

104TH CONGRESS
1ST SESSION

S. 1423

To amend the Occupational Safety and Health Act of 1970 to make
modifications to certain provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17 (legislative day, November 16), 1995

Mr. GREGG (for himself, Mrs. KASSEBAUM, Mr. NUNN, Mr. JEFFORDS, and
Mr. GORTON) introduced the following bill; which was read twice and re-
ferred to the Committee on Labor and Human Resources

A BILL

To amend the Occupational Safety and Health Act of 1970
to make modifications to certain provisions, and for other
purposes.

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

3 **SECTION 1. SHORT TITLE; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Occupational Safety and Health Reform and Reinvention
6 Act”.

7 (b) REFERENCE.—Whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Occupational Safety and Health Act of 1970
 3 (29 U.S.C. 651 et seq.).

4 **SEC. 2. EMPLOYEE PARTICIPATION.**

5 Section 4 (29 U.S.C. 653) is amended by adding at
 6 the end the following new subsection:

7 “(c) In order to carry out the purpose of this Act
 8 to encourage employers and employees in their efforts to
 9 reduce the number of occupational safety and health haz-
 10 ards, an employee participation program—

11 “(1) in which employees participate;

12 “(2) which exists for the purpose, in whole or
 13 in part, of dealing with employees concerning safe
 14 and healthful working conditions; and

15 “(3) which does not have, claim, or seek author-
 16 ity to negotiate or enter into collective bargaining
 17 agreements with the employer or to amend existing
 18 collective bargaining agreements between the em-
 19 ployer and any labor organization,

20 shall not constitute a ‘labor organization’ for purposes of
 21 section 8(a)(2) of the National Labor Relations Act (29
 22 U.S.C. 158(a)(2)) or a representative for purposes of sec-
 23 tions 1 and 2 of the Railway Labor Act (45 U.S.C. 151
 24 and 151a). Nothing in this section shall be construed to
 25 affect employer obligations under section 8(a)(5) of the

1 National Labor Relations Act (29 U.S.C. 158(a)(5)) to
 2 deal with a certified or recognized employee representative
 3 with respect to health and safety matters to the extent
 4 otherwise required by law.”.

5 **SEC. 3. INSPECTIONS.**

6 (a) TRAINING AND AUTHORITY OF SECRETARY.—
 7 Section 8 (29 U.S.C. 657) is amended—

8 (1) by redesignating subsection (g) as sub-
 9 section (h); and

10 (2) by adding after subsection (f) the following
 11 new subsection:

12 “(g)(1) Except as provided in paragraph (2), the Sec-
 13 retary shall not conduct routine inspections of, or enforce
 14 any standard, rule, regulation, or order under this Act
 15 with respect to—

16 “(A) any person who is engaged in a farming
 17 operation that does not maintain a temporary labor
 18 camp and that employs 10 or fewer employees; or

19 “(B) any employer of not more than 10 employ-
 20 ees if such employer is included within a category of
 21 employers having an occupational injury or a lost
 22 workday case rate (determined under the Standard
 23 Industrial Classification Code for which such data
 24 are published) that is less than the national average
 25 rate as most recently published by the Secretary act-

1 ing through the Bureau of Labor Statistics under
2 section 24.

3 “(2) In the case of persons who are not engaged in
4 farming operations, paragraph (1) shall not be construed
5 to prevent the Secretary from—

6 “(A) providing consultations, technical assist-
7 ance, and educational and training services and con-
8 ducting surveys and studies under this Act;

9 “(B) conducting inspections or investigations in
10 response to complaints of employees, issuing cita-
11 tions for violations of this Act found during such in-
12 spections, and assessing a penalty for violations that
13 are not corrected within a reasonable abatement pe-
14 riod;

15 “(C) taking any action authorized by this Act
16 with respect to imminent dangers;

17 “(D) taking any action authorized by this Act
18 with respect to a report of an employment accident
19 that is fatal to at least one employee or that results
20 in the hospitalization of at least three employees,
21 and taking any action pursuant to an investigation
22 conducted with respect to such report; and

23 “(E) taking any action authorized by this Act
24 with respect to complaints of discrimination against

1 employees for exercising their rights under this
2 Act.”.

3 (b) INSPECTIONS BASED ON EMPLOYEE COM-
4 PLAINTS.—Section 8(f) (29 U.S.C. 657(f)) is amended to
5 read as follows:

6 “(f)(1)(A) An employee or representative of an em-
7 ployee who believes that a violation of a safety or health
8 standard exists that threatens physical harm, or that an
9 imminent danger exists, may request an inspection by pro-
10 viding notice of the violation or danger to the Secretary
11 or an authorized representative of the Secretary.

