

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 592

To amend the Occupational Safety and Health Act of 1970 and the National Labor Relations Act to modify certain provisions, to transfer certain occupational safety and health functions to the Secretary of Labor, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, MARCH 16), 1995

Mrs. HUTCHISON introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To amend the Occupational Safety and Health Act of 1970 and the National Labor Relations Act to modify certain provisions, to transfer certain occupational safety and health functions to the Secretary of Labor, 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 Act of 1995”.

6       (b) **REFERENCE.**—Whenever in this Act an amend-  
7       ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference  
2 shall be considered to be made to a section or other provi-  
3 sion of the Occupational Safety and Health Act of 1970  
4 (29 U.S.C. 651 et seq.).

5 **SEC. 2. USE OF OSHA IN PRIVATE LITIGATION.**

6 Section 4(b)(4) (29 U.S.C. 653(b)(4)) is amended by  
7 adding before the period the following: “, except that an  
8 allegation of a violation, a finding of a violation, or an  
9 abatement of an alleged violation, under this Act or the  
10 standards promulgated under this Act shall not be admis-  
11 sible as evidence in any civil action or used to increase  
12 the amount of payments received under any workmen’s  
13 compensation law for any work-related injury”.

14 **SEC. 3. DUTIES OF EMPLOYERS AND EMPLOYEES.**

15 Section 5 (29 U.S.C. 654) is amended by adding at  
16 the end the following new subsection:

17 “(c) On multi-employer work sites, an employer may  
18 not be cited for a violation of this section if the employer—

19 “(1) has not created the condition that caused  
20 the violation; or

21 “(2) has no employees exposed to the violation  
22 and has not assumed responsibility for ensuring  
23 compliance by other employers on the work site.”.

1 **SEC. 4. STANDARD SETTING.**

2 (a) STANDARDS.—Section 6(b)(5) (29 U.S.C.  
3 655(b)(5)) is amended to read as follows:

4 “(5) The development of standards under this  
5 section shall be based on the latest scientific data in  
6 the field and on research demonstrations, experi-  
7 ments, and other information that may be appro-  
8 priate. In establishing the standards, the Secretary  
9 shall consider, and make findings, based on the fol-  
10 lowing factors:

11 “(A) The standard shall be needed to ad-  
12 dress a significant risk of material impairment  
13 to workers and shall substantially reduce that  
14 risk.

15 “(B) The standard shall be technologically  
16 and economically feasible.

17 “(C) There shall be a reasonable relation-  
18 ship between the costs and benefits of the  
19 standard.

20 “(D) The standard shall provide protection  
21 to workers in the most cost-effective manner  
22 and minimize employment loss due to the  
23 standard in the affected industries and sectors  
24 of industries.

1           “(E) Whenever practicable, the standard  
2           shall be expressed in terms of objective criteria  
3           and of the performance desired.”.

4           (b) VARIANCES.—Section 6(d) (29 U.S.C. 655(d)) is  
5 amended by adding at the end the following new sen-  
6 tences: “No citation shall be issued for a violation of an  
7 occupational safety and health standard that is the subject  
8 of a good faith application for a variance during the period  
9 the application is pending before the Secretary.”.

10          (c) STANDARD PRIORITIES.—The second sentence of  
11 section 6(g) (29 U.S.C. 655(g)) is amended to read as  
12 follows: “In determining the priority for establishing  
13 standards dealing with toxic materials or the physical  
14 agents of toxic materials, the Secretary shall consider the  
15 number of workers exposed to the substance, the nature  
16 and severity of potential impairment, and the likelihood  
17 of such impairment based on information obtained by the  
18 Secretary from the Environmental Protection Agency, the  
19 Department of Health and Human Services, and other ap-  
20 propriate sources.”.

21          (d) REGULATORY FLEXIBILITY ANALYSIS.—Section  
22 6 (29 U.S.C. 655) is amended by adding at the end the  
23 following new subsections:

24          “(h) In promulgating an occupational safety and  
25 health standard under subsection (b), the Secretary shall

1 perform a regulatory flexibility analysis described in sec-  
2 tions 603 and 604 of title 5, United States Code.

