To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for high gravity violations, to adjust penalties for inflation, to provide rights for victims or their family members, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Protecting America’s Workers Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—COVERAGE OF PUBLIC EMPLOYEES AND APPLICATION OF ACT**

Sec. 101. Coverage of public employees.
Sec. 102. Application of Act.

**TITLE II—INCREASING WHISTLEBLOWER PROTECTIONS**

Sec. 201. Enhanced protections from retaliation.

**TITLE III—IMPROVING REPORTING, INSPECTION, AND ENFORCEMENT**

Sec. 301. General duty of employers.
Sec. 302. Posting of employee rights.
Sec. 303. Employer reporting of work-related injuries, illnesses, deaths and hospitalizations; prohibition on discouraging employee reporting.
Sec. 304. No loss of employee pay for inspections.
Sec. 305. Investigations of fatalities and significant incidents.
Sec. 306. Prohibition on unclassified citations.
Sec. 307. Victims’ rights.
Sec. 308. Right to contest citations and penalties.
Sec. 309. Correction of serious, willful, or repeated violations pending contest and procedures for a stay.
Sec. 310. Conforming amendments.
Sec. 311. Civil penalties.
Sec. 312. Criminal penalties.
Sec. 313. Prejudgment interest.

**TITLE IV—STATE PLANS**

Sec. 401. Concurrent enforcement authority and review of State occupational safety and health plans.

**TITLE V—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH**

Sec. 501. Health Hazard Evaluations by the National Institute for Occupational Safety and Health.

**TITLE VI—EFFECTIVE DATE**

Sec. 601. Effective date.
TITLE I—COVERAGE OF PUBLIC EMPLOYEES AND APPLICATION OF ACT

SEC. 101. COVERAGE OF PUBLIC EMPLOYEES.

(a) In General.—Section 3(5) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652(5)) is amended by striking “but does not include” and all that follows through the period at the end and inserting “including the United States, a State, or a political subdivision of a State.”.

(b) Construction.—Nothing in this Act shall be construed to affect the application of section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667).

SEC. 102. APPLICATION OF ACT.

Section 4(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)) is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (5), (6), and (7), respectively; and

(2) by striking paragraph (1) and inserting the following:

“(1) If a Federal agency has promulgated and is enforcing a standard or regulation affecting occupational safety or health of some or all of the employees within that agency’s regulatory jurisdiction, and the Secretary
determines that such a standard or regulation as promul-
gated and the manner in which the standard or regulation
is being enforced provides protection to those employees
that is at least as effective as the protection provided to
those employees by this Act and the Secretary’s enforce-
ment of this Act, the Secretary may publish a certification
notice in the Federal Register. The notice shall set forth
that determination and the reasons for the determination
and certify that the Secretary has ceded jurisdiction to
that Federal agency with respect to the specified standard
or regulation affecting occupational safety or health. In
determining whether to cede jurisdiction to a Federal
agency, the Secretary shall seek to avoid duplication of,
and conflicts between, health and safety requirements.
Such certification shall remain in effect unless and until
rescinded by the Secretary.

“(2) The Secretary shall, by regulation, establish pro-
cedures by which any person who may be adversely af-
fected by a decision of the Secretary certifying that the
Secretary has ceded jurisdiction to another Federal agency
pursuant to paragraph (1) may petition the Secretary to
rescind a certification notice under paragraph (1). Upon
receipt of such a petition, the Secretary shall investigate
the matter involved and shall, within 90 days after receipt
of the petition, publish a decision with respect to the peti-

tion in the Federal Register.

“(3) Any person who may be adversely affected by—

“(A) a decision of the Secretary certifying that
the Secretary has ceded jurisdiction to another Fed-

eral agency pursuant to paragraph (1); or

“(B) a decision of the Secretary denying a peti-
tion to rescind such a certification notice under
paragraph (1),

may, not later than 60 days after such decision is pub-
lished in the Federal Register, file a petition challenging
such decision with the United States court of appeals for
the circuit in which such person resides or such person
has a principal place of business, for judicial review of
such decision. A copy of the petition shall be forthwith
transmitted by the clerk of the court to the Secretary. The
Secretary’s decision shall be set aside if found to be arbi-
trary, capricious, an abuse of discretion, or otherwise not
in accordance with law.

“(4) Nothing in this Act shall apply to working condi-
tions covered by the Federal Mine Safety and Health Act
of 1977 (30 U.S.C. 801 et seq.).”.
TITLE II—INCREASING WHISTLEBLOWER PROTECTIONS

SEC. 201. ENHANCED PROTECTIONS FROM RETALIATION.

