

114TH CONGRESS
1ST SESSION

S. 1112

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.

IN THE SENATE OF THE UNITED STATES

APRIL 28, 2015

Mr. FRANKEN (for himself and Mrs. MURRAY) 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 expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for high gravity violations, to adjust penalties for inflation, to provide rights for victims or their family members, and for other purposes.

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

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

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

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

Sec. 1. Short title; table of contents.
 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 Occupational
 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)) is amended—

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

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

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20 rescinded by the Secretary.

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

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

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

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

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

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

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

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

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

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

6 (1) by striking “(c)(1)” and inserting the fol-
 7 lowing: “(c) EMPLOYEE ACTIONS.—

8 “(1) IN GENERAL.—”;

9 (2) 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 (3) by striking “this Act or has” and inserting
 16 the following: “this Act;

17 “(B) such employee has”;

18 (4) 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
 23 any provision of this Act; or

24 “(D) of the exercise”; and

1 (5) 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.—

11 “(A) IN GENERAL.—No person shall dis-
 12 charge, or cause to be discharged, or in any
 13 manner discriminate against, or cause to be dis-
 14 criminated against, an employee for refusing to
 15 perform the employee’s duties if the employee
 16 has a reasonable apprehension that performing
 17 such duties would result in serious injury to, or
 18 serious impairment of the health of, the em-
 19 ployee or other employees.

20 “(B) CIRCUMSTANCES.—For purposes of
 21 subparagraph (A), the circumstances causing
 22 the employee’s good-faith belief that performing
 23 such duties would pose a safety or health haz-
 24 ard shall be of such a nature that a reasonable
 25 person, under the circumstances confronting the

1 employee, would conclude that there is such a
2 hazard. In order to qualify for protection under
3 this paragraph, the employee, when practicable,
4 shall have communicated or attempted to com-
5 municate the safety or health concern to the
6 employer and have not received from the em-
7 ployer a response reasonably calculated to allay
8 such concern.”.

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

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

18 “(4) STATUTE OF LIMITATIONS.—

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

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

1 “(ii) the date on which the employee
2 knows or should reasonably have known
3 that such alleged violation occurred.

4 “(B) REPEAT VIOLATION.—Except in
5 cases when the employee has been discharged,
6 a violation of paragraph (1) or (2) shall be con-
7 sidered to have occurred on the last date an al-
8 leged repeat violation occurred.

9 “(5) INVESTIGATION.—

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

17 “(i) shall include—

18 “(I) interviewing the complain-
19 ant;

20 “(II) providing the respondent an
21 opportunity to—

22 “(aa) submit to the Sec-
23 retary a written response to the
24 complaint; and

1 “(bb) meet with the Sec-
2 retary to present statements from
3 witnesses or provide evidence;
4 and

5 “(III) providing the complainant
6 an opportunity to—

7 “(aa) receive any statements
8 or evidence provided to the Sec-
9 retary;

10 “(bb) meet with the Sec-
11 retary; and

12 “(cc) rebut any statements
13 or evidence; and

14 “(ii) may include issuing subpoenas
15 for the purposes of such investigation.

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

19 “(i) determine whether reasonable
20 cause exists to believe that a violation of
21 paragraph (1) or (2) has occurred; and

22 “(ii) issue a decision granting or de-
23 nying relief.

24 “(6) PRELIMINARY ORDER FOLLOWING INVES-
25 TIGATION.—If, after completion of an investigation

1 under paragraph (5)(A), the Secretary finds reason-
2 able cause to believe that a violation of paragraph
3 (1) or (2) has occurred, the Secretary shall issue a
4 preliminary order providing relief authorized under
5 paragraph (14) at the same time the Secretary
6 issues a decision under paragraph (5)(B). If a de
7 novo hearing is not requested within the time period
8 required under paragraph (7)(A)(i), such prelimi-
9 nary order shall be deemed a final order of the Sec-
10 retary and is not subject to judicial review.

11 “(7) HEARING.—

12 “(A) REQUEST FOR HEARING.—

13 “(i) IN GENERAL.—A de novo hearing
14 on the record before an administrative law
15 judge may be requested—

16 “(I) by the complainant or re-
17 spondent within 30 days after receiv-
18 ing notification of a decision granting
19 or denying relief issued under para-
20 graph (5)(B) or a preliminary order
21 under paragraph (6), respectively;

22 “(II) by the complainant within
23 30 days after the date the complaint
24 is dismissed without investigation by
25 the Secretary under paragraph (5); or

1 “(III) by the complainant within
2 120 days after the date of filing the
3 complaint, if the Secretary has not
4 issued a decision under paragraph
5 (5)(B).