3 “(i) In promulgating any occupational safety and  
4 health standard under subsection (b), the Secretary shall  
5 minimize the time, effort, and costs involved in the reten-  
6 tion, reporting, notifying, or disclosure of information to  
7 the Secretary, to third parties, or to the public to the ex-  
8 tent consistent with the purpose of the standard. Compli-  
9 ance with the requirement of this subsection may be in-  
10 cluded in a review under subsection (f).”.

11 **SEC. 5. INSPECTIONS.**

12 (a) **AUTHORITY OF SECRETARY.**—Section 8(a)(2)  
13 (29 U.S.C. 657(a)(2)) is amended to read as follows:

14 “(2) to inspect and investigate during regular  
15 working hours and at other reasonable times, and  
16 within reasonable limits and in a reasonable manner,  
17 any such place of employment and all pertinent con-  
18 ditions, structures, machines, apparatus, devices,  
19 equipment, and materials in such place of employ-  
20 ment.

21 In conducting inspections and investigations under para-  
22 graph (2), the Secretary may question any such employer,  
23 owner, operator, agent or employee. Interviews of employ-  
24 ees may be in private if the employee so requests.”.

25 (b) **RECORDKEEPING.**—

1           (1) GENERAL MAINTENANCE.—The first sen-  
2           tence of section 8(c)(1) (29 U.S.C. 657(c)(i)) is  
3           amended to read as follows: “Each employer shall  
4           make, keep and preserve, and make available upon  
5           reasonable request and within reasonable limits to  
6           the Secretary or the Secretary of Health and  
7           Human Services, such records regarding the activi-  
8           ties of the employer relating to this Act as the Sec-  
9           retary, in cooperation with the Secretary of Health  
10          and Human Services, may prescribe by regulation as  
11          necessary or appropriate for the enforcement of this  
12          Act or for developing information regarding the  
13          causes and prevention of occupational accidents and  
14          illnesses.”.

15          (2) RECORDS OR REPORTS ON INJURIES.—Sec-  
16          tion 8(c) (29 U.S.C. 657(c)) is amended by adding  
17          at the end the following new paragraphs:

18          “(4) In prescribing regulations under this subsection,  
19          the Secretary may not require employers to maintain  
20          records of, or to make reports on, injuries that do not in-  
21          volve lost work time or that involve employees of other  
22          employers.

23          “(5) In prescribing regulations requiring employers  
24          to report work-related deaths and multiple hospitaliza-  
25          tions, the Secretary shall include provisions that provide

1 an employer at least 24 hours in which to make such re-  
2 port.”.

3 (c) 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 giv-  
10 ing notice to the Secretary or an authorized representative  
11 of the Secretary of such violation or danger.

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 that the alleged  
15 violation or danger has been brought to the attention of  
16 the employer and the employer has refused to take any  
17 action to correct the alleged violation or danger.

18 “(C)(i) The notice under subparagraph (A) shall be  
19 signed by the employees or representative of employees  
20 and a copy shall be provided to the employer or the agent  
21 of the employer no later than the time of arrival of an  
22 occupational safety and health agency inspector to conduct  
23 the inspection.

24 “(ii) Upon the request of the person giving the notice  
25 under subparagraph (A), the name of the person and the

1 names of individual employees referred to in the notice  
2 shall not appear in the copy or on any record published,  
3 released, or made available pursuant to subsection (i), ex-  
4 cept that the Secretary may disclose this information dur-  
5 ing prehearing discovery in a contested case.

6       “(D) The Secretary may not make an inspection  
7 under this section except on request by an employee or  
8 representative of employees.

