

Calendar No. 483

104TH CONGRESS
2^D SESSION

S. 1423

[Report No. 104-308]

A BILL

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

JUNE 28, 1996

Reported with amendments

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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, Mr. GORTON, Mrs. HUTCHISON, Mr. COCHRAN, Mr. GRASSLEY, Mr. FAIRCLOTH, Mr. COATS, Mr. BOND, Mr. THOMAS, Mr. HELMS, Mr. MACK, Mr. SMITH, and Mr. CRAIG) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

JUNE 28, 1996

Reported by Mrs. KASSEBAUM, with amendments

[Omit the part struck through and insert the part printed in *italic*]

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,*

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

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

5 (b) REFERENCE.—Whenever in this Act an amend-
6 ment or repeal is expressed in terms of an amendment
7 to, or repeal of, a section or other provision, the reference
8 shall be considered to be made to a section or other provi-
9 sion of the Occupational Safety and Health Act of 1970
10 (29 U.S.C. 651 et seq.).

11 **SEC. 2. EMPLOYEE PARTICIPATION.**

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

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

18 “(1) in which employees participate;

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

22 “(3) which does not have, claim, or seek author-
23 ity to negotiate or enter into collective bargaining
24 agreements with the employer or to amend existing
25 collective bargaining agreements between the em-
26 ployer and any labor organization,

1 shall not constitute a ‘labor organization’ for purposes of
2 section 8(a)(2) of the National Labor Relations Act (29
3 U.S.C. 158(a)(2)) or a representative for purposes of sec-
4 tions 1 and 2 of the Railway Labor Act (45 U.S.C. 151
5 and 151a). Nothing in this section shall be construed to
6 affect employer obligations under section 8(a)(5) of the
7 National Labor Relations Act (29 U.S.C. 158(a)(5)) to
8 deal with a certified or recognized employee representative
9 with respect to health and safety matters to the extent
10 otherwise required by law.”.

11 **SEC. 3. INSPECTIONS.**

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

14 (1) by redesignating subsection (g) as sub-
15 section (h); and

16 (2) by adding after subsection (f) the following
17 new subsection:

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

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

1 “(B) any employer of not more than 10 employ-
2 ees if such employer is included within a category of
3 employers having an occupational injury or a lost
4 workday case rate (determined under the Standard
5 Industrial Classification Code for which such data
6 are published) that is less than the national average
7 rate as most recently published by the Secretary act-
8 ing through the Bureau of Labor Statistics under
9 section 24.

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

13 “(A) providing consultations, technical assist-
14 ance, and educational and training services and con-
15 ducting surveys and studies under this Act;

16 “(B) conducting inspections or investigations in
17 response to complaints of employees, issuing cita-
18 tions for violations of this Act found during such in-
19 spections, and assessing a penalty for violations that
20 are not corrected within a reasonable abatement pe-
21 riod;

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

24 “(D) taking any action authorized by this Act
25 with respect to a report of an employment accident

1 that is fatal to at least one employee or that results
2 in the hospitalization of at least three employees,
3 and taking any action pursuant to an investigation
4 conducted with respect to such report; and

5 “(E) taking any action authorized by this Act
6 with respect to complaints of discrimination against
7 employees for exercising their rights under this
8 Act.”.

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

12 “(f)(1)(A) An employee or representative of an em-
13 ployee who believes that a violation of a safety or health
14 standard exists that threatens physical harm, or that an
15 imminent danger exists, may request an inspection by pro-
16 viding notice of the violation or danger to the Secretary
17 or an authorized representative of the Secretary.

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

1 “(C)(i) The notice under subparagraph (A) shall be
2 signed by the employees or representative of employees
3 and a copy shall be provided to the employer or the agent
4 of the employer not later than the time of arrival of an
5 occupational safety and health agency inspector to conduct
6 the inspection.