6 “(ii) REINSTATEMENT ORDER.—The
7 request for a hearing shall not operate to
8 stay any preliminary reinstatement order
9 issued under paragraph (6).

10 “(B) PROCEDURES.—

11 “(i) IN GENERAL.—A hearing re-
12 quested under this paragraph shall be con-
13 ducted expeditiously and in accordance
14 with rules established by the Secretary for
15 hearings conducted by administrative law
16 judges.

17 “(ii) SUBPOENAS; PRODUCTION OF
18 EVIDENCE.—In conducting any such hear-
19 ing, the administrative law judge may issue
20 subpoenas. The respondent or complainant
21 may request the issuance of subpoenas
22 that require the deposition of, or the at-
23 tendance and testimony of, witnesses and
24 the production of any evidence (including
25 any books, papers, documents, or record-

ings) relating to the matter under consideration.

“(iii) DECISION.—The administrative law judge shall issue a decision not later than 90 days after the date on which a hearing was requested under this paragraph and promptly notify, in writing, the parties and the Secretary of such decision, including the findings of fact and conclusions of law. If the administrative law judge finds that a violation of paragraph (1) or (2) has occurred, the judge shall issue an order for relief under paragraph (14). If review under paragraph (8) is not timely requested, such order shall be deemed a final order of the Secretary that is not subject to judicial review.

“(8) ADMINISTRATIVE APPEAL.—

“(A) IN GENERAL.—Not later than 30 days after the date of notification of a decision and order issued by an administrative law judge under paragraph (7), the complainant or respondent may file, with objections, an administrative appeal with an administrative review

body designated by the Secretary (referred to in this paragraph as the ‘review board’).

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

“(C) DECISIONS.—If the review board grants an administrative appeal, the review board shall issue a final decision and order affirming or reversing, in whole or in part, the decision under review by not later than 90 days after receipt of the administrative appeal. If it is determined that a violation of paragraph (1) or (2) has occurred, the review board shall issue a final decision and order providing relief authorized under paragraph (14). Such decision and order shall constitute final agency action with respect to the matter appealed.

“(9) SETTLEMENT IN THE ADMINISTRATIVE PROCESS.—

“(A) IN GENERAL.—At any time before issuance of a final order, an investigation or

1 proceeding under this subsection may be termi-
2 nated on the basis of a settlement agreement
3 entered into by the parties.

4 “(B) PUBLIC POLICY CONSIDERATIONS.—

5 Neither the Secretary, an administrative law
6 judge, nor the review board conducting a hear-
7 ing under this subsection shall accept a settle-
8 ment that contains conditions conflicting with
9 the rights protected under this Act or that are
10 contrary to public policy, including a restriction
11 on a complainant’s right to future employment
12 with employers other than the specific employ-
13 ers named in a complaint.

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

16 “(A) IN GENERAL.—The complainant may
17 bring a de novo action described in subpara-
18 graph (B) if—

19 “(i) an administrative law judge has
20 not issued a decision and order within the
21 90-day time period required under para-
22 graph (7)(B)(iii); or

23 “(ii) the review board has not issued
24 a decision and order within the 90-day

1 time period required under paragraph
2 (8)(C).

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

15 “(11) JUDICIAL REVIEW.—

16 “(A) TIMELY APPEAL TO THE COURT OF
17 APPEALS.—Any party adversely affected or ag-
18 grieved by a final decision and order issued
19 under this subsection may obtain review of such
20 decision and order in the United States Court
21 of Appeals for the circuit where the violation,
22 with respect to which such final decision and
23 order was issued, allegedly occurred or where
24 the complainant resided on the date of such al-
25 leged violation. To obtain such review, a party

1 shall file a petition for review not later than 60
2 days after the final decision and order was
3 issued. Such review shall conform to chapter 7
4 of title 5, United States Code. The commence-
5 ment of proceedings under this subparagraph
6 shall not, unless ordered by the court, operate
7 as a stay of the final decision and order.