9       “(E) If upon receipt of the notice under subpara-  
10 graph (A), the Secretary determines that the employee or  
11 employee representative has brought the alleged violation  
12 or danger to the attention of the employer and the em-  
13 ployer has refused to take corrective action, and there are  
14 reasonable grounds to believe such violation or danger still  
15 exists, the Secretary shall make a special inspection in ac-  
16 cordance with this section as soon as possible. The special  
17 inspection shall be conducted for the limited purpose of  
18 determining whether such violation or danger exists.

19       “(2) If the Secretary determines either before, or as  
20 a result of, an inspection that there are not reasonable  
21 grounds to believe a violation or danger exists, the Sec-  
22 retary shall notify the complaining employee or employee  
23 representative of the determination and, upon request by  
24 the employee or employee representative, shall provide a

1 written statement of the reasons for the Secretary’s final  
2 disposition of the case.”.

3 (d) TRAINING AND ENFORCEMENT.—Section 8 (29  
4 U.S.C. 657) is amended—

5 (1) by redesignating subsection (g) as sub-  
6 section (i); and

7 (2) by inserting after subsection (f) the follow-  
8 ing new subsections:

9 “(g) Inspections conducted under this section shall  
10 be conducted by at least one person who has training in,  
11 and is knowledgeable of, the industry or types of hazards  
12 being inspected.

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

17 “(A) an employer who is engaged in a farming  
18 operation that does not maintain a temporary labor  
19 camp and employs 100 or fewer employees; or

20 “(B) an employer of not more than 100 employ-  
21 ees if the employer is included within a category of  
22 employers having an occupational injury or a lost  
23 workday case rate (determined under the Standard  
24 Industrial Classification Code for which such data  
25 are published) which is less than the national aver-

1 age rate as most recently published by the Secretary  
2 acting through the Bureau of Labor Statistics under  
3 section 24.

4 “(2) In the case of an employer described in subpara-  
5 graph (B) of paragraph (1), such paragraph shall not be  
6 construed to prohibit the Secretary from—

7 “(A) providing under this Act consultations,  
8 technical assistance, and educational and training  
9 services;

10 “(B) conducting under this Act surveys and  
11 studies;

12 “(C) conducting inspections or investigations in  
13 response to employee complaints, issuing citations  
14 for violations of this Act found during an inspection,  
15 and assessing a penalty for violations that are not  
16 corrected within a reasonable abatement period;

17 “(D) taking any action authorized by this Act  
18 with respect to imminent dangers;

19 “(E) taking any action authorized by this Act  
20 with respect to health standards;

21 “(F) taking any action authorized by this Act  
22 with respect to a report of an employment accident  
23 that is fatal to at least one employee or that results  
24 in hospitalization of at least three employees and

1 taking any action pursuant to an investigation of  
2 such report; and

3 “(G) taking any action authorized by this Act  
4 with respect to complaint of discrimination against  
5 employees for exercising their rights under this  
6 Act.”.

7 **SEC. 6. VOLUNTARY COMPLIANCE.**

8 (a) PROGRAM.—The Occupational Safety and Health  
9 Act of 1970 (21 U.S.C. 651 et seq.) is amended by insert-  
10 ing after section 8 the following new section:

11 **“SEC. 8A. VOLUNTARY COMPLIANCE.**

12 “(a) IN GENERAL.—The Secretary shall by regula-  
13 tion establish a program to encourage voluntary employer  
14 and employee efforts to provide safe and healthful working  
15 conditions.

16 “(b) EXEMPTION.—In establishing a program under  
17 subsection (a), the Secretary shall, in accordance with sub-  
18 section (c), provide an exemption from all safety and  
19 health inspections and investigations with respect to a  
20 place of employment maintained by an employer, except  
21 inspections and investigations conducted for the purpose  
22 of—

23 “(1) determining the cause of a workplace acci-  
24 dent that resulted in the death of one or more em-

1 employees or the hospitalization of three or more  
2 employees; or

3 “(2) responding to a request for an inspection  
4 pursuant to subsection (f)(1).