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

15 ~~“(D) The Secretary may only make an inspection~~
16 ~~under this section if such an inspection is requested by~~
17 ~~an employee or a representative of employees.~~

18 ~~“(E)(i) (D)(i)~~ If, upon receipt of the notice under
19 subparagraph (A), the Secretary determines that there are
20 reasonable grounds to believe the violation or danger ex-
21 ists, the Secretary may conduct a special inspection in ac-
22 cordance with this section as soon as practicable. Except
23 as provided in clause (ii), the special inspection shall be
24 conducted for the limited purpose of determining whether
25 the violation or danger exists.

1 “(ii) During a special inspection described in clause
2 (i), the Secretary may take appropriate actions with re-
3 spect to health and safety violations that are not within
4 the scope of the inspection and that are observed by the
5 Secretary or an authorized representative of the Secretary
6 during the inspection.

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

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

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

22 “(B) there are reasonable grounds to believe
23 that a hazard exists.

24 “(4) The Secretary is not required to conduct a spe-
25 cial inspection under this subsection if the Secretary deter-

1 mines that a request for a special inspection was made
2 for reasons other than the safety and health of the employ-
3 ees of an employer or that the employees of an employer
4 are not at risk.”.

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

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

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

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

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

21 “(1) determining the cause of a workplace acci-
22 dent that resulted in the death of one or more em-
23 ployees or the hospitalization of three or more em-
24 ployees; or

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

3 “(c) EXEMPTION REQUIREMENTS.—To qualify for an
4 exemption under subsection (b), an employer shall provide
5 to the Secretary evidence that, with respect to the em-
6 ployer—

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

10 “(A) a consultation program provided by
11 recipients of grants under section 7(c)(1) or
12 23(g);

13 “(B) a certification or consultation pro-
14 gram provided by an insurance carrier or other
15 private business entity pursuant to a State pro-
16 gram, law, or regulation (if the person conduct-
17 ing the review or inspection meets standards es-
18 tablished by, and is certified by, the Secretary);
19 or

20 “(C) a workplace consultation program
21 provided by a qualified person certified by the
22 Secretary for purposes of providing such con-
23 sultations,

24 that includes a means of ensuring that serious haz-
25 ards identified in the consultation are corrected

1 within an appropriate time and that, where applica-
2 ble, permits an employee (of the employer) who is a
3 representative of a health and safety employee par-
4 ticipation program to accompany a consultant dur-
5 ing a workplace inspection; or

6 “(2) the place of employment has an exemplary
7 safety and health record and the employer maintains
8 a safety and health program for the workplace that
9 includes—

10 “(A) procedures for assessing hazards to
11 the employer’s employees that are inherent to
12 the employer’s operations or business;

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

16 “(C) an employee participation program
17 that, at a minimum—

18 “(i) includes regular consultation be-
19 tween the employer and nonsupervisory
20 employees regarding safety and health is-
21 sues;

22 “(ii) includes the opportunity for non-
23 supervisory employees to make rec-
24 ommendations regarding hazards in the
25 workplace and to receive responses or to

1 implement improvements in response to
2 such recommendations; and

3 “(iii) ensures that participating non-
4 supervisory employees have training or ex-
5 pertise on safety and health issues consist-
6 ent with the responsibilities of such em-
7 ployees.

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

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

20 “(f) RECORDS.—Records of a safety and health in-
21 spection, audit, or review that is conducted by an employer
22 and that is not conducted under a program described in
23 subsection (a) shall not be required to be disclosed to the
24 Secretary unless—

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

4 “(2) such employer has not taken measures to
5 address serious hazards in the workplace of the em-
6 ployer identified during such inspection, audit, or re-
7 view.”.

