

117TH CONGRESS
1ST SESSION

H. R. 2876

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 HOUSE OF REPRESENTATIVES

APRIL 28, 2021

Mr. COURTNEY (for himself, Mr. SCOTT of Virginia, Ms. ADAMS, Mr. LARSON of Connecticut, Mr. MRVAN, Ms. MOORE of Wisconsin, Ms. DELAURO, Mr. SABLAN, Mr. DESAULNIER, Ms. PINGREE, Mr. MORELLE, Mr. GRIJALVA, Mrs. HAYES, Mr. GARAMENDI, Ms. CASTOR of Florida, Ms. SCHAKOWSKY, Mr. NORCROSS, Ms. WASSERMAN SCHULTZ, Ms. OMAR, and Ms. SHERRILL) introduced the following bill; which was referred to the Committee on Education and Labor

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.

TITLE I—COVERAGE OF PUBLIC EMPLOYEES, AUTHORIZED EMPLOYEE REPRESENTATIVES, VOLUNTARY EMERGENCY RESPONDERS, AND APPLICATION OF ACT

Sec. 101. Coverage of public employees.

Sec. 102. Authorized employee representatives.

Sec. 103. Application of Act.

TITLE II—INCREASING WHISTLEBLOWER PROTECTIONS

Sec. 201. Enhanced protections from retaliation.

TITLE III—IMPROVING REPORTING, INSPECTION, AND ENFORCEMENT

PART A—DUTIES AND STANDARDS

Sec. 301. General duty of employers.

Sec. 302. Occupational safety and health standards.

PART B—INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

Sec. 311. Posting of employee rights.

Sec. 312. Employer reporting of work-related injuries, illness, deaths, and hospitalizations; prohibition on discouraging employee reporting.

Sec. 313. No loss of employee pay for inspections.

Sec. 314. Investigations of fatalities and significant incidents.

Sec. 315. Recordkeeping.

PART C—CITATIONS

Sec. 321. Period for issuance of a citation.

Sec. 322. Prohibition on unclassified citations.

PART D—RIGHTS OF VICTIMS AND FAMILIES

Sec. 331. Rights of Victims and Families.

PART E—PROCEDURE FOR ENFORCEMENT

Sec. 341. Right to contest citations and penalties.

Sec. 342. Correction of serious, willful, or repeated violations pending contest and procedures for a stay.

Sec. 343. Inaction by the Review Commission.

Sec. 344. Conforming amendments.

PART F—PENALTIES

- Sec. 351. Civil penalties.
 Sec. 352. Criminal penalties.
 Sec. 353. Prejudgment interest.

TITLE IV—STATE PLANS

- Sec. 401. Concurrent enforcement authority and review of State occupational safety and health plans.
 Sec. 402. Evaluation of repeated violations in State plans.

TITLE V—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

- Sec. 501. Health hazard evaluations by the National Institute for Occupational Safety and Health.
 Sec. 502. Training and employee education.

TITLE VI—EFFECTIVE DATE

- Sec. 601. Effective date.

1 **TITLE I—COVERAGE OF PUBLIC**
 2 **EMPLOYEES, AUTHORIZED**
 3 **EMPLOYEE REPRESENTA-**
 4 **TIVES, VOLUNTARY EMER-**
 5 **GENCY RESPONDERS, AND**
 6 **APPLICATION OF ACT**

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

8 (a) IN GENERAL.—Section 3(5) of the Occupational
 9 Safety and Health Act of 1970 (29 U.S.C. 652(5)) is
 10 amended by striking “but does not include” and all that
 11 follows through the period at the end and inserting “in-
 12 cluding the United States, a State, or a political subdivi-
 13 sion of a State.”.

14 (b) CONSTRUCTION.—Nothing in this Act shall be
 15 construed to affect the application of section 18 of the Oc-

1 cupational Safety and Health Act of 1970 (29 U.S.C.
2 667).

3 **SEC. 102. AUTHORIZED EMPLOYEE REPRESENTATIVES.**

4 Section 3 of the Occupational Safety and Health Act
5 of 1970 (29 U.S.C. 652) is amended by adding at the end
6 the following:

7 “(15) AUTHORIZED EMPLOYEE REPRESENTA-
8 TIVE.—The term ‘authorized employee representa-
9 tive’—

10 “(A) means any person or organization
11 that for the purposes of this Act represents not
12 less than one employee at an establishment, fac-
13 tory, plant, construction site, or other work-
14 place, or other environment where work is per-
15 formed by an employee for an employer; and

16 “(B) includes a representative authorized
17 by employees, a representative of employees, or
18 any other representative of an employee under
19 this Act.”.

20 **SEC. 103. APPLICATION OF ACT.**

21 Section 4(b) of the Occupational Safety and Health
22 Act of 1970 (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 such paragraph. Upon
4 receipt of such a petition, the Secretary shall investigate
5 the matter involved and shall, not later than 90 days after
6 the receipt of the petition, publish a decision with respect
7 to the petition 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) of the
 8 Occupational Safety and Health Act of 1970 (29 U.S.C.
 9 660(c)(1)) is amended—

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

15 “(A) such”;

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

18 “(B) such employee has”;

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

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

25 “(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 of such Act (29 U.S.C. 660(c)) is amended by striking
9 paragraph (2) 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) of such Act (29
5 U.S.C. 660(c)) is amended by striking paragraph (3) and
6 inserting the following:

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

13 “(4) STATUTE OF LIMITATIONS.—

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

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

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

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

1 occurred on the last date an alleged repeat violation
2 occurred.