12 “(B) Notice under subparagraph (A) shall be reduced
13 to writing, shall set forth with reasonable particularity the
14 grounds for the notice, and shall state whether the alleged
15 violation or danger has been brought to the attention of
16 the employer and if so, whether the employer has refused
17 to take any action to correct the alleged violation or dan-
18 ger.

19 “(C)(i) The notice under subparagraph (A) shall be
20 signed by the employees or representative of employees
21 and a copy shall be provided to the employer or the agent
22 of the employer not later than the time of arrival of an
23 occupational safety and health agency inspector to conduct
24 the inspection.

1 “(ii) Upon the request of the person providing the
2 notice under subparagraph (A), the name of the person
3 and the names of individual employees referred to in the
4 notice shall not appear in the copy of the notice or on
5 any record published, released, or made available pursuant
6 to subsection (i), except that the Secretary may disclose
7 this information during prehearing discovery in a con-
8 tested case.

9 “(D) The Secretary may only make an inspection
10 under this section if such an inspection is requested by
11 an employee or a representative of employees.

12 “(E)(i) If, upon receipt of the notice under subpara-
13 graph (A), the Secretary determines that there are reason-
14 able grounds to believe the violation or danger exists, the
15 Secretary may conduct a special inspection in accordance
16 with this section as soon as practicable. Except as pro-
17 vided in clause (ii), the special inspection shall be con-
18 ducted for the limited purpose of determining whether the
19 violation or danger exists.

20 “(ii) During a special inspection described in clause
21 (i), the Secretary may take appropriate actions with re-
22 spect to health and safety violations that are not within
23 the scope of the inspection and that are observed by the
24 Secretary or an authorized representative of the Secretary
25 during the inspection.

1 “(2) If the Secretary determines either before, or as
2 a result of, an inspection that there are not reasonable
3 grounds to believe a violation or danger exists, the Sec-
4 retary shall notify the complaining employee or employee
5 representative of the determination and, upon request by
6 the employee or employee representative, shall provide a
7 written statement of the reasons for the Secretary’s final
8 disposition of the case.

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

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

16 “(B) there are reasonable grounds to believe
17 that a hazard exists.

18 “(4) The Secretary is not required to conduct a spe-
19 cial inspection under this subsection if the Secretary deter-
20 mines that a request for a special inspection was made
21 for reasons other than the safety and health of the employ-
22 ees of an employer or that the employees of an employer
23 are not at risk.”.

1 **SEC. 4. WORKSITE-BASED INITIATIVES.**

2 (a) PROGRAM.—The Act (29 U.S.C. 651 et seq.) is
 3 amended by inserting after section 8 the following new
 4 section:

5 **“SEC. 8A. HEALTH AND SAFETY REINVENTION INITIATIVES.**

6 “(a) IN GENERAL.—The Secretary shall establish a
 7 program to encourage voluntary employer and employee
 8 efforts to provide safe and healthful working conditions.

9 “(b) EXEMPTION.—In establishing a program under
 10 subsection (a), the Secretary shall, in accordance with sub-
 11 section (c), provide an exemption from all safety and
 12 health inspections and investigations for a place of em-
 13 ployment maintained by an employer participating in such
 14 program, except that this subsection shall not apply to in-
 15 spections and investigations conducted for the purpose
 16 of—

17 “(1) determining the cause of a workplace acci-
 18 dent that resulted in the death of one or more em-
 19 ployees or the hospitalization of three or more em-
 20 ployees; or

21 “(2) responding to a request for an inspection
 22 pursuant to section 8(f)(1).

23 “(c) EXEMPTION REQUIREMENTS.—To qualify for an
 24 exemption under subsection (b), an employer shall provide
 25 to the Secretary evidence that, with respect to the em-
 26 ployer—

1 “(1) during the preceding year, the place of em-
2 ployment or conditions of employment have been re-
3 viewed or inspected under—

4 “(A) a consultation program provided by
5 recipients of grants under section 7(c)(1) or
6 23(g);

7 “(B) a certification or consultation pro-
8 gram provided by an insurance carrier or other
9 private business entity pursuant to a State pro-
10 gram, law, or regulation if the person con-
11 ducting the review or inspection meets stand-
12 ards established by, and is certified by, the Sec-
13 retary; or

14 “(C) a workplace consultation program
15 provided by a qualified person certified by the
16 Secretary for purposes of providing such con-
17 sultations,