(a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)(1)) is amended—

(1) by striking “discharge” and all that follows through “because such” and inserting the following: “discharge or cause to be discharged, or in any manner discriminate against or cause to be discriminated against, any employee because—

“(A) such”;

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

“(B) such employee has”;

(3) by striking “in any such proceeding or because of the exercise” and inserting the following: “before Congress or in any Federal or State proceeding related to safety or health;

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

“(D) of the exercise”; and

(4) by inserting before the period at the end the following: “, including the reporting of any injury, illness, or unsafe condition to the employer, agent of
the employer, safety and health committee involved, or employee safety and health representative involved’.

(b) Prohibition of Retaliation.—Section 11(c) of such Act (29 U.S.C. 660(c)) is amended by striking paragraph (2) and inserting the following:

“(2) Prohibition of Retaliation.—(A) No person shall discharge, or cause to be discharged, or in any manner discriminate against, or cause to be discriminated against, an employee for refusing to perform the employee’s duties if the employee has a reasonable apprehension that performing such duties would result in serious injury to, or serious impairment of the health of, the employee or other employees.

“(B) For purposes of subparagraph (A), the circumstances causing the employee’s good-faith belief that performing such duties would pose a safety or health hazard shall be of such a nature that a reasonable person, under the circumstances confronting the employee, would conclude that there is such a hazard. In order to qualify for protection under this paragraph, the employee, when practicable, shall have communicated or attempted to communicate the safety or health concern to the em-
ployer and have not received from the employer a re-
response reasonably calculated to allay such concern.”.

(c) PROCEDURE.—Section 11(c) of such Act (29
U.S.C. 660(c)) is amended by striking paragraph (3) and
inserting the following:

“(3) COMPLAINT.—Any employee who believes
that the employee has been discharged, disciplined,
or otherwise discriminated against by any person in
violation of paragraph (1) or (2) may seek relief for
such violation by filing a complaint with the Sec-
retary under paragraph (5).

“(4) STATUTE OF LIMITATIONS.—

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

“(i) the date on which an alleged vio-
lation of paragraph (1) or (2) occurs; or

“(ii) the date on which the employee
knows or should reasonably have known
that such alleged violation occurred.

“(B) REPEAT VIOLATION.—Except in
cases when the employee has been discharged,
a violation of paragraph (1) or (2) shall be con-
sidered to have occurred on the last date an al-
leged repeat violation occurred.
“(5) INVESTIGATION.—

“(A) IN GENERAL.—An employee may, within the time period required under paragraph (4)(B), file a complaint with the Secretary alleging a violation of paragraph (1) or (2). If the complaint alleges a prima facie case, the Secretary shall conduct an investigation of the allegations in the complaint, which—

“(i) shall include—

“(I) interviewing the complainant;

“(II) providing the respondent an opportunity to—

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

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

“(III) providing the complainant an opportunity to—

“(aa) receive any statements or evidence provided to the Secretary;
“(bb) meet with the Secretary; and

“(cc) rebut any statements or evidence; and

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

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

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

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

“(6) PRELIMINARY ORDER FOLLOWING INVESTIGATION.—If, after completion of an investigation under paragraph (5)(A), the Secretary finds reasonable cause to believe that a violation of paragraph (1) or (2) has occurred, the Secretary shall issue a preliminary order providing relief authorized under paragraph (14) at the same time the Secretary issues a decision under paragraph (5)(B). If a de novo hearing is not requested within the time period required under paragraph (7)(A)(i), such prelimi-
nary order shall be deemed a final order of the Secretary and is not subject to judicial review.

“(7) HEARING.—

“(A) Request for hearing.—

“(i) In general.—A de novo hearing on the record before an administrative law judge may be requested—

“(I) by the complainant or respondent within 30 days after receiving notification of a decision granting or denying relief issued under paragraph (5)(B) or paragraph (6) respectively;

“(II) by the complainant within 30 days after the date the complaint is dismissed without investigation by the Secretary under paragraph (5)(A); or

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

“(ii) Reinstatement order.—The request for a hearing shall not operate to
stay any preliminary reinstatement order
issued under paragraph (6).

“(B) PROCEDURES.—

“(i) IN GENERAL.—A hearing re-
quested under this paragraph shall be con-
ducted expeditiously and in accordance
with rules established by the Secretary for
hearings conducted by administrative law
judges.

“(ii) SUBPOENAS; PRODUCTION OF
evidence.—In conducting any such hear-
ing, the administrative law judge may issue
subpoenas. The respondent or complainant
may request the issuance of subpoenas
that require the deposition of, or the at-
tendance and testimony of, witnesses and
the production of any evidence (including
any books, papers, documents, or record-
ings) relating to the matter under consid-
eration.