3 “(5) INVESTIGATION.—

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

11 “(i) shall include—

12 “(I) interviewing the complainant;

13 “(II) providing the respondent an op-
14 portunity to—

15 “(aa) submit to the Secretary a
16 written response to the complaint; and

17 “(bb) meet with the Secretary to
18 present statements from witnesses or
19 provide evidence; and

20 “(III) providing the complainant an
21 opportunity to—

22 “(aa) receive any statements or
23 evidence provided to the Secretary;

24 “(bb) meet with the Secretary;
25 and

1 “(cc) rebut any statements or
2 evidence; and

3 “(ii) may include issuing subpoenas for the
4 purposes of such investigation.

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

7 “(i) determine whether reasonable cause
8 exists to believe that a violation of paragraph
9 (1) or (2) has occurred; and

10 “(ii) issue a decision granting or denying
11 relief.

12 “(6) PRELIMINARY ORDER FOLLOWING INVESTIGA-
13 TION.—If, after completion of an investigation under
14 paragraph (5)(A), the Secretary finds reasonable cause to
15 believe that a violation of paragraph (1) or (2) has oc-
16 curred, the Secretary shall issue a preliminary order pro-
17 viding relief authorized under paragraph (14) at the same
18 time the Secretary issues a decision under paragraph
19 (5)(B). If a de novo hearing is not requested within the
20 time period required under paragraph (7)(A)(i), such pre-
21 liminary order shall be deemed a final order of the Sec-
22 retary and is not subject to judicial review.

23 “(7) HEARING.—

24 “(A) REQUEST FOR HEARING.—

1 “(i) IN GENERAL.—A de novo hearing on
2 the record before an administrative law judge
3 may be requested—

4 “(I) by the complainant or respondent
5 within 30 days after receiving notification
6 of a decision granting or denying relief
7 issued under paragraph (5)(B) or a pre-
8 liminary order under paragraph (6), re-
9 spectively;

10 “(II) by the complainant within 30
11 days after the date the complaint is dis-
12 missed without investigation by the Sec-
13 retary under paragraph (5)(A); or

14 “(III) by the complainant within 120
15 days after the date of filing the complaint,
16 if the Secretary has not issued a decision
17 under paragraph (5)(B).

18 “(ii) REINSTATEMENT ORDER.—The re-
19 quest for a hearing shall not operate to stay
20 any preliminary reinstatement order issued
21 under paragraph (6).

22 “(B) PROCEDURES.—

23 “(i) IN GENERAL.—A hearing requested
24 under this paragraph shall be conducted expedi-
25 tiously and in accordance with rules established

1 by the Secretary for hearings conducted by ad-
2 ministrative law judges.

3 “(ii) SUBPOENAS; PRODUCTION OF EVI-
4 DENCE.—In conducting any such hearing, the
5 administrative law judge may issue subpoenas.
6 The respondent or complainant may request the
7 issuance of subpoenas that require the deposi-
8 tion of, or the attendance and testimony of, wit-
9 nesses and the production of any evidence (in-
10 cluding any books, papers, documents, or re-
11 cordings) relating to the matter under consider-
12 ation.

13 “(iii) DECISION.—The administrative law
14 judge shall issue a decision not later than 90
15 days after the date on which a hearing was re-
16 quested under this paragraph and promptly no-
17 tify, in writing, the parties and the Secretary of
18 such decision, including the findings of fact and
19 conclusions of law. If the administrative law
20 judge finds that a violation of paragraph (1) or
21 (2) has occurred, the judge shall issue an order
22 for relief under paragraph (14). If review under
23 paragraph (8) is not timely requested, such
24 order shall be deemed a final order of the Sec-
25 retary that is not subject to judicial review.

1 “(8) ADMINISTRATIVE APPEAL.—

2 “(A) IN GENERAL.—Not later than 30 days
3 after the date of notification of a decision and order
4 issued by an administrative law judge under para-
5 graph (7), the complainant or respondent may file,
6 with objections, an administrative appeal with an ad-
7 ministrative review body designated by the Secretary
8 (referred to in this paragraph as the ‘review board’).

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

16 “(C) DECISIONS.—If the review board grants
17 an administrative appeal, the review board shall
18 issue a final decision and order affirming or revers-
19 ing, in whole or in part, the decision under review
20 by not later than 90 days after receipt of the admin-
21 istrative appeal. If it is determined that a violation
22 of paragraph (1) or (2) has occurred, the review
23 board shall issue a final decision and order providing
24 relief authorized under paragraph (14). Such deci-

1 sion and order shall constitute final agency action
2 with respect to the matter appealed.

3 “(9) SETTLEMENT IN THE ADMINISTRATIVE PROC-
4 ESS.—

5 “(A) IN GENERAL.—At any time before
6 issuance of a final order, an investigation or pro-
7 ceeding under this subsection may be terminated on
8 the basis of a settlement agreement entered into by
9 the parties.