18 that includes a means of ensuring that serious haz-
19 ards identified in the consultation are corrected
20 within an appropriate time and that, where applica-
21 ble, permits an employee (of the employer) who is a
22 representative of a health and safety employee par-
23 ticipation program to accompany a consultant dur-
24 ing a workplace inspection; or

1 “(2) the place of employment has an exemplary
2 safety and health record and the employer maintains
3 a safety and health program for the workplace that
4 includes—

5 “(A) procedures for assessing hazards to
6 the employer’s employees that are inherent to
7 the employer’s operations or business;

8 “(B) procedures for correcting or control-
9 ling such hazards in a timely manner based
10 upon the severity of the hazard; and

11 “(C) an employee participation program
12 that, at a minimum—

13 “(i) includes regular consultation be-
14 tween the employer and nonsupervisory
15 employees regarding safety and health
16 issues;

17 “(ii) includes the opportunity for non-
18 supervisory employees to make rec-
19 ommendations regarding hazards in the
20 workplace and to receive responses or to
21 implement improvements in response to
22 such recommendations; and

23 “(iii) ensures that participating non-
24 supervisory employees have training or ex-
25 pertise on safety and health issues con-

1 sistent with the responsibilities of such em-
2 ployees.

3 “(d) MODEL PROGRAM.—The Secretary shall publish
4 and make available to employers a model safety and health
5 program that if completed by the employer shall be consid-
6 ered to meet the requirements for an exemption under this
7 section.

8 “(e) CERTIFICATION.—The Secretary may require
9 that, to claim the exemption under subsection (b), an em-
10 ployer provide certification to the Secretary and notice to
11 the employer’s employees of such eligibility. The Secretary
12 may conduct random audits of the records of employers
13 to ensure against falsification of the records by the em-
14 ployers.

15 “(f) RECORDS.—Records of a safety and health in-
16 spection, audit, or review that is conducted by an employer
17 and that is not conducted under a program described in
18 subsection (a) shall not be required to be disclosed to the
19 Secretary unless—

20 “(1) the Secretary is conducting an investiga-
21 tion involving a fatality or a serious injury of an em-
22 ployee of such employer; or

23 “(2) such employer has not taken measures to
24 address serious hazards in the workplace of the em-

1 ployer identified during such inspection, audit, or re-
2 view.”.

3 (b) DEFINITION.—Section 3 (29 U.S.C. 652) is
4 amended by adding at the end the following new para-
5 graph:

6 “(15) The term ‘exemplary safety and health
7 record’ means such record as the Secretary shall an-
8 nually determine for each industry. Such record
9 shall include employers that have had, in the most
10 recent reporting period, no employee death caused
11 by occupational injury and fewer lost workdays due
12 to occupational injury and illness than the average
13 for the industry of which the employer is a part.”.

14 **SEC. 5. EMPLOYER DEFENSES.**

15 Section 9 (29 U.S.C. 658) is amended by adding at
16 the end the following new subsections:

17 “(d) No citation may be issued under subsection (a)
18 to an employer unless the employer knew, or with the exer-
19 cise of reasonable diligence would have known, of the pres-
20 ence of the alleged violation. No citation shall be issued
21 under subsection (a) to an employer for an alleged viola-
22 tion of section 5, any standard, rule, or order promulgated
23 pursuant to section 6, any other regulation promulgated
24 under this Act, or any other occupational safety and
25 health standard, if such employer demonstrates that—

1 “(1) employees of such employer have been pro-
2 vided with the proper training and equipment to pre-
3 vent such a violation;

4 “(2) work rules designed to prevent such a vio-
5 lation have been established and adequately commu-
6 nicated to employees by such employer and the em-
7 ployer has taken reasonable measures to discipline
8 employees when violations of such work rules have
9 been discovered;

10 “(3) the failure of employees to observe work
11 rules led to the violation; and

12 “(4) reasonable steps have been taken by such
13 employer to discover any such violation.

14 “(e) A citation issued under subsection (a) to an em-
15 ployer who violates the requirements of section 5, of any
16 standard, rule, or order promulgated pursuant to section
17 6, or any other regulation promulgated under this Act
18 shall be vacated if such employer demonstrates that em-
19 ployees of such employer were protected by alternative
20 methods equally or more protective of the employee’s safe-
21 ty and health than those required by such standard, rule,
22 order, or regulation in the factual circumstances under-
23 lying the citation.

1 “(f) Subsections (d) and (e) shall not be construed
2 to eliminate or modify other defenses that may exist to
3 any citation.”.