5 “(c) REQUIREMENTS FOR EXEMPTION.—In order to  
6 qualify for the exemption provided under subsection (b),  
7 an employer shall provide to the Secretary evidence that—

8 “(1) the place of employment or conditions of  
9 employment have, during the preceding year, been  
10 reviewed or inspected under—

11 “(A) a consultation program provided by  
12 any State agency relating to occupational safety  
13 and health;

14 “(B) a certification or consultation pro-  
15 gram provided by an insurance carrier or other  
16 private business entity pursuant to a State pro-  
17 gram, law, or regulation; or

18 “(C) a workplace consultation program  
19 provided by any other person certified by the  
20 Secretary for purposes of providing such con-  
21 sultations; or

22 “(2) the place of employment has an exemplary  
23 safety record and the employer maintains a safety  
24 and health program for the workplace that—

25 “(A) includes—

1 “(i) procedures for assessing hazards  
2 to the employees of the employer that are  
3 inherent to the operations or business of  
4 the employer;

5 “(ii) procedures for correcting or con-  
6 trolling the hazards in a timely manner  
7 based on the severity of the hazard; and

8 “(iii) employee participation in the  
9 program including, at a minimum—

10 “(I) regular consultation between  
11 the employer and nonsupervisory em-  
12 ployees regarding safety and health is-  
13 sues; and

14 “(II) opportunity for non-  
15 supervisory employees to make rec-  
16 ommendations regarding hazards in  
17 the workplace and to receive responses  
18 or to implement improvements in re-  
19 sponse to such recommendations; and

20 “(B) provides assurances that participating  
21 nonsupervisory employees have training or ex-  
22 pertise on safety and health issues consistent  
23 with the responsibilities of the employees.

24 A program under subparagraph (A) or (B) of paragraph  
25 (1) shall include methods that ensure that serious hazards

1 identified in the consultation are corrected within an ap-  
2 propriate time.

3 “(d) CERTIFICATION.—The Secretary may require  
4 that an employer in order to claim the exemption under  
5 subsection (b) give certification to the Secretary and no-  
6 tice to the employees of the employer of the eligibility of  
7 the employer for an exemption.”.

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 record’  
12 means that an employer has had, in the most recent  
13 annual reporting of the employer required by the Oc-  
14 cupational Safety and Health Administration, no  
15 employee death caused by occupational injury and  
16 fewer lost workdays due to occupational injury and  
17 illness than the average for the industry of which  
18 the employer is a part.”.

19 **SEC. 7. 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

12          “(3) the failure of employees to observe work  
13          rules led to the violation.

14          “(e) A citation issued under subsection (a) to an em-  
15          ployer that violates the requirements of any standard,  
16          rule, or order promulgated pursuant to section 6 or any  
17          other regulation promulgated under this Act shall be va-  
18          cated if such employer demonstrates that employees of  
19          such employer were protected by alternative methods  
20          equally or more protective of the safety and health of the  
21          employee than the methods required by such standard,  
22          rule, order, or regulation in the factual circumstances un-  
23          derlying 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. 8. THE OCCUPATIONAL SAFETY AND HEALTH REVIEW**  
5 **COMMISSION.**

6 (a) PROCEDURE FOR ENFORCEMENT.—

7 (1) NOTIFICATION.—The first sentence of sec-  
8 tion 10(b) (29 U.S.C. 659(b)) is amended to read as  
9 follows: “If the Secretary has reason to believe an  
10 employer has failed to correct a violation for which  
11 a citation has been issued within the period per-  
12 mitted for the correction of such violation, the Sec-  
13 retary shall notify the employer by certified mail of  
14 such failure and of the penalty proposed to be as-  
15 sessed under section 17 by reason of such failure,  
16 and that the employer has 15 working days within  
17 which to notify the Secretary that the employer de-  
18 sires to contest the notification of the Secretary or  
19 the proposed assessment of penalty. The period de-  
20 scribed in the first sentence shall not begin to run  
21 until the time for contestation has expired or the  
22 entry of a final order by the Commission in a con-  
23 tested case initiated by the employer in good faith  
24 and not solely for delay or avoidance of penalties.”.