10 “(B) PUBLIC POLICY CONSIDERATIONS.—Nei-
11 ther the Secretary, an administrative law judge, nor
12 the review board conducting a hearing under this
13 subsection shall accept a settlement that contains
14 conditions conflicting with the rights protected under
15 this Act or that are contrary to public policy, includ-
16 ing a restriction on a complainant’s right to future
17 employment with employers other than the specific
18 employers named in a complaint.

19 “(10) INACTION BY THE REVIEW BOARD OR ADMIN-
20 ISTRAIVE LAW JUDGE.—

21 “(A) IN GENERAL.—The complainant may
22 bring a de novo action described in subparagraph
23 (B) if—

24 “(i) an administrative law judge has not
25 issued a decision and order within the 90-day

1 time period required under paragraph
2 (7)(B)(iii); or

3 “(ii) the review board has not issued a de-
4 cision and order within the 90-day time period
5 required under paragraph (8)(C).

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

17 “(11) JUDICIAL REVIEW.—

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

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

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

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

24 “(13) BURDENS OF PROOF.—

1 “(A) CRITERIA FOR DETERMINATION.—In mak-
2 ing a determination or adjudicating a complaint pur-
3 suant to this subsection, the Secretary, administra-
4 tive law judge, review board, or a court may deter-
5 mine that a violation of paragraph (1) or (2) has oc-
6 curred only if the complainant demonstrates that
7 any conduct described in paragraph (1) or (2) with
8 respect to the complainant was a contributing factor
9 in the adverse action alleged in the complaint.

10 “(B) PROHIBITION.—Notwithstanding subpara-
11 graph (A), a decision or order that is favorable to
12 the complainant shall not be issued in any adminis-
13 trative or judicial action pursuant to this subsection
14 if the respondent demonstrates by clear and con-
15 vincing evidence that the respondent would have
16 taken the same adverse action in the absence of such
17 conduct.

18 “(14) RELIEF.—

19 “(A) ORDER FOR RELIEF.—If the Secretary,
20 administrative law judge, review board, or a court
21 determines that a violation of paragraph (1) or (2)
22 has occurred, the Secretary, administrative law
23 judge, review board, or court, respectively, shall have
24 jurisdiction to order all appropriate relief, including

1 injunctive relief, compensatory and exemplary dam-
2 ages, including—

3 “(i) affirmative action to abate the viola-
4 tion;

5 “(ii) reinstatement without loss of position
6 or seniority, and restoration of the terms,
7 rights, conditions, and privileges associated with
8 the complainant’s employment, including oppor-
9 tunities for promotions to positions with equiva-
10 lent or better compensation for which the com-
11 plainant is qualified;

12 “(iii) compensatory and consequential
13 damages sufficient to make the complainant
14 whole (including back pay, prejudgment inter-
15 est, and other damages); and

16 “(iv) expungement of all warnings, rep-
17 rimands, or derogatory references that have
18 been placed in paper or electronic records or
19 databases of any type relating to the actions by
20 the complainant that gave rise to the unfavor-
21 able personnel action, and, at the complainant’s
22 direction, transmission of a copy of the decision
23 on the complaint to any person whom the com-
24 plainant reasonably believes may have received
25 such unfavorable information.

1 “(B) ATTORNEYS’ FEES AND COSTS.—If the
2 Secretary or an administrative law judge, review
3 board, or court grants an order for relief under sub-
4 paragraph (A), the Secretary, administrative law
5 judge, review board, or court, respectively, shall as-
6 sess, at the request of the employee against the em-
7 ployer—

8 “(i) reasonable attorneys’ fees; and

9 “(ii) costs (including expert witness fees)
10 reasonably incurred, as determined by the Sec-
11 retary, administrative law judge, review board,
12 or court, respectively, in connection with bring-
13 ing the complaint upon which the order was
14 issued.

15 “(15) PROCEDURAL RIGHTS.—The rights and rem-
16 edies provided for in this subsection may not be waived
17 by any agreement, policy, form, or condition of employ-
18 ment, including by any pre-dispute arbitration agreement
19 or collective bargaining agreement.

20 “(16) SAVINGS.—Nothing in this subsection shall be
21 construed to diminish the rights, privileges, or remedies
22 of any employee who exercises rights under any Federal
23 or State law or common law, or under any collective bar-
24 gaining agreement.

25 “(17) ELECTION OF VENUE.—

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

6 “(i) the Secretary under paragraph (5); or

7 “(ii) a State plan administrator in such
8 State.

9 “(B) REFERRALS.—If—

10 “(i) the Secretary receives a complaint
11 pursuant to subparagraph (A)(i), the Secretary
12 shall not refer such complaint to a State plan
13 administrator for resolution; or

14 “(ii) a State plan administrator receives a
15 complaint pursuant to subparagraph (A)(ii), the
16 State plan administrator shall not refer such
17 complaint to the Secretary for resolution.”.