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

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

24 “(13) BURDENS OF PROOF.—

1 “(A) CRITERIA FOR DETERMINATION.—In
2 making a determination or adjudicating a com-
3 plaint pursuant to this subsection, the Sec-
4 retary or an administrative law judge, review
5 board, or court may determine that a violation
6 of paragraph (1) or (2) has occurred only if the
7 complainant demonstrates that any conduct de-
8 scribed in paragraph (1) or (2) with respect to
9 the complainant was a contributing factor in
10 the adverse action alleged in the complaint.

11 “(B) PROHIBITION.—Notwithstanding sub-
12 paragraph (A), a decision or order that is favor-
13 able to the complainant shall not be issued in
14 any administrative or judicial action pursuant
15 to this subsection if the respondent dem-
16 onstrates by clear and convincing evidence that
17 the respondent would have taken the same ad-
18 verse action in the absence of such conduct.

19 “(14) RELIEF.—

20 “(A) ORDER FOR RELIEF.—If the Sec-
21 retary or an administrative law judge, review
22 board, or court determines that a violation of
23 paragraph (1) or (2) has occurred, the Sec-
24 retary, administrative law judge, review board,
25 or court, respectively, shall have jurisdiction to

1 order all appropriate relief, including injunctive
2 relief and compensatory and exemplary dam-
3 ages, including—

4 “(i) affirmative action to abate the
5 violation;

6 “(ii) reinstatement without loss of po-
7 sition or seniority, and restoration of the
8 terms, rights, conditions, and privileges as-
9 sociated with the complainant’s employ-
10 ment, including opportunities for pro-
11 motions to positions with equivalent or bet-
12 ter compensation for which the complain-
13 ant is qualified;

14 “(iii) compensatory and consequential
15 damages sufficient to make the complain-
16 ant whole (including back pay, prejudg-
17 ment interest, and other damages); and

18 “(iv) expungement of all warnings,
19 reprimands, or derogatory references that
20 have been placed in paper or electronic
21 records or databases of any type relating
22 to the actions by the complainant that
23 gave rise to the unfavorable personnel ac-
24 tion, and, at the complainant’s direction,
25 transmission of a copy of the decision on

1 the complaint to any person whom the
2 complainant reasonably believes may have
3 received such unfavorable information.

4 “(B) ATTORNEYS’ FEES AND COSTS.—If
5 the Secretary, administrative law judge, review
6 board, or court grants an order for relief under
7 subparagraph (A), the Secretary, administrative
8 law judge, review board, or court, respectively,
9 shall assess, at the request of the employee
10 against the employer—

11 “(i) reasonable attorneys’ fees; and

12 “(ii) costs (including expert witness
13 fees) reasonably incurred, as determined
14 by the Secretary, administrative law judge,
15 review board, or court, respectively, in con-
16 nection with bringing the complaint upon
17 which the order was issued.

18 “(15) PROCEDURAL RIGHTS.—The rights and
19 remedies provided for in this subsection may not be
20 waived by any agreement, policy, form, or condition
21 of employment, including by any pre-dispute arbitra-
22 tion agreement or collective bargaining agreement.

23 “(16) SAVINGS.—Nothing in this subsection
24 shall be construed to diminish the rights, privileges,
25 or remedies of any employee who exercises rights

1 under any Federal or State law or common law, or
 2 under any collective bargaining agreement.

3 “(17) ELECTION OF VENUE.—

4 “(A) IN GENERAL.—An employee of an
 5 employer who is located in a State that has a
 6 State plan approved under section 18 may file
 7 a complaint alleging a violation of paragraph
 8 (1) or (2) by such employer with—

9 “(i) the Secretary under paragraph
 10 (5); or

11 “(ii) a State plan administrator in
 12 such State.

13 “(B) REFERRALS.—If—

14 “(i) the Secretary receives a complaint
 15 pursuant to subparagraph (A)(i), the Sec-
 16 retary shall not refer such complaint to a
 17 State plan administrator for resolution; or

18 “(ii) a State plan administrator re-
 19 ceives a complaint pursuant to subpara-
 20 graph (A)(ii), the State plan administrator
 21 shall not refer such complaint to the Sec-
 22 retary for resolution.”.

23 (d) RELATION TO ENFORCEMENT.—Section 17(j)
 24 (29 U.S.C. 666(j)) is amended by inserting before the pe-

1 riod the following: “, including the history of violations
2 under section 11(c)”.