1           (2) BURDEN OF PROOF.—Section 10 (29  
2 U.S.C. 659) is further amended by adding at the  
3 end the following new subsection:

4           “(d) In all hearings before the Commission relating  
5 to a contested citation, the Secretary shall have the burden  
6 of proving by a preponderance of the evidence—

7           “(1) the existence of a violation;

8           “(2) that the violation for which the citation  
9 was issued constitutes a realistic hazard to the safe-  
10 ty and health of the affected employees;

11           “(3) that there is a likelihood that such hazard  
12 will result in employee injury;

13           “(4) that the employer knew or with the exer-  
14 cise of reasonable diligence should have known of the  
15 hazard and violation; and

16           “(5) that a technically and economically feasible  
17 method of compliance exists.”.

18           (b) JUDICIAL REVIEW.—Section 11(a) (29 U.S.C.  
19 660(a)) is amended by inserting after “conclusive.” at the  
20 end of the sixth sentence the following: “The court shall  
21 make its own determination as to questions of law, includ-  
22 ing the reasonable interpretation of standards, and shall  
23 not accord deference to either the Commission or the Sec-  
24 retary.”.

1 **SEC. 9. DISCRIMINATION.**

2 (a) COMPLAINT.—Section 11(c)(2) (29 U.S.C.  
3 660(c)(2)) is amended to read as follows:

4 “(2)(A)(i) Any employee who believes that such em-  
5 ployee has been discharged or otherwise discriminated  
6 against by the employer of such employee in violation of  
7 this subsection may, within 30 days after such violation  
8 occurs, file a complaint with the Secretary alleging such  
9 discrimination.

10 “(ii) A complaint may not be filed under clause (i)  
11 after the expiration of the 30-day period described in such  
12 clause.

13 “(B)(i) Upon receipt of a complaint under subpara-  
14 graph (A) and as the Secretary considers appropriate, the  
15 Secretary shall conduct an investigation.

16 “(ii) If upon such investigation, the Secretary deter-  
17 mines that the provisions of this subsection have been vio-  
18 lated, the Secretary shall attempt to eliminate the alleged  
19 violation by informal methods.

20 “(iii) Nothing said or done, during the use of the in-  
21 formal methods applied under clause (ii) may be made  
22 public by the Secretary or used as evidence in any subse-  
23 quent proceeding.

24 “(iv) The Secretary shall make a determination con-  
25 cerning the complaint as soon as possible and, in any

1 event, not later than 90 days after the date of the filing  
2 of the complaint.

3 “(C) If the Secretary is unable to resolve the alleged  
4 violation through informal methods, the Secretary shall  
5 notify the parties in writing that conciliation efforts have  
6 failed.

7 “(D)(i) Not later than 90 days after the date on  
8 which the Secretary notifies the parties under subpara-  
9 graph (C) in writing that conciliation efforts have failed,  
10 the Secretary may then bring an action in any appropriate  
11 United States district court against an employer described  
12 in subparagraph (A).

13 “(ii) The employer against whom an action under  
14 clause (i) is brought may demand that the issue of dis-  
15 crimination be determined by jury trial.

16 “(E) Upon a showing of discrimination under sub-  
17 paragraph (D)(ii), the Secretary may seek, and the court  
18 may award, any and all of the following types of relief:

19 “(i) An injunction to enjoin a continued viola-  
20 tion of this subsection.

21 “(ii) Reinstatement of the employee to the same  
22 or equivalent position.

23 “(iii) Reinstatement of full benefits and senior-  
24 ity rights.

25 “(iv) Compensation for lost wages and benefits.

1 “(F) This subsection shall be the exclusive means of  
2 securing a remedy for any aggrieved employee.”.

3 (b) ACCESS TO RECORDS.—Section 11(c)(3) (29  
4 U.S.C. 660(c)(3)) is amended to read as follows:

5 “(3) Any records of the Secretary, including the files  
6 of the Secretary, relating to investigations and enforce-  
7 ment proceedings pursuant to this subsection shall not be  
8 subject to inspection and examination by the public while  
9 such inspections and proceedings are open or pending in  
10 the United States district court.”.

