

104TH CONGRESS
1ST SESSION

S. 526

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

MARCH 9 (legislative day, MARCH 6), 1995

Mr. GREGG (for himself and Mr. BOND) introduced the following bill; which
was read twice and referred 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.**

4 This Act may be cited as the “Occupational Safety
5 and Health Amendments of 1995”.

6 **SEC. 2. EMPLOYEE PARTICIPATION.**

7 Section 4 of the Occupational Safety and Health Act
8 of 1970 (29 U.S.C. 653) is amended by adding at the end
9 the following new subsection:

1 “(c) In order to carry out the purpose of this Act
 2 to encourage employers and employees in their efforts to
 3 reduce the number of occupational safety and health haz-
 4 ards, an employee participation committee—

5 “(1) in which employees participate;

6 “(2) which exists for the purpose, in whole or
 7 in part, of dealing with employees concerning—

8 “(A) safe and healthful working conditions;

9 or

10 “(B) any other related matters; and

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

16 shall not constitute a ‘labor organization’ for purposes of
 17 section 8(a)(2) of the National Labor Relations Act (29
 18 U.S.C. 158(a)(2)) or a representative for purposes of sec-
 19 tions 1 and 2 of the Railway Labor Act (45 U.S.C. 151
 20 and 151a).”.

21 **SEC. 3. RISK ASSESSMENT IN STANDARDS MAKING.**

22 (a) PRIORITY FOR ESTABLISHING STANDARDS.—
 23 Section 6(g) of the Occupational Safety and Health Act
 24 of 1970 (29 U.S.C. 655(g)) is amended—

1 (1) by striking “(g) In” and inserting “(g)(1)
2 In”; and

3 (2) by adding at the end the following new
4 paragraph:

5 “(2) In determining the priority for establishing
6 standards relating to toxic materials or harmful physical
7 agents, the Secretary shall consider the number of workers
8 exposed to such materials or agents, the nature and sever-
9 ity of potential impairment, and the likelihood of such im-
10 pairment.”.

11 (b) RISK ASSESSMENTS FOR FINAL STANDARD.—
12 Section 6 of the Occupational Safety and Health Act of
13 1970 (29 U.S.C. 655) is amended by adding at the end
14 the following new subsection:

15 “(h)(1) Notwithstanding any other provision of this
16 Act, in promulgating any final occupational safety and
17 health regulation or standard, the Secretary shall publish
18 in the Federal Register—

19 “(A) an estimate, calculated with as much spec-
20 ificity as practicable, of the risk to the health and
21 safety of employees addressed by such regulation or
22 standard, the affect of such regulation or standard
23 on human health or the environment, and the costs
24 associated with the implementation of, and compli-
25 ance with, such regulation or standard;

1 “(B) a comparative analysis of the risk ad-
2 dressed by such regulation or standard relative to
3 other risks to which employees are exposed; and

4 “(C) a certification that—

5 “(i) the estimate under subparagraph (A)
6 and the analysis under subparagraph (B) are—

7 “(I) based upon a scientific evaluation
8 of the risk to the health and safety of em-
9 ployees and to human health or the envi-
10 ronment; and

11 “(II) supported by the best available
12 scientific data;

13 “(ii) such regulation or standard will sub-
14 stantially advance the purpose of protecting em-
15 ployee health and safety or the environment
16 against the specified identified risk; and

17 “(iii) such regulation or standard will
18 produce benefits to employee health and safety
19 or the environment that will justify the cost to
20 the Federal Government and the public of the
21 implementation of and compliance with such
22 regulation or standard.

23 “(2) If the Secretary cannot make the certification
24 required under paragraph (1)(C), the Secretary shall—

1 “(A) notify the Congress concerning the reasons
2 why such certification cannot be made; and

3 “(B) publish a statement of such reasons with
4 the final regulation or standard.

5 “(3) Nothing in this subsection shall be construed to
6 grant a cause of action to any person.”.

7 **SEC. 4. CONSULTATION SERVICES.**

8 Section 21(c) of the Occupational Safety and Health
9 Act of 1970 (29 U.S.C. 671(c)) is amended—

10 (1) by striking “(c) The” and inserting “(c)(1)
11 The”; and

12 (2) by adding at the end the following new
13 paragraph:

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

23 “(B)(i) Except as provided in clause (ii), the Sec-
24 retary shall reimburse a State that enters into a coopera-
25 tive agreement under subparagraph (A) in an amount that

1 equals 90 percent of the costs incurred by the State under
2 such agreement.

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

5 “(I) training approved by the Secretary for
6 State staff operating under a cooperative agreement;
7 and

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

10 “(iii) A reimbursement paid to a State under this
11 subparagraph shall be limited to costs incurred by such
12 State for the provision of consultation services under this
13 paragraph and the costs described in clause (ii).”.

14 **SEC. 5. REDUCED PENALTIES FOR NONSERIOUS VIOLA-**
15 **TIONS.**

16 Section 17 of the Occupational Safety and Health Act
17 of 1970 (29 U.S.C. 666) is amended—

18 (1) in subsection (c), by striking “up to
19 \$7,000” and inserting “not more than \$25”;

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

21 “(i) Any employer who violates any of the posting or
22 recordkeeping requirements prescribed under this Act
23 shall not be assessed a civil penalty for such violation un-
24 less it is determined that the employer has violated sub-

1 section (a) or (d) with respect to such posting or record-
2 keeping requirements.”; and

3 (3) in subsection (h), to read as follows:

4 “(h) Notwithstanding any other provision of law, the
5 Secretary shall not assess a civil penalty, which is author-
6 ized under this section, for more than one instance of a
7 violation of any applicable regulation, rule, order, or regu-
8 lation prescribed under the provisions of this Act.”.

9 **SEC. 6. WARNINGS IN LIEU OF CITATIONS.**

10 Subsection (a) of section 9 of the Occupational Safety
11 and Health Act (29 U.S.C. 658(a)) is amended to read
12 as follows:

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

1 “(2) The Secretary or the authorized representative
2 of the Secretary shall issue a warning in lieu of a citation
3 with respect to—

4 “(A) violations that have no significant relation-
5 ship to employee safety or health; or

6 “(B) cases in which the employer in good faith
7 acts promptly to abate the violation.

8 “(3) Nothing in this Act shall prohibit the Secretary
9 or the authorized representative of the Secretary from pro-
10 viding technical assistance to an employer in correcting
11 a violation discovered during an inspection or investigation
12 under this Act.”.

○