3 **TITLE III—IMPROVING REPORT-** 4 **ING, INSPECTION, AND EN-** 5 **FORCEMENT**

6 **SEC. 301. EMPLOYER DUTIES.**

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

9 “(1) shall furnish employment and a place of
10 employment which are free from recognized hazards
11 that are causing or are likely to cause death or seri-
12 ous physical harm to each employee of the employer
13 or any other individual performing work at the place
14 of employment; and”.

15 **SEC. 302. RECORDING AND REPORTING OF OCCUPATIONAL** 16 **INJURIES AND ILLNESSES.**

17 Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended—

18 (1) by striking “The Secretary,” and inserting
19 “(A) The Secretary,”; and

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

21 “(B) Not later than 180 days after the date of enact-
22 ment of the Protecting America’s Workers Act, the Sec-
23 retary shall revise the regulations in part 1904 of title 29,
24 Code of Federal Regulations, concerning the recording
25 and reporting of occupational injuries and illnesses under

1 this Act, to require site-controlling employers to keep a
 2 site log for all recordable injuries and illnesses occurring
 3 among all employees on the particular site, including em-
 4 ployees of the site-controlling employer or others who are
 5 performing work at the particular site (including inde-
 6 pendent contractors).

7 “(C) As used in this paragraph, the term ‘site-con-
 8 trolling employer’ means the employer that has primary
 9 control over a worksite at which employees of more than
 10 one employer work, such as by hiring or coordinating the
 11 work of other employers working at the site.”.

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

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

18 **SEC. 304. EMPLOYER REPORTING OF WORK-RELATED**
 19 **DEATHS AND HOSPITALIZATIONS AND PROHI-**
 20 **BITION ON DISCOURAGING EMPLOYEE RE-**
 21 **PORTS OF INJURY OR ILLNESS.**

22 Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended by
 23 adding at the end the following new sentences: “Such reg-
 24 ulations shall require employers to promptly notify the
 25 Secretary of any work-related death or work-related injury

1 or illness that results in the in-patient hospitalization of
 2 an employee for medical treatment. Such regulations shall
 3 also prohibit the employer from adopting or implementing
 4 policies or practices by the employer that have the effect
 5 of discouraging accurate recordkeeping and the reporting
 6 of work-related injuries or illnesses by any employee or
 7 in any manner discriminate or provide for adverse action
 8 against any employee for reporting a work-related injury
 9 or illness.”.

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

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

18 **SEC. 306. INVESTIGATIONS OF FATALITIES AND SIGNIFI-**
 19 **CANT INCIDENTS.**

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

22 “(i) INVESTIGATION OF FATALITIES AND SERIOUS
 23 INCIDENTS.—

1 “(1) IN GENERAL.—The Secretary shall investigate
2 any significant incident, or any incident resulting in death,
3 that occurs in a place of employment.

4 “(2) APPROPRIATE MEASURES.—If a significant inci-
5 dent or an incident resulting in death occurs in a place
6 of employment, the employer shall promptly notify the
7 Secretary of the incident involved and shall take appro-
8 priate measures to prevent the destruction or alteration
9 of any evidence that would assist in investigating the inci-
10 dent. The appropriate measures required by this para-
11 graph do not prevent an employer from taking action on
12 a worksite to prevent injury to employees or substantial
13 damage to property or to avoid disruption of essential
14 services necessary to public safety. If an employer takes
15 such action, the employer shall notify the Secretary of the
16 action in a timely fashion.

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

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

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

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

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

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

8 **SEC. 308. VICTIMS’ RIGHTS.**

9 The Act is amended by inserting after section 9 (29
10 U.S.C. 658) the following:

11 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

16 “(1) meet with the Secretary regarding the in-
17 spection or investigation conducted under such sec-
18 tion before the Secretary’s decision to issue a cita-
19 tion or take no action;

20 “(2) receive, at no cost, a copy of any citation
21 or report, issued as a result of such inspection or in-
22 vestigation, at the same time as the employer re-
23 ceives such citation or report;

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

1 “(4) be provided notification of the date and
2 time or any proceedings, service of pleadings, and
3 other relevant documents, and an explanation of the
4 rights of the employer, employee and employee rep-
5 resentative, and victim to participate in proceedings
6 conducted under section 10(c).