11 **SEC. 10. INJUNCTION AGAINST IMMINENT DANGER.**

12 Section 13 (29 U.S.C. 662) is amended—

13 (1) by striking subsection (c);

14 (2) by redesignating subsections (a) and (b) as  
15 subsections (b) and (c), respectively; and

16 (3) by inserting before subsection (b) (as so re-  
17 designated by paragraph (2)) the following new sub-  
18 section:

19 “(a)(1)(A)(i) If the Secretary determines, on the  
20 basis of an inspection or investigation under this section,  
21 that a condition or practice in a place of employment is  
22 such that an imminent danger to safety or health exists  
23 that could reasonably be expected to cause death or seri-  
24 ous physical harm or permanent impairment of the health  
25 or functional capacity of employees if not corrected imme-

1 diately or before the imminence of such danger can be  
2 eliminated through the enforcement procedures otherwise  
3 provided by this Act, the Secretary—

4 “(I) may inform the employer, and provide no-  
5 tice by posting at the place of employment to the af-  
6 fected employees of the danger; and

7 “(II) shall request that the condition or practice  
8 be corrected immediately or that the affected em-  
9 ployees be immediately removed from exposure to  
10 such danger.

11 “(ii) A notice under clause (i) shall be removed by  
12 the Secretary from the place of employment not later than  
13 72 hours after the notice was first posted unless a court  
14 in an action brought under subsection (c) requires that  
15 the notice be maintained.

16 “(B) The Secretary shall not prevent the continued  
17 activity of employees whose presence is necessary to avoid,  
18 correct, or remove the imminent danger or to maintain  
19 the capacity of a continuous process operation to resume  
20 normal operations without a cessation of operations or  
21 where cessation of operations is necessary, to permit the  
22 cessation to be accomplished in a safe and orderly way.

23 “(2) No employer shall discharge, or in any manner  
24 discriminate against any employee, because the employee  
25 has refused to perform a duty that has been identified as

1 the source of an imminent danger by a notice posted pur-  
2 suant to paragraph (1).”.

3 **SEC. 11. SMALL BUSINESS ASSISTANCE AND TRAINING.**

4 Section 16 (29 U.S.C. 655) is amended—

5 (1) by inserting “(a)” after “16.”; and

6 (2) by adding at the end the following new sub-  
7 sections:

8 “(b) The Secretary shall publish and make available  
9 to employers a model injury prevention program that if  
10 completed by the employer shall be deemed to meet the  
11 requirement for an exemption under section 8A or a re-  
12 duction in penalty under section 17(a)(2)(B).

13 “(c) The Secretary shall establish and implement a  
14 program to provide technical assistance and consultative  
15 services for employers and employees, either directly or by  
16 grant or contract, concerning work site safety and health  
17 and compliance with this Act. Such assistance shall be tar-  
18 geted at small employers and the most hazardous indus-  
19 tries.

20 “(d) This subsection authorizes the provision of con-  
21 sultative services to employers through cooperative agree-  
22 ments between the States and the Occupational Safety  
23 and Health Administration. The consultative services pro-  
24 vided under a cooperative agreement under this subsection

1 shall be the same type of services described in part 1908  
2 of title 39 of the Code of Federal Regulations.

3 “(e) Not less than one-fourth of the annual appro-  
4 priation made to the Secretary to carry out this Act shall  
5 be expended for the purposes described in this section.”.