18 (d) RELATION TO ENFORCEMENT.—Section 17(j) of
19 such Act (29 U.S.C. 666(j)) is amended by inserting be-
20 fore the period the following: “, including the history of
21 violations under section 11(c)”.

1 **TITLE III—IMPROVING REPORT-**
2 **ING, INSPECTION, AND EN-**
3 **FORCEMENT**

4 **PART A—DUTIES AND STANDARDS**

5 **SEC. 301. GENERAL DUTY OF EMPLOYERS.**

6 Section 5 of the Occupational Safety and Health Act
7 of 1970 (29 U.S.C. 654(a)(1)) is amended—

8 (1) in subsection (a), by amending paragraph
9 (1) to read as follows:

10 “(1) shall furnish employment and a place of
11 employment that are free from recognized hazards
12 that are causing or are likely to cause death or seri-
13 ous physical harm and that the employer creates or
14 controls or to which the employer exposes any em-
15 ployee of the employer or any other person per-
16 forming work at the place of employment; and”; and

17 (2) by adding at the end the following new sub-
18 section:

19 “(c) Each employee or other person exposed to a haz-
20 ard in violation of subsection (a) may constitute a separate
21 violation.”.

22 **SEC. 302. OCCUPATIONAL SAFETY AND HEALTH STAND-**
23 **ARDS.**

24 Section 6 of the Occupational Safety and Health Act
25 of 1970 (29 U.S.C. 655) is amended—

1 (1) in subsection (a)—

2 (A) by striking “Without regard” and in-
3 serting “(1) Without regard”;

4 (B) by striking “chapter 5” and inserting
5 “chapters 5 and 6”;

6 (C) by striking “shall, as soon as prac-
7 ticable” and inserting the following: “shall—”

8 “(A) as soon as practicable”;

9 (D) by striking “In the” and inserting the
10 following:

11 “(2) In the”;

12 (E) by striking “designated employees.”
13 and inserting “designated employees; and”;

14 (F) by adding at the end of paragraph (1)
15 (as designated by subparagraph (A)) the fol-
16 lowing:

17 “(B) not later than 2 years after the effec-
18 tive date of section 601(a) of the Protecting
19 America’s Workers Act, by rule update any na-
20 tional consensus standard that has been pro-
21 mulgated or incorporated by reference pursuant
22 to this subsection, except that such a standard
23 shall not be updated pursuant to this subpara-
24 graph, if—

1 “(i) the standard has been superseded
2 by a standard promulgated pursuant to
3 subsection (b); or

4 “(ii) the Secretary determines such
5 update would not result in improved health
6 or safety for specifically designated em-
7 ployees.”; and

8 (G) in paragraph (2) (as designated by
9 subparagraph (D)), by inserting “including na-
10 tional consensus standards, or in the event of a
11 consolidation of national consensus standards,”
12 after “conflict among any such standards,”;
13 and

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

15 “(h) No standard, rule, or regulation promulgated
16 under this Act shall reduce the protection afforded by an
17 existing health or safety standard, rule, regulation, or na-
18 tional consensus standard.”.

19 **PART B—INSPECTIONS, INVESTIGATIONS, AND**
20 **RECORDKEEPING**

21 **SEC. 311. POSTING OF EMPLOYEE RIGHTS.**

22 Section 8(c)(1) of the Occupational Safety and
23 Health Act of 1970 (29 U.S.C. 657(c)(1)) is amended by
24 adding at the end the following new sentence: “Such regu-
25 lations shall include provisions requiring employers to post

1 for employees information on the protections afforded
2 under section 11(c).”.

3 **SEC. 312. EMPLOYER REPORTING OF WORK-RELATED INJU-**
4 **RIES, ILLNESS, DEATHS, AND HOSPITALIZA-**
5 **TIONS; PROHIBITION ON DISCOURAGING EM-**
6 **PLOYEE REPORTING.**

7 Section 8(c)(2) of such Act (29 U.S.C. 657(c)(2)) is
8 amended by adding at the end the following: “Such regula-
9 tions shall contain the following:

10 “(A) A requirement that employers promptly
11 notify the Secretary of any work-related death or
12 work-related injury or illness that results in the in-
13 patient hospitalization of any employee for medical
14 treatment, amputation, or loss of an eye.

15 “(B) A prohibition on the adoption or imple-
16 mentation by employers of policies or practices that
17 have the effect of discouraging accurate record-
18 keeping and the reporting of work-related injuries or
19 illnesses by any employee, or in any manner dis-
20 criminate or provides for adverse action against any
21 employee for reporting a work-related injury or ill-
22 ness.

23 “(C) A requirement that, at a minimum, em-
24 ployers subject to the requirements of sections
25 1904.41 and 1902.7(d) of title 29, Code of Federal

1 Regulations (as amended by the final regulations of
2 the Department of Labor published in the Federal
3 Register on May 12, 2016 (81 Fed. Reg. 29624 et
4 seq.)) shall, on at least an annual basis, electroni-
5 cally report to the Secretary information from the
6 records of work-related deaths, injuries, and illnesses
7 required to be made and maintained under this
8 paragraph, which shall include the information re-
9 quired to be made and maintained in accordance
10 with such sections 1904.41 and 1902.7(d), and a re-
11 quirement that the Secretary make such reports
12 available to the public in a searchable format.