7 “(b) RIGHTS BEFORE THE COMMISSION.—Upon re-
8 quest, a victim or representative of a victim shall be af-
9 forded the right with respect to a work-related bodily in-
10 jury or death to—

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

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

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

18 “(c) MODIFICATION OF CITATION.—Before entering
19 into an agreement to withdraw or modify a citation issued
20 as a result of an inspection or investigation of an incident
21 under section 8, the Secretary shall notify a victim or rep-
22 resentative of a victim and provide the victim or represent-
23 ative of a victim with an opportunity to appear and make
24 a statement before the parties conducting settlement nego-
25 tiations. In lieu of an appearance, the victim or represent-

1 ative of the victim may elect to submit a letter to the Sec-
2 retary and the parties.

3 “(d) SECRETARY PROCEDURES.—The Secretary shall
4 establish procedures—

5 “(1) to inform victims of their rights under this
6 section; and

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

9 “(e) COMMISSION PROCEDURES AND CONSIDER-
10 ATIONS.—The Commission shall—

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

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

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

21 “(1) keep victims informed of the status of in-
22 vestigations, enforcement actions, and settlement ne-
23 gotiations; and

24 “(2) assist victims in asserting their rights
25 under this section.

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

3 “(1) an employee, including a former employee,
4 who has sustained a work-related injury or illness
5 that is the subject of an inspection or investigation
6 conducted under section 8; or

7 “(2) a family member (as further defined by
8 the Secretary) of a victim described in paragraph
9 (1), if—

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

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

18 **SEC. 309. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

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

20 (1) in the first sentence—

21 (A) by inserting after “that he intends to
22 contest a citation issued under section (9)(a)”
23 the following: “(or a modification of a citation
24 issued under this section)”;

1 (B) by inserting after “the issuance of a
 2 citation under section 9(a)” the following: “(in-
 3 cluding a modification of a citation issued
 4 under this section)”; and

5 (C) by inserting after “files a notice with
 6 the Secretary alleging” the following: “that the
 7 citation fails properly to designate the violation
 8 as serious, willful, or repeated, that the pro-
 9 posed penalty is not adequate, or”;

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

15 (3) by amending the last sentence—

16 (A) by inserting “employers and” after
 17 “Commission shall provide”; and

18 (B) by inserting before the period at the
 19 end “, and notification of any modification of a
 20 citation”.

21 **SEC. 310. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
 22 **PEATED VIOLATIONS PENDING CONTEST AND**
 23 **PROCEDURES FOR A STAY.**

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

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

4 “(1) PERIOD PERMITTED FOR CORRECTION OF
 5 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—
 6 For each violation which the Secretary designates as
 7 serious, willful, or repeated, the period permitted for
 8 the correction of the violation shall begin to run
 9 upon receipt of the citation.

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

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

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

18 “(3) CRITERIA AND RULES OF PROCEDURE FOR
 19 STAYS.—

20 “(A) MOTION FOR A STAY.—An employer
 21 that receives a citation alleging a violation des-
 22 ignated as serious, willful, or repeated and that
 23 files a notice of contest to the citation asserting
 24 that the time set for abatement of the alleged
 25 violation is unreasonable or challenging the ex-

1 istence of the alleged violation may file with the
2 Commission a motion to stay the period for the
3 abatement of the violation.

4 “(B) CRITERIA.—In determining whether
5 a stay should be issued on the basis of a motion
6 filed under subparagraph (A), the Commission
7 may grant a stay only if the employer has dem-
8 onstrated—

9 “(i) a substantial likelihood of success
10 on the areas contested under subparagraph
11 (A); and

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

14 “(C) RULES OF PROCEDURE.—The Com-
15 mission shall develop rules of procedure for con-
16 ducting a hearing on a motion filed under sub-
17 paragraph (A) on an expedited basis. At a min-
18 imum, such rules shall provide the following:

19 “(i) That a hearing before an admin-
20 istrative law judge shall occur not later
21 than 15 days following the filing of the
22 motion for a stay (unless extended at the
23 request of the employer), and shall provide
24 for a decision on the motion not later than

1 15 days following the hearing (unless ex-
2 tended at the request of the employer).

