
3       and corrective actions are fully implemented by each  
4       State;

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

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

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

22              “(B) inspections, the number of pro-  
23      grammed health and safety inspections at pri-  
24      vate and public sector establishments, and  
25      whether the State targets the highest hazard

1 private sector worksites and facilities in that  
2 State;

3 “(C) budget and staffing, including wheth-  
4 er the State is providing adequate budget re-  
5 sources to hire, train and retain sufficient num-  
6 bers of qualified staff, including timely filling of  
7 vacancies;

8 “(D) administrative review, including the  
9 quality of decisions, consistency with Federal  
10 precedence, transparency of proceedings, avail-  
11 ability of decisions and records to the public,  
12 adequacy of State defense, and whether the  
13 State appropriately appeals adverse decisions;

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

“(F) program administration, including whether the State’s standards and policies are at least as effective as the Federal program and are updated in a timely manner, and whether National Emphasis Programs that are applicable in such States are adopted and implemented in a manner that is at least as effective as the Federal program;

“(G) whether the State plan satisfies the requirements for approval set forth in this section and its implementing regulations; and

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

## **TITLE V—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH**

### **SEC. 501. HEALTH HAZARD EVALUATIONS BY THE NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH.**

Section 20(a)(6) (29 U.S.C. 669(a)(6)) is amended by striking the second sentence and inserting the fol-

1 lowing: “The Secretary shall determine following a written  
 2 request by any employer, authorized representative of cur-  
 3 rent or former employees, physician, other Federal agency,  
 4 or State or local health department, specifying with rea-  
 5 sonable particularity the grounds on which the request is  
 6 made, whether any substance normally found in the place  
 7 of employment has potentially toxic effects in such con-  
 8 centrations as used or found or whether any physical  
 9 agents, equipment, or working condition found or used has  
 10 potentially hazardous effects; and shall submit such deter-  
 11 mination both to employers and affected employees as  
 12 soon as possible.”.

## 13 **TITLE VI—EFFECTIVE DATE**

### 14 **SEC. 601. EFFECTIVE DATE.**

15 (a) GENERAL RULE.—Except as provided for in sub-  
 16 section (b), this Act and the amendments made by this  
 17 Act shall take effect not later than 90 days after the date  
 18 of the enactment of this Act.

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

22 (1) A State that has a State plan approved  
 23 under section 18 of the Occupational Safety and  
 24 Health Act of 1970 (29 U.S.C. 667) shall amend its  
 25 State plan to conform with the requirements of this



1 Act and the amendments made by this Act not later  
2 than 12 months after the date of the enactment of  
3 this Act. The Secretary of Labor may extend the pe-  
4 riod for a State to make such amendments to its  
5 State plan by not more than 12 months, if the  
6 State's legislature is not in session during the 12-  
7 month period beginning with the date of the enact-  
8 ment of this Act. Such amendments to the State  
9 plan shall take effect not later than 90 days after  
10 the adoption of such amendments by such State.

11 (2) This Act and the amendments made by this  
12 Act shall take effect not later than 36 months after  
13 the date of the enactment of this Act with respect  
14 to a workplace of a State, or a political subdivision  
15 of a State, that does not have a State plan approved  
16 under such section 18 (29 U.S.C. 667).

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