6 **SEC. 12. PENALTIES.**

7 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) is  
8 amended—

9 (1) by striking out subsections (a), (b), (c), (f),  
10 (i), (j), and (k);

11 (2) by redesignating subsections (d), (e), (g),  
12 (h), and (l) as subsections (b), (c), (d), (e), and (f),  
13 respectively; and

14 (3) by inserting after “17.” the following:

15 “(a)(1) Any employer who violates the requirements  
16 of section 5, any standard, rule, or order promulgated pur-  
17 suant to section 6, or any other regulation promulgated  
18 under this Act may be assessed a civil penalty of not more  
19 than \$7,000. The Commission shall have authority to as-  
20 sess all civil penalties provided for in this section, giving  
21 due consideration to the appropriateness of the penalty  
22 with respect to—

23 “(A) the size of the employer;

24 “(B) the number of employees exposed to the  
25 violation;

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

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

5           “(E) the good faith of the employer in correct-  
6           ing the violation after the violation has been identi-  
7           fied;

8           “(F) the extent to which employee misconduct  
9           was responsible for the violation; and

10          “(G) the effect of the penalty on the ability of  
11          the employee to stay in business.

12          “(2) In assessing penalties under this section the  
13          Commission shall have authority to determine whether vio-  
14          lations should be classified as willful, repeated, serious,  
15          other than serious, or de minimus. Regardless of the clas-  
16          sification of a violation, there shall be only one penalty  
17          assessed for each violation. The Commission may not en-  
18          hance the penalty based on the number of employees ex-  
19          posed to the violation or the number of instances of the  
20          same violation.

21          “(3)(A) A penalty assessed under paragraph (1) shall  
22          be reduced by 25 percent in any case in which the em-  
23          ployer—



1           (1) NATIONAL INSTITUTE OF OCCUPATIONAL  
2 SAFETY AND HEALTH.—The functions and authori-  
3 ties provided to the National Institute of Occupa-  
4 tional Safety and Health under section 22 of the Oc-  
5 cupational Safety and Health Act of 1970 (29  
6 U.S.C. 671) are transferred to the Secretary of  
7 Labor.

8           (2) SECRETARY OF HEALTH AND HUMAN SERV-  
9 ICES.—The responsibilities and authorities of the  
10 Secretary of Health and Human Services under sec-  
11 tions 20, 21, and 22 of the Occupational Safety and  
12 Health Act of 1970 (29 U.S.C. 669, 670, and 671)  
13 are transferred to the Secretary of Labor.

14           (3) REPEAL.—Section 22 (29 U.S.C. 671) is  
15 repealed.

16           (b) ADDITIONAL FUNCTIONS.—In carrying out the  
17 functions transferred under subsection (a), the Secretary  
18 of Labor shall take such actions as are necessary to avoid  
19 duplication of programs and to maximize training, edu-  
20 cation, and research under the Occupational Safety and  
21 Health Act of 1970 (29 U.S.C. 671 et seq.).

22           (c) REFERENCES.—

23           (1) IN GENERAL.—Each reference in any other  
24 Federal law, Executive order, rule, regulation, or

1 delegation of authority, or any document of or relat-  
2 ing to—

3 (A) the head of the transferred office, or  
4 the Secretary of Health and Human Services,  
5 with regard to functions transferred under sub-  
6 section (a), shall be deemed to refer to the Sec-  
7 retary of Labor; and

8 (B) a transferred office with regard to  
9 functions transferred under subsection (a), shall  
10 be deemed to refer to the Department of Labor.

11 (2) DEFINITION.—For the purpose of this sub-  
12 section, the term “office” includes any office, admin-  
13 istration, agency, institute, unit, organizational en-  
14 tity, or component thereof.

15 (d) CONFORMING AMENDMENTS.—Not later than  
16 180 days after the effective date of this Act, if the Sec-  
17 retary of Labor determines (after consultation with the  
18 appropriate committees of Congress and the Director of  
19 the Office of Management and Budget) that technical and  
20 conforming amendments to Federal statutes are necessary  
21 to carry out the changes made by this section, the Sec-  
22 retary of Labor shall prepare and submit to Congress rec-  
23 ommended legislation containing the amendments.