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

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

1 later than 30 days after receipt of the ob-
 2 jection. If the Commission fails to issue
 3 such decision within 30 days, the decision
 4 of the administrative law judge shall be-
 5 come a final order of the Commission.

6 “(iv) For notification to employees or
 7 representatives of affected employees of re-
 8 quests for such hearings and an oppor-
 9 tunity for affected employees or represent-
 10 atives of affected employees to participate
 11 as parties to such hearings.”.

12 **SEC. 311. CONFORMING AMENDMENTS.**

13 (a) VIOLATIONS DESIGNATED AS SERIOUS, WILL-
 14 FUL, OR REPEATED.—The first sentence of section 10(b)
 15 (29 U.S.C. 659(b)) is amended by inserting “, with the
 16 exception of violations designated as serious, willful, or re-
 17 peated,” after “(which period shall not begin to run”.

18 (b) JUDICIAL REVIEW.—The first sentence of section
 19 11(a) (29 U.S.C. 660(a)) is amended—

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

24 (2) by striking “subsection (c)” and inserting
 25 “subsection (c) or (d)”; and

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

4 (c) FAILURE TO CORRECT VIOLATIONS.—Section
5 17(d) (29 U.S.C. 666(d)) is amended to read as follows:

6 “(d) Any employer who fails to correct a violation
7 designated by the Secretary as serious, willful, or repeated
8 and for which a citation has been issued under section 9(a)
9 within the period permitted for its correction (and a stay
10 has not been issued by the Commission under section
11 10(d)) may be assessed a civil penalty of not more than
12 \$7,000 for each day during which such failure or violation
13 continues. Any employer who fails to correct any other vio-
14 lation for which a citation has been issued under section
15 9(a) within the period permitted for its correction (which
16 period shall not begin to run until the date of the final
17 order of the Commission in the case of any review pro-
18 ceeding under section 10 initiated by the employer in good
19 faith and not solely for delay of avoidance of penalties)
20 may be assessed a civil penalty of not more than \$7,000
21 for each day during which such failure or violation con-
22 tinues.”.

23 **SEC. 312. CIVIL PENALTIES.**

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

1 (1) in subsection (a)—

2 (A) by striking “\$70,000” and inserting
3 “\$120,000”;

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

6 (C) by adding at the end the following: “In
7 determining whether a violation is repeated, the
8 Secretary or the Commission shall consider the
9 employer’s history of violations under this Act
10 and under State occupational safety and health
11 plans established under section 18. For the pur-
12 poses of this subsection, a violation is repeated
13 if the employer who has received the violation
14 has also received a citation for a violation of the
15 same, or a substantially similar, standard, regu-
16 lation, rule, or order, at any other facility in
17 any State, without regard to whether the stand-
18 ard, regulation, rule, or order is enforced by the
19 Secretary or by the State pursuant to section
20 18. If such a willful or repeated violation
21 caused or contributed to the death of an em-
22 ployee, such civil penalty amounts shall be in-
23 creased to not more than \$250,000 for each
24 such violation, but not less than \$50,000 for
25 each such violation, except that for an employer

1 with 25 or fewer employees such penalty shall
2 not be less than \$25,000 for each such viola-
3 tion.”;

4 (2) in subsection (b)—

5 (A) by striking “\$7,000” and inserting
6 “\$12,000”; and

7 (B) by adding at the end the following: “If
8 such a violation caused or contributed to the
9 death of an employee, such civil penalty
10 amounts shall be increased to not more than
11 \$50,000 for each such violation, but not less
12 than \$20,000 for each such violation, except
13 that for an employer with 25 or fewer employ-
14 ees such penalty shall not be less than \$10,000
15 for each such violation.”;

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

18 (4) in subsection (d), as amended by section
19 311(c), by striking “\$7,000” each place it occurs
20 and inserting “\$12,000”;

21 (5) by redesignating subsections (e) through (i)
22 and (j) through (l), as subsections (f) through (j)
23 and (l) through (n), respectively; and

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

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

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

10 **SEC. 313. CRIMINAL PENALTIES.**

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

13 (1) by amending subsection (f) (as redesignated
 14 by section 312(a)(5)) to read as follows:

15 “(f)(1) Any employer who knowingly violates any
 16 standard, rule, or order promulgated under section 6 of
 17 this Act, or of any regulation prescribed under this Act,
 18 and that violation caused or significantly contributed to
 19 the death of any employee, shall, upon conviction, be pun-
 20 ished by a fine in accordance with title 18, United States
 21 Code, or by imprisonment for not more than 10 years, or
 22 both, except that if the conviction is for a violation com-
 23 mitted after a first conviction of such person under this
 24 subsection or subsection (j), punishment shall be by a fine

1 in accordance with title 18, United States Code, or by im-
 2 prisonment for not more than 20 years, or by both.