13 “(D) A requirement that each site-controlling
14 employer keep, maintain, and make available a site
15 log for all recordable injuries and illnesses occurring
16 for any employee at each work site for which the
17 employer is the site-controlling employer, including
18 employees of the site-controlling employer and others
19 who are performing work at such site (including
20 independent contractors). For purposes of this sub-
21 paragraph, the term ‘site-controlling employer’
22 means the employer that has primary control over a
23 work site at which employees of more than one em-
24 ployer work, such as by hiring or coordinating the
25 work of other employers working at the site.”.

1 **SEC. 313. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.**

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

9 **SEC. 314. INVESTIGATIONS OF FATALITIES AND SIGNIFI-**
10 **CANT INCIDENTS.**

11 Section 8 of such Act (29 U.S.C. 657), as amended
12 by sections 311 through 313, is further amended by add-
13 ing at the end the following new subsection:

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

16 “(1) IN GENERAL.—The Secretary shall inves-
17 tigate any significant incident or an incident result-
18 ing in death that occurs in a place of employment.

19 “(2) EVIDENCE PRESERVATION.—If a signifi-
20 cant incident or an incident resulting in death oc-
21 curs in a place of employment, the employer shall
22 promptly notify the Secretary of the incident in-
23 volved and shall take appropriate measures to pre-
24 vent the destruction or alteration of any evidence
25 that would assist in investigating the incident. The
26 appropriate measures required by this paragraph do

1 not prevent an employer from taking action on a
2 worksite to prevent injury to employees or substan-
3 tial damage to property or to avoid disruption of es-
4 sential services necessary to public safety, provided
5 that if an employer takes such action, the employer
6 shall notify the Secretary of the action in a timely
7 fashion.

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

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

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

17 **SEC. 315. RECORDKEEPING.**

18 (a) RULE REQUIRED.—Not later than 180 days after
19 the date of enactment of this Act, the Occupational Safety
20 and Health Administration shall issue a final rule amend-
21 ing its recordkeeping regulations under section 8(c) of the
22 Occupational Safety and Health Act of 1970 (29 U.S.C.
23 657(c)) to clarify that—

1 (1) the duty to make and maintain accurate
2 records of work-related injuries and illnesses is an
3 ongoing obligation;

4 (2) the duty to make and maintain such records
5 continues for as long as the employer is required to
6 keep records of the recordable injury or illness; and

7 (3) such duty does not expire solely because the
8 employer fails to create the necessary records when
9 first required to do so.

10 (b) AUTHORIZATION.—Subsection (a) shall be consid-
11 ered a specific authorization by Congress in accordance
12 with section 801(b)(2) of title 5, United States Code, with
13 respect to the issuance of a new recordkeeping rule.

14 **PART C—CITATIONS**

15 **SEC. 321. PERIOD FOR ISSUANCE OF A CITATION.**

16 Section 9(c) of the Occupational Safety and Health
17 Act of 1970 (29 U.S.C. 658(c)) is amended by adding at
18 the end the following: “For purposes of this subsection,
19 a violation continues to occur for as long as an employer
20 has not satisfied the requirements, rules, standards, or-
21 ders, and regulations referenced in subsection (a).”.

22 **SEC. 322. PROHIBITION ON UNCLASSIFIED CITATIONS.**

23 Section 9 of the Occupational Safety and Health Act
24 of 1970 (29 U.S.C. 658) is further amended by adding
25 at the end the following:

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

5 **PART D—RIGHTS OF VICTIMS AND FAMILIES**

6 **SEC. 331. RIGHTS OF VICTIMS AND FAMILIES.**

7 The Occupational Safety and Health Act of 1970 (29
 8 U.S.C. 651 et seq.) is amended by inserting after section
 9 9 (29 U.S.C. 658) the following:

10 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

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

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

23 “(3) be informed of any notice of contest or ad-
 24 dition of parties to the proceedings filed under sec-
 25 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 **PART E—PROCEDURE FOR ENFORCEMENT**

19 **SEC. 341. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

20 Section 10(c) of the Occupational Safety and Health
21 Act of 1970 (29 U.S.C. 659(c)) is amended—

22 (1) in the first sentence—

23 (A) by inserting after “that he intends to
24 contest a citation issued under section (9)” the

1 following: “(or a modification of a citation
2 issued under this section)”;

3 (B) by inserting after “the issuance of a
4 citation under section 9” the following: “(in-
5 cluding a modification of a citation issued
6 under such section)”;

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

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

17 (3) by amending the last sentence—

18 (A) by inserting “employers and” after
19 “Commission shall provide”; and

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

1 **SEC. 342. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
 2 **PEATED VIOLATIONS PENDING CONTEST AND**
 3 **PROCEDURES FOR A STAY.**

4 Section 10 of the Occupational Safety and Health Act
 5 of 1970 (29 U.S.C. 659) is further amended by adding
 6 at the end the following:

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

10 “(1) PERIOD PERMITTED FOR CORRECTION OF
 11 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—
 12 For each violation which the Secretary designates as
 13 serious, willful, or repeated, the period permitted for
 14 the correction of the violation shall begin to run
 15 upon receipt of the citation.