1 **SEC. 14. PREVENTION OF ALCOHOL AND SUBSTANCE**  
2 **ABUSE.**

3 The Occupational Safety and Health Act is amend-  
4 ed—

5 (1) by striking sections 28 through 31;

6 (2) by redesignating sections 32, 33, and 34 as  
7 sections 29, 30, and 31, respectively; and

8 (3) by inserting after section 27, the following  
9 new section:

10 **“SEC. 28. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

11 “(a) IN GENERAL.—Whenever there exists the rea-  
12 sonable probability that the safety or health of any em-  
13 ployee could be endangered because of the use of alcohol  
14 or a controlled substance in the workplace, the employer  
15 of such employee may establish and implement an alcohol  
16 and substance abuse testing program in accordance with  
17 subsection (b).

18 “(b) STANDARDS.—The Secretary shall establish  
19 standards under section 6 for substance abuse and alcohol  
20 testing programs established under subsection (a) as fol-  
21 lows:

22 “(1) The substance abuse testing program shall  
23 conform, to the maximum extent practicable, to sub-  
24 part B of the mandatory guidelines for Federal  
25 workplace drug testing programs published on April  
26 11, 1988, by the Secretary of Health and Human

1 Services at 53 F.R. 11979 and any amendments  
2 adopted to such guidelines.

3 “(2) The alcohol testing program shall include  
4 an alcohol breath analysis and shall conform, to the  
5 maximum extent practicable; to any guidelines devel-  
6 oped by the Secretary of Transportation for alcohol  
7 testing of mass transit employees under the Depart-  
8 ment of Transportation and Related Agencies Ap-  
9 propriations Act, 1992.

10 “(c) TESTING PRIOR TO EMPLOYMENT.—This sec-  
11 tion shall not be construed to prohibit an employer from  
12 requiring an employee to submit to and pass an alcohol  
13 or substance abuse test—

14 “(1) prior to employment by the employer;

15 “(2) on a for cause basis or where the employer  
16 has reasonable suspicion to believe that such em-  
17 ployee is using or is under the influence of alcohol  
18 or a controlled substance;

19 “(3) where such test is administered as part of  
20 a scheduled medical examination;

21 “(4) in the case of an accident or incident in-  
22 volving the actual or potential loss of human life,  
23 bodily injury, or property damage; or

1           “(5) during and for a reasonable period of time  
2           (not to exceed 5 years) after the conclusion of an al-  
3           cohol or substance abuse treatment program.”.

4 **SEC. 15. ECONOMIC IMPACT ANALYSIS.**

5           The Secretary of Labor shall conduct a continuing  
6           comprehensive analysis of the costs and benefits of each  
7           standard in effect under section 6 of the Occupational  
8           Safety and Health Act of 1970. The Secretary shall report  
9           the results of the analysis to Congress upon the expiration  
10          of the 2-year period beginning on the date of the enact-  
11          ment of this Act and every 2 years thereafter.

12 **SEC. 16. LABOR RELATIONS.**

13          (a) DEFINITIONS.—Paragraph (5) of section 2 of the  
14          National Labor Relations Act (29 U.S.C. 152(5)) is  
15          amended by adding at the end the following new sentence:  
16          “The term does not include a safety committee that is  
17          comprised of an employer and the employees of the em-  
18          ployer and that is jointly established by the employer and  
19          the employees of the employer, or by the employer and  
20          a labor organization representing the employees of the em-  
21          ployer, to carry out efforts to reduce injuries and disease  
22          arising out of employment.”.

23          (b) UNFAIR LABOR PRACTICES.—Section 8(a)(2) of  
24          the National Labor Relations Act (29 U.S.C. 158(a)(2))  
25          is amended by inserting before the semicolon at the end

1 thereof the following: “*Provided, further,* That it shall not  
2 constitute an unfair practice under this paragraph for an  
3 employer and the employees of the employer, or for an  
4 employer and a labor organization representing the em-  
5 ployees of the employer, to jointly establish a safety com-  
6 mittee in which the employer and the employees of the  
7 employer carry out efforts to reduce injuries and disease  
8 arising out of employment;”.

○

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