4 **SEC. 6. INSPECTION QUOTAS.**

5 Section 9 (29 U.S.C. 658), as amended by section
6 5, is further amended by adding at the end thereof the
7 following new subsection:

8 “(g) The Secretary shall not establish any quota for
9 any subordinate within the Occupational Safety and
10 Health Administration (including any regional director,
11 area director, supervisor, or inspector) with respect to the
12 number of inspections conducted, citations issued, or pen-
13 alties collected.”.

14 **SEC. 7. WARNINGS IN LIEU OF CITATIONS.**

15 Subsection (a) of section 9 (29 U.S.C. 658(a)) is
16 amended to read as follows:

17 “(a)(1) Except as provided in paragraph (2), if, upon
18 inspection or investigation, the Secretary or an authorized
19 representative of the Secretary believes that an employer
20 has violated a requirement of section 5, of any regulation,
21 rule, or order promulgated pursuant to section 6, or of
22 any regulations prescribed pursuant to this Act, the Sec-
23 retary may with reasonable promptness issue a citation
24 to the employer. Each citation shall be in writing and shall
25 describe with particularity the nature of the violation, in-

1 cluding a reference to the provision of the Act, regulation,
 2 rule, or order alleged to have been violated. The citation
 3 shall fix a reasonable time for the abatement of the viola-
 4 tion.

5 “(2) The Secretary or the authorized representative
 6 of the Secretary—

7 “(A) may issue a warning in lieu of a citation
 8 with respect to a violation that has no significant re-
 9 lationship to employee safety or health and

10 “(B) may issue a warning in lieu of a citation
 11 in cases in which an employer in good faith acts
 12 promptly to abate a violation if the violation is not
 13 a willful or repeat violation.

14 “(3) Nothing in this Act shall be construed as prohib-
 15 iting the Secretary or the authorized representative of the
 16 Secretary from providing technical or compliance assist-
 17 ance to an employer in correcting a violation discovered
 18 during an inspection or investigation under this Act with-
 19 out issuing a citation.”.

20 **SEC. 8. REDUCED PENALTIES FOR NONSERIOUS VIOLA-**
 21 **TIONS AND MITIGATING CIRCUMSTANCES.**

22 Section 17 (29 U.S.C. 666) is amended—

23 (1) in subsection (c), by striking “up to
 24 \$7,000” and inserting “not more than \$100”;

25 (2) in subsection (i), to read as follows:

1 “(i) Any employer who violates any of the posting or
2 paperwork requirements other than serious or fraudulent
3 reporting requirement deficiencies, prescribed under this
4 Act shall not be assessed a civil penalty for such violation
5 unless it is determined that the employer has violated sub-
6 section (a) or (d) with respect to such posting or paper-
7 work requirements.”; and

8 (3) in subsection (j), to read as follows:

9 “(j)(1) The Commission shall have authority to as-
10 sess all civil penalties under this section. In assessing a
11 penalty under this section, the Commission shall give due
12 consideration to the appropriateness of the penalty with
13 respect to—

14 “(A) the size of the employer;

15 “(B) the number of employees exposed to the
16 violation;

17 “(C) the likely severity of any injuries directly
18 resulting from such violation;

19 “(D) the probability that the violation could re-
20 sult in injury or illness;

21 “(E) the employer’s good faith in correcting the
22 violation after the violation has been identified;

23 “(F) the extent to which employee misconduct
24 was responsible for the violation;

1 “(G) the effect of the penalty on the employer’s
2 ability to stay in business;

3 “(H) the history of previous violations; and

4 “(I) whether the violation is the sole result of
5 the failure to meet a requirement, under this Act or
6 prescribed by regulation, with respect to the posting
7 of notices, the preparation or maintenance of occu-
8 pational safety and health records, or the prepara-
9 tion, maintenance, or submission of any written in-
10 formation.

11 “(2)(A) A penalty assessed under this section shall
12 be reduced by at least 25 percent in any case in which
13 the employer—

14 “(i) maintains a safety and health program de-
15 scribed in section 8A(a) for the worksite at which
16 the violation (for which the penalty was assessed)
17 took place; or

18 “(ii) demonstrates that the worksite at which
19 the violation (for which the penalty was assessed)
20 took place has an exemplary safety record.

21 If the employer maintains a program described in clause
22 (i) and has the record described in clause (ii), the penalty
23 shall be reduced by at least 50 percent.