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

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

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

24 “(3) CRITERIA AND RULES OF PROCEDURE FOR
 25 STAYS.—

1 “(A) MOTION FOR A STAY.—An employer
2 that receives a citation alleging a violation des-
3 ignated as serious, willful, or repeated and that
4 files a notice of contest to the citation asserting
5 that the time set for abatement of the alleged
6 violation is unreasonable or challenging the ex-
7 istence of the alleged violation may file with the
8 Commission a motion to stay the period for the
9 abatement of the violation.

10 “(B) CRITERIA.—In determining whether
11 a stay should be issued on the basis of a motion
12 filed under subparagraph (A), the Commission
13 may grant a stay only if the employer has dem-
14 onstrated—

15 “(i) a substantial likelihood of success
16 on the areas contested under subparagraph
17 (A); and

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

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

1 “(i) That a hearing before an admin-
2 istrative law judge shall occur not later
3 than 15 days following the filing of the
4 motion for a stay (unless extended at the
5 request of the employer), and shall provide
6 for a decision on the motion not later than
7 15 days following the hearing (unless ex-
8 tended at the request of the employer).

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

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

1 view such decision, or no quorum is seated,
 2 the decision of the administrative law
 3 judge shall become a final order of the
 4 Commission. If the Commission grants re-
 5 view of the objection, the Commission shall
 6 issue a decision regarding the stay not
 7 later than 30 days after receipt of the ob-
 8 jection. If the Commission fails to issue
 9 such decision within 30 days, the decision
 10 of the administrative law judge shall be-
 11 come a final order of the Commission.

12 “(iv) For notification to employees or
 13 representatives of affected employees of re-
 14 quests for such hearings and shall provide
 15 affected employees or representatives of af-
 16 fected employees an opportunity to partici-
 17 pate as parties to such hearings.”.

18 **SEC. 343. INACTION BY THE REVIEW COMMISSION.**

19 Section 10 of the Occupational Safety and Health Act
 20 of 1970 (29 U.S.C. 659), as amended by sections 341 and
 21 342, is further amended by adding at the end the fol-
 22 lowing:

23 “(e) INACTION BY REVIEW COMMISSION.—

24 “(1) IN GENERAL.—A decision or order issued
 25 by an administrative law judge of the Commission

1 for which a petition for review has been filed in a
 2 timely manner, and for which 1 year after the Com-
 3 mission has accepted such petition and directed that
 4 such petition be reviewed by the Commission, the
 5 Commission has failed to issue a final decision or
 6 order because the Commission lacks a quorum—

7 “(A) shall be deemed a final decision or
 8 order of the Commission; and

9 “(B) may be appealed pursuant to section
 10 11(a).

11 “(2) EXCEPTION.—Paragraph (1) shall not
 12 apply with respect to motions to stay filed under
 13 subsection (d)(3).”.

14 **SEC. 344. CONFORMING AMENDMENTS.**

15 (a) VIOLATIONS DESIGNATED AS SERIOUS, WILL-
 16 FUL, OR REPEATED.—The first sentence of section 10(b)
 17 of the Occupational Safety and Health Act of 1970 (29
 18 U.S.C. 659(b)) is amended by inserting “, with the excep-
 19 tion of violations designated as serious, willful, or re-
 20 peated,” after “(which period shall not begin to run”.

21 (b) JUDICIAL REVIEW.—The first sentence of section
 22 11(a) of the Occupational Safety and Health Act of 1970
 23 (29 U.S.C. 660(a)) is amended—

24 (1) by inserting “(or the failure of the Commis-
 25 sion, including an administrative law judge, to make

1 a timely decision on a petition for a stay or other
2 review)” after “an order”;

3 (2) by striking “subsection (c)” and inserting
4 “subsection (c), (d), or (e)”;

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

8 (c) FAILURE TO CORRECT VIOLATIONS.—Section
9 17(d) of the Occupational Safety and Health Act of 1970
10 (29 U.S.C. 666(d)) is amended to read as follows:

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

1 than \$7,000 for each day during which such failure or vio-
 2 lation continues.”.

3 **PART F—PENALTIES**

4 **SEC. 351. CIVIL PENALTIES.**

5 (a) IN GENERAL.—Section 17 of the Occupational
 6 Safety and Health Act of 1970 (29 U.S.C. 666) is further
 7 amended—

8 (1) in subsection (a)—

9 (A) by striking “\$70,000” and inserting
 10 “\$136,532”;

11 (B) by striking “\$5,000” and inserting
 12 “\$9,753”; and

13 (C) by adding at the end the following: “In
 14 determining whether a violation is repeated, the
 15 Secretary or the Commission shall consider the
 16 employer’s history of violations under this Act
 17 and under State occupational safety and health
 18 plans established under section 18. If such a
 19 willful or repeated violation caused or contrib-
 20 uted to the death of an employee, such civil
 21 penalty amounts shall be increased to not more
 22 than \$250,000 for each such violation, but not
 23 less than \$50,000 for each such violation, ex-
 24 cept that for an employer with 25 or fewer em-

1 employees such penalty shall not be less than
2 \$25,000 for each such violation.”;

3 (2) in subsection (b)—

4 (A) by striking “\$7,000” and inserting
5 “\$13,653”; and

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

15 (3) in subsection (c), by striking “\$7,000” and
16 inserting “\$13,653”;

17 (4) in subsection (d), as amended by section
18 344(c), by striking “\$7,000” each place it occurs
19 and inserting “\$13,653”;

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

24 (6) in subsection (j) (as so redesignated) by
25 striking “\$7,000” and inserting “\$13,653”.