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

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

19 **SEC. 5. EMPLOYER DEFENSES.**

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

22 “(d) No citation may be issued under subsection (a)
23 to an employer unless the employer knew, or with the exer-
24 cise of reasonable diligence would have known, of the pres-
25 ence of the alleged violation. No citation shall be issued

1 under subsection (a) to an employer for an alleged viola-
2 tion of section 5, any standard, rule, or order promulgated
3 pursuant to section 6, any other regulation promulgated
4 under this Act, or any other occupational safety and
5 health standard, if such employer demonstrates that—

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

9 “(2) work rules designed to prevent such a vio-
10 lation have been established and adequately commu-
11 nicated to employees by such employer and the em-
12 ployer has taken reasonable measures to discipline
13 employees when violations of such work rules have
14 been discovered;

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

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

19 “(e) A citation issued under subsection (a) to an em-
20 ployer who violates the requirements of section 5, of any
21 standard, rule, or order promulgated pursuant to section
22 6, or any other regulation promulgated under this Act
23 shall be vacated if such employer demonstrates that em-
24 ployees of such employer were protected by alternative
25 methods equally or more protective of the employee’s safe-

1 ty and health than those required by such standard, rule,
2 order, or regulation in the factual circumstances underly-
3 ing the citation.

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

7 **SEC. 6. INSPECTION QUOTAS.**

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

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

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

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

20 “(a)(1) Except as provided in paragraph (2), if, upon
21 inspection or investigation, the Secretary or an authorized
22 representative of the Secretary believes that an employer
23 has violated a requirement of section 5, of any regulation,
24 rule, or order promulgated pursuant to section 6, or of
25 any regulations prescribed pursuant to this Act, the Sec-

1 retary may with reasonable promptness issue a citation
 2 to the employer. Each citation shall be in writing and shall
 3 describe with particularity the nature of the violation, in-
 4 cluding a reference to the provision of the Act, regulation,
 5 rule, or order alleged to have been violated. The citation
 6 shall fix a reasonable time for the abatement of the viola-
 7 tion.

8 “(2) The Secretary or the authorized representative
 9 of the Secretary—

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

13 “(B) may issue a warning in lieu of a citation
 14 in cases in which an employer in good faith acts
 15 promptly to abate a violation if the violation is not
 16 a willful or ~~repeat~~ *repeated* violation.

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

23 **SEC. 8. REDUCED PENALTIES FOR NONSERIOUS VIOLA-**
 24 **TIONS AND MITIGATING CIRCUMSTANCES.**

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

1 (1) in subsection (c), by striking “up to
2 \$7,000” and inserting “not more than \$100”;

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

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

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

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

17 “(A) the size of the employer;

18 “(B) the number of employees exposed to the
19 violation;

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

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

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

1 “(F) the extent to which employee misconduct
2 was responsible for the violation;

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

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

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

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

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

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

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

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

3 “(i) has been previously cited by the Secretary;

4 “(ii) creates an imminent danger;

5 “(iii) has caused death; or

6 “(iv) has caused a serious incident,

7 shall be reduced by at least 75 percent if the worksite at
8 which such violation occurred has been reviewed or in-
9 spected under a program described in section 8A(c)(1)
10 during the 1-year period before the date of the citation
11 for such violation, and such employer has complied with
12 recommendations to bring such employer into compliance
13 within a reasonable period of time.”.

14 **SEC. 9. CONSULTATION SERVICES.**

15 Section 21(c) (29 U.S.C. ~~671(e)~~ 670(c)) is amend-
16 ed—

17 (1) by striking “(c) The” and inserting “(c)(1)
18 The”; ~~and~~

19 (2) by striking “(1) provide” and inserting “(A)
20 provide”;

21 (3) by striking “(2) consult” and inserting “(B)
22 consult”; and

23 ~~(2)~~ (4) by adding at the end the following new
24 paragraph:

1 “(2)(A) The Secretary shall, through the authority
2 granted under section 7(c) and paragraph (1), enter into
3 cooperative agreements with States for the provision of
4 consultation services by such States to employers concern-
5 ing the provision of safe and healthful working conditions.
6 A State that has a plan approved under section 18 shall
7 be eligible to enter into a cooperative agreement under this
8 paragraph only if such plan does not include provisions
9 for federally funded consultation to employers.