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

6 (2) by amending subsection (g) (as redesignated
 7 by section 312(a)(5)) to read as follows:

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

15 (3) in subsection (h) (as redesignated by section
 16 312(a)(5)), by striking “fine of not more than
 17 \$10,000, or by imprisonment for not more than six
 18 months,” and inserting “fine in accordance with title
 19 18, United States Code, or by imprisonment for not
 20 more than 5 years,”; and

21 (4) by inserting after subsection (j) (as redesign-
 22 ated by section 312(a)(5)) the following:

23 “(k)(1) Any employer who knowingly violates any
 24 standard, rule, or order promulgated under section 6, or
 25 any regulation prescribed under this Act, and that viola-

1 tion caused or significantly contributed to serious bodily
 2 harm to any employee but does not cause death to any
 3 employee, shall, upon conviction, be punished by a fine in
 4 accordance with title 18, United States Code, or by impris-
 5 onment for not more than 5 years, or by both, except that
 6 if the conviction is for a violation committed after a first
 7 conviction of such person under this subsection or sub-
 8 section (f), punishment shall be by a fine in accordance
 9 with title 18, United States Code, or by imprisonment for
 10 not more than 10 years, or by both.

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

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

17 “(A) a substantial risk of death;

18 “(B) protracted unconsciousness;

19 “(C) protracted and obvious physical disfigure-
 20 ment; or

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

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

4 “(o) Nothing in this Act shall preclude a State or
5 local law enforcement agency from conducting criminal
6 prosecutions in accordance with the laws of such State or
7 locality.”.

8 **SEC. 314. PREJUDGMENT INTEREST.**

9 Section 17(n) (29 U.S.C. 666(n)) (as redesignated by
10 section 312(a)(5)) is amended by adding at the end the
11 following: “Pre-final order interest on such penalties shall
12 begin to accrue on the date the party contests a citation
13 issued under this Act, and shall end upon the issuance
14 of the final order. Such pre-final order interest shall be
15 calculated at the current underpayment rate determined
16 by the Secretary of the Treasury pursuant to section 6621
17 of the Internal Revenue Code of 1986, and shall be com-
18 pounded daily. Post-final order interest shall begin to ac-
19 crue 30 days after the date a final order of the Commis-
20 sion or the court is issued, and shall be charged at the
21 rate of 8 percent per year.”.

TITLE IV—STATE PLANS

SEC. 401. CONCURRENT ENFORCEMENT AUTHORITY AND REVIEW OF STATE OCCUPATIONAL SAFETY AND HEALTH PLANS.

Section 18 (29 U.S.C. 667) is amended—

(1) by amending subsection (f) to read as follows:

“(f)(1) The Secretary shall, on the basis of reports submitted by the State agency and the Secretary’s own inspections, make a continuing evaluation of the manner in which each State that has a plan approved under this section is carrying out such plan. Such evaluation shall include an assessment of whether the State continues to meet the requirements of subsection (c) of this section and any other criteria or indices of effectiveness specified by the Secretary in regulations. Whenever the Secretary finds, on the basis of such evaluation, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), the Secretary shall make an initial determination of whether the failure is of such a nature that the plan should be withdrawn or whether the failure is of such a nature that the State should be given the opportunity to remedy the deficiencies, and provide notice of the Secretary’s findings and initial determination.

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

1 retary to reassert and exercise such concurrent enforce-
2 ment authority.

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

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

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

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

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

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

23 “(2) whether the Secretary’s investigations in
 24 response to Complaints About State Plan Adminis-
 25 tration (CASPA) are adequate, whether significant

1 policy issues have been identified by headquarters,
2 and whether corrective actions are fully implemented
3 by each State;

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

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

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

21 “(B) inspections, the number of pro-
22 grammed health and safety inspections at pri-
23 vate and public sector establishments, and
24 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 90 days after the date of enactment
 18 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).

○