1 (b) INFLATION ADJUSTMENT.—Section 17 of such
 2 Act (29 U.S.C. 666), as amended by subsection (a), is fur-
 3 ther amended by inserting after subsection (d) the fol-
 4 lowing:

5 “(e) Amounts provided under this section for civil
 6 penalties shall be adjusted by the Secretary once each
 7 year, not later than January 15 of such year, to account
 8 for the percentage increase or decrease in the Consumer
 9 Price Index for all urban consumers during such period,
 10 consistent with the requirements of the Federal Civil Pen-
 11 alties Inflation Adjustment Act of 1990 (28 U.S.C. 2461
 12 note).”.

13 **SEC. 352. CRIMINAL PENALTIES.**

14 (a) IN GENERAL.—Section 17 of the Occupational
 15 Safety and Health Act of 1970 (29 U.S.C. 666) (as
 16 amended by section 351) is further amended—

17 (1) by amending subsection (f) (as redesignated
 18 by section 351(a)(5)) to read as follows:

19 “(f)(1) Any employer who knowingly violates any
 20 standard, rule, or order promulgated under section 6 of
 21 this Act, or of any regulation prescribed under this Act,
 22 and that violation caused or significantly contributed to
 23 the death of any employee, shall, upon conviction, be pun-
 24 ished by a fine in accordance with title 18, United States
 25 Code, or by imprisonment for not more than 10 years, or

1 both, except that if the conviction is for a violation com-
2 mitted after a first conviction of such person under this
3 subsection or subsection (i), punishment shall be by a fine
4 in accordance title 18, United States Code, or by imprison-
5 ment for not more than 20 years, or by both.

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

9 (2) by amending subsection (g) (as redesignated
10 by section 351(a)(5)) to read as follows:

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

18 (3) in subsection (h) (as redesignated by section
19 351(a)(5)), by striking “fine of not more than
20 \$10,000, or by imprisonment for not more than six
21 months,” and inserting “fine in accordance with title
22 18, United States Code, or by imprisonment for not
23 more than 5 years,”; and

24 (4) by inserting after subsection (j) (as redesign-
25 nated by section 351(a)(5)) the following:

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

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

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

20 “(A) a substantial risk of death;

21 “(B) protracted unconsciousness;

22 “(C) protracted and obvious physical disfigure-
23 ment; or

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

4 (b) JURISDICTION FOR PROSECUTION UNDER STATE
 5 AND LOCAL CRIMINAL LAWS.—Such section 17 (29
 6 U.S.C. 666) is further amended by adding at the end the
 7 following:

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

12 **SEC. 353. PREJUDGMENT INTEREST.**

13 Section 17(n) of the Occupational Safety and Health
 14 Act of 1970 (29 U.S.C. 666(n)) (as redesignated by sec-
 15 tion 351(a)(5)) 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 of the Occupational Safety and Health Act
 8 of 1970 (29 U.S.C. 668) is amended—

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

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

1 failure is of such a nature that the State should be given
2 the opportunity to remedy the deficiencies, and provide no-
3 tice of the Secretary's findings and initial determination.
4 “(2) If the Secretary makes an initial determination
5 to reassert and exercise concurrent enforcement authority
6 while the State is given an opportunity to remedy the defi-
7 ciencies, the Secretary shall afford the State an oppor-
8 tunity for a public hearing within 15 days of such request,
9 provided that such request is made not later than 10 days
10 after Secretary's notice to the State. The Secretary shall
11 review and consider the testimony, evidence, or written
12 comments, and not later than 30 days following such hear-
13 ing, make a determination to affirm, reverse, or modify
14 the Secretary's initial determination to reassert and exer-
15 cise concurrent enforcement authority under sections 8, 9,
16 10, 13, and 17 with respect to standards promulgated
17 under section 6 and obligations under section 5(a). Fol-
18 lowing such a determination by the Secretary, or in the
19 event that the State does not request a hearing within the
20 timeframe set forth in this paragraph, the Secretary may
21 reassert and exercise such concurrent enforcement author-
22 ity, while a final determination is pending under para-
23 graph (3) or until the Secretary has determined that the
24 State has remedied the deficiencies as provided under
25 paragraph (4). Such determination shall be published in

1 the Federal Register. The procedures set forth in section
2 18(g) shall not apply to a determination by the Secretary
3 to reassert and exercise such concurrent enforcement au-
4 thority.