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

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

17 “(I) training approved by the Secretary for
18 State staff operating under a cooperative agreement;
19 and

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

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

1 “(C) Notwithstanding any other provision of law, at
2 least 15 percent of the total amount of funds appropriated
3 for the Occupational Safety and Health Administration for
4 a fiscal year shall be used for education, consultation, and
5 outreach efforts.”.

6 **SEC. 10. VOLUNTARY PROTECTION PROGRAMS.**

7 (a) COOPERATIVE AGREEMENTS.—The Secretary of
8 Labor shall establish cooperative agreements to encourage
9 the establishment of comprehensive safety and health
10 management systems that include—

11 (1) requirements for systematic assessment of
12 hazards;

13 (2) comprehensive hazard prevention, mitiga-
14 tion, and control programs;

15 (3) active and meaningful management and em-
16 ployee participation in the voluntary program de-
17 scribed in subsection (b); and

18 (4) employee safety and health training.

19 (b) VOLUNTARY PROTECTION PROGRAM.—The Sec-
20 retary of Labor shall establish a voluntary protection pro-
21 gram to encourage the achievement of excellence in both
22 the technical and managerial protection of employees from
23 occupational hazards as follows:

24 (1) APPLICATION.—Volunteers for the program
25 shall be required to submit an application to the

1 Secretary of Labor demonstrating that the worksite
2 with respect to which the application is made meets
3 such qualifications as the Secretary of Labor may
4 prescribe for participation in the program.

5 (2) ONSITE EVALUATIONS.—There shall be on-
6 site evaluations by representatives of the Secretary
7 of Labor to ensure a high level of protection of em-
8 ployees. The onsite visits shall not result in enforce-
9 ment citations under the Occupational Safety and
10 Health Act of 1970, as amended, unless representa-
11 tives of the Secretary of Labor observe hazards for
12 which no agreement can be made to abate the haz-
13 ards in a reasonable amount of time.

14 (3) INFORMATION.—Volunteers who are ap-
15 proved for participation by the Secretary of Labor
16 shall assure the Secretary of Labor that information
17 about their safety and health program shall be made
18 readily available to the Secretary of Labor to share
19 with employers.

20 (4) REEVALUATIONS.—Continued participation
21 in the program shall require periodic reevaluations
22 by the Secretary of Labor.

23 (5) EXEMPTIONS.—A site with respect to which
24 a program has been approved shall during participa-
25 tion in the program be exempt from inspections and

1 certain paperwork requirements to be determined by
2 the Secretary of Labor, except inspections or inves-
3 tigation arising from employee complaints, fatali-
4 ties, catastrophes, or significant toxic releases.

5 (c) ANNUAL FEE.—The Secretary of Labor may
6 charge an annual fee to participants in a voluntary protec-
7 tion program described in subsection (b). The fee shall be
8 in an amount determined by the Secretary of Labor, and
9 amounts collected shall be deposited in the general treas-
10 ury of the United States.

11 **SEC. 11. EXTENSION OF COVERAGE TO PUBLIC EMPLOYEES.**

12 (a) *DEFINITION OF EMPLOYER.*—Section 3(5) (29
13 U.S.C. 652(5)) is amended by striking “but does not in-
14 clude” and inserting “including”.

15 (b) *CONFORMING AMENDMENTS.*—

16 (1) *FEDERAL AGENCY SAFETY PROGRAMS AND*
17 *RESPONSIBILITIES.*—Section 19 (29 U.S.C. 668) is
18 *repealed.*

19 (2) *APPLICATION OF OSHA PROVISIONS TO THE*
20 *POSTAL SERVICE.*—Section 410(b) of title 39, United
21 States Code, is amended by striking out paragraph
22 (7) and inserting in lieu thereof the following new
23 paragraph:

24 “(7) the Occupational Safety and Health Act of
25 1970 (29 U.S.C. 651 et seq.);”.