24 “(B) A penalty assessed against an employer for a
25 violation other than a violation that—

1 “(i) has been previously cited by the Secretary;
 2 “(ii) creates an imminent danger;
 3 “(iii) has caused death; or
 4 “(iv) has caused a serious incident,
 5 shall be reduced by at least 75 percent if the worksite at
 6 which such violation occurred has been reviewed or in-
 7 spected under a program described in section 8A(c)(1)
 8 during the 1-year period before the date of the citation
 9 for such violation, and such employer has complied with
 10 recommendations to bring such employer into compliance
 11 within a reasonable period of time.”.

12 **SEC. 9. CONSULTATION SERVICES.**

13 Section 21(c) (29 U.S.C. 671(c)) is amended—

14 (1) by striking “(c) The” and inserting “(c)(1)
 15 The”; and

16 (2) by adding at the end the following new
 17 paragraph:

18 “(2)(A) The Secretary shall, through the authority
 19 granted under section 7(c) and paragraph (1), enter into
 20 cooperative agreements with States for the provision of
 21 consultation services by such States to employers con-
 22 cerning the provision of safe and healthful working condi-
 23 tions. A State that has a plan approved under section 18
 24 shall be eligible to enter into a cooperative agreement

1 under this paragraph only if such plan does not include
2 provisions for federally funded consultation to employers.

3 “(B)(i) Except as provided in clause (ii), the Sec-
4 retary shall reimburse a State that enters into a coopera-
5 tive agreement under subparagraph (A) in an amount that
6 equals 90 percent of the costs incurred by the State under
7 such agreement.

8 “(ii) A State shall be fully reimbursed by the Sec-
9 retary for—

10 “(I) training approved by the Secretary for
11 State staff operating under a cooperative agreement;
12 and

13 “(II) specified out-of-State travel expenses in-
14 curred by such staff.

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

19 “(C) Notwithstanding any other provision of law, at
20 least 15 percent of the total amount of funds appropriated
21 for the Occupational Safety and Health Administration for
22 a fiscal year shall be used for education, consultation, and
23 outreach efforts.”.

1 **SEC. 10. VOLUNTARY PROTECTION PROGRAMS.**

2 (a) COOPERATIVE AGREEMENTS.—The Secretary of
3 Labor shall establish cooperative agreements to encourage
4 the establishment of comprehensive safety and health
5 management systems that include—

6 (1) requirements for systematic assessment of
7 hazards;

8 (2) comprehensive hazard prevention, mitiga-
9 tion, and control programs;

10 (3) active and meaningful management and em-
11 ployee participation in the voluntary program de-
12 scribed in subsection (b); and

13 (4) employee safety and health training.

14 (b) VOLUNTARY PROTECTION PROGRAM.—The Sec-
15 retary of Labor shall establish a voluntary protection pro-
16 gram to encourage the achievement of excellence in both
17 the technical and managerial protection of employees from
18 occupational hazards as follows:

19 (1) APPLICATION.—Volunteers for the program
20 shall be required to submit an application to the
21 Secretary of Labor demonstrating that the worksite
22 with respect to which the application is made meets
23 such qualifications as the Secretary of Labor may
24 prescribe for participation in the program.

25 (2) ONSITE EVALUATIONS.—There shall be on-
26 site evaluations by representatives of the Secretary

1 of Labor to ensure a high level of protection of em-
2 ployees. The onsite visits shall not result in enforce-
3 ment citations under the Occupational Safety and
4 Health Act of 1970, as amended, unless representa-
5 tives of the Secretary of Labor observe hazards for
6 which no agreement can be made to abate the haz-
7 ards in a reasonable amount of time.

8 (3) INFORMATION.—Volunteers who are ap-
9 proved for participation by the Secretary of Labor
10 shall assure the Secretary of Labor that information
11 about their safety and health program shall be made
12 readily available to the Secretary of Labor to share
13 with employers.

14 (4) REEVALUATIONS.—Continued participation
15 in the program shall require periodic reevaluations
16 by the Secretary of Labor.

17 (5) EXEMPTIONS.—A site with respect to which
18 a program has been approved shall during participa-
19 tion in the program be exempt from inspections and
20 certain paperwork requirements to be determined by
21 the Secretary of Labor, except inspections or inves-
22 tigations arising from employee complaints, fatali-
23 ties, catastrophes, or significant toxic releases.

24 (c) ANNUAL FEE.—The Secretary of Labor may
25 charge an annual fee to participants in a voluntary protec-

1 tion program described in subsection (b). The fee shall be
2 in an amount determined by the Secretary of Labor, and
3 amounts collected shall be deposited in the general treas-
4 ury of the United States.

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