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

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

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

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

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

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

1 “(2) whether the Secretary’s investigations in
2 response to Complaints About State Plan Adminis-
3 tration (CASPA) are adequate, whether significant
4 policy issues have been identified by headquarters
5 and corrective actions are fully implemented by each
6 State;

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

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

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

24 “(B) inspections, the number of pro-
25 grammed health and safety inspections at pri-

1 vate and public sector establishments, and
2 whether the State targets the highest hazard
3 private sector work sites and facilities in that
4 State;

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

10 “(D) administrative review, including the
11 quality of decisions, consistency with Federal
12 precedent, transparency of proceedings, deci-
13 sions and records are available to the public,
14 adequacy of State defense, and whether the
15 State appropriately appeals adverse decisions;

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

1 for employees to appeal the dismissal of a com-
2 plaint;

3 “(F) program administration, including
4 whether the State’s standards and policies are
5 at least as effective as the Federal program and
6 are updated in a timely manner, and whether
7 National Emphasis Programs that are applica-
8 ble in such States are adopted and implemented
9 in a manner that is at least as effective as the
10 Federal program;

11 “(G) whether the State plan satisfies the
12 requirements for approval set forth in this sec-
13 tion and its implementing regulations; and

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

20 **SEC. 402. EVALUATION OF REPEATED VIOLATIONS IN**
21 **STATE PLANS.**

22 Section 18(c) of the Occupational Safety and Health
23 Act of 1970 (29 U.S.C. 668(c)) is amended—

24 (1) in paragraph (7), by striking “, and” and
25 inserting a comma;

1 (2) in paragraph (8), by striking the period at
 2 the end and inserting “, and”; and

3 (3) by adding after paragraph 8 the following
 4 new paragraph:

5 “(9) provides that in determining whether a
 6 violation is repeated, the State shall consider the
 7 employer’s violations within the State, in conjunction
 8 with the employer’s history of violations under other
 9 States’ occupational safety and health plans ap-
 10 proved by the Secretary and the employer’s history
 11 of violations in those States where the Secretary has
 12 jurisdiction under this Act, in a manner that is at
 13 least as effective as provided under section 17.”.

14 **TITLE V—NATIONAL INSTITUTE**
 15 **FOR OCCUPATIONAL SAFETY**
 16 **AND HEALTH**

17 **SEC. 501. HEALTH HAZARD EVALUATIONS BY THE NA-**
 18 **TIONAL INSTITUTE FOR OCCUPATIONAL**
 19 **SAFETY AND HEALTH.**

20 Section 20(a)(6) of the Occupational Safety and
 21 Health Act of 1970 (29 U.S.C. 669(a)(6)) is amended by
 22 striking the second sentence and inserting the following:
 23 “The Secretary shall determine following a written request
 24 by any employer, authorized representative of current or
 25 former employees, physician, other Federal agency, or

1 State or local health department, specifying with reason-
2 able particularity the grounds on which the request is
3 made, whether any substance normally found in the place
4 of employment has potentially toxic effects in such con-
5 centrations as used or found or whether any physical
6 agents, equipment, or working condition found or used has
7 potentially hazardous effects; and shall submit such deter-
8 mination both to employers and affected employees as
9 soon as possible.”.

10 **SEC. 502. TRAINING AND EMPLOYEE EDUCATION.**

11 Paragraph (1) of section 21(c) of the Occupational
12 Safety and Health Act of 1970 (29 U.S.C. 670(c)) is
13 amended to read as follows: “(1) provide for the establish-
14 ment and supervision of programs for the education and
15 training of employers and employees in the recognition,
16 avoidance, and prevention of unsafe or unhealthful work-
17 ing conditions, and employee rights and employer respon-
18 sibilities under this Act, which shall include grant pro-
19 grams to provide grants for nonprofit organizations (in-
20 cluding grants to develop or expand the capacity of such
21 organizations to provide safety and health training, edu-
22 cation, and related assistance to the targeted audiences,
23 grants for the training of employees and employers on oc-
24 cupational safety and health hazards of particular concern
25 or for particular industries, or groups of workers at high

1 risk of injury, illness, or exposure to hazards, and grants
2 for the development of training materials on particular
3 topics), and”

4 **TITLE VI—EFFECTIVE DATE**

5 **SEC. 601. EFFECTIVE DATE.**

6 (a) GENERAL RULE.—Except as provided for in sub-
7 section (b), this Act and the amendments made by this
8 Act shall take effect on the date that is 90 days after the
9 date of the enactment of this Act.

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

13 (1) A State that has a State plan approved
14 under section 18 of the Occupational Safety and
15 Health Act of 1970 (29 U.S.C. 667) shall amend its
16 State plan to conform with the requirements of this
17 Act and the amendments made by this Act not later
18 than 12 months after the date of the enactment of
19 this Act. The Secretary of Labor may extend the pe-
20 riod for a State to make such amendments to its
21 State plan by not more than 12 months, if the
22 State’s legislature is not in session during the 12-
23 month period beginning with the date of the enact-
24 ment of this Act. Such amendments to the State

1 plan shall take effect not later than 90 days after
2 the adoption of such amendments by such State.

3 (2) This Act and the amendments made by this
4 Act shall take effect on the date that is 36 months
5 after the date of the enactment of this Act with re-
6 spect to a workplace of a State, or a political sub-
7 division of a State, that does not have a State plan
8 approved under such section 18 (29 U.S.C. 667).

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