“(iii) DECISION.—The administrative
law judge shall issue a decision not later
than 90 days after the date on which a
hearing was requested under this para-
graph and promptly notify, in writing, the
parties and the Secretary of such decision, including the findings of fact and conclusions of law. If the administrative law judge finds that a violation of paragraph (1) or (2) has occurred, the judge shall issue an order for relief under paragraph (14). If review under paragraph (8) is not timely requested, such order shall be deemed a final order of the Secretary that is not subject to judicial review.

“(8) ADMINISTRATIVE APPEAL.—

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

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

“(C) DECISIONS.—If the review board
grants an administrative appeal, the review
board shall issue a final decision and order af-
firming or reversing, in whole or in part, the
decision under review by not later than 90 days
after receipt of the administrative appeal. If it
is determined that a violation of paragraph (1)
or (2) has occurred, the review board shall issue
a final decision and order providing relief au-
thorized under paragraph (14). Such decision
and order shall constitute final agency action
with respect to the matter appealed.

“(9) SETTLEMENT IN THE ADMINISTRATIVE
PROCESS.—

“(A) IN GENERAL.—At any time before
issuance of a final order, an investigation or
proceeding under this subsection may be termi-
nated on the basis of a settlement agreement
entered into by the parties.

“(B) PUBLIC POLICY CONSIDERATIONS.—
Neither the Secretary, an administrative law
judge, nor the review board conducting a hear-
ing under this subsection shall accept a settle-
ment that contains conditions conflicting with
the rights protected under this Act or that are
contrary to public policy, including a restriction
on a complainant’s right to future employment
with employers other than the specific employ-
ers named in a complaint.

“(10) Inaction by the Review Board or Ad-
ministrative Law Judge.—

“(A) In general.—The complainant may
bring a de novo action described in subpara-
graph (B) if—

“(i) an administrative law judge has
not issued a decision and order within the
90-day time period required under para-
graph (7)(B)(iii); or

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

“(B) De Novo Action.—Such de novo ac-
tion may be brought at law or equity in the
United States district court for the district
where a violation of paragraph (1) or (2) alleg-
edly occurred or where the complainant resided
on the date of such alleged violation. The court
shall have jurisdiction over such action without regard to the amount in controversy and to order appropriate relief under paragraph (14). Such action shall, at the request of either party to such action, be tried by the court with a jury.

“(11) JUDICIAL REVIEW.—

“(A) TIMELY APPEAL TO THE COURT OF APPEALS.—Any party adversely affected or aggrieved by a final decision and order issued under this subsection may obtain review of such decision and order in the United States Court of Appeals for the circuit where the violation, with respect to which such final decision and order was issued, allegedly occurred or where the complainant resided on the date of such alleged violation. To obtain such review, a party shall file a petition for review not later than 60 days after the final decision and order was issued. Such review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the final decision and order.
“(B) LIMITATION ON COLLATERAL ATTACK.—An order and decision with respect to which review may be obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

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

“(13) BURDENS OF PROOF.—

“(A) CRITERIA FOR DETERMINATION.—In making a determination or adjudicating a complaint pursuant to this subsection, the Secretary, administrative law judge, review board, or a court may determine that a violation of paragraph (1) or (2) has occurred only if the complainant demonstrates that any conduct described in paragraph (1) or (2) with respect to
the complainant was a contributing factor in
the adverse action alleged in the complaint.

“(B) PROHIBITION.—Notwithstanding sub-
paragraph (A), a decision or order that is favor-
able to the complainant shall not be issued in
any administrative or judicial action pursuant
to this subsection if the respondent dem-
onstrates by clear and convincing evidence that
the respondent would have taken the same ad-
verse action in the absence of such conduct.

“(14) RELIEF.—

“(A) ORDER FOR RELIEF.—If the Sec-
retary, administrative law judge, review board,
or a court determines that a violation of para-
graph (1) or (2) has occurred, the Secretary,
administrative law judge, review board, or
court, respectively, shall have jurisdiction to
order all appropriate relief, including injunctive
relief, compensatory and exemplary damages,
including—

“(i) affirmative action to abate the
violation;

“(ii) reinstatement without loss of po-
sition or seniority, and restoration of the
terms, rights, conditions, and privileges as-
associated with the complainant’s employ-
ment, including opportunities for pro-
motions to positions with equivalent or bet-
ter compensation for which the complain-
ant is qualified;

“(iii) compensatory and consequential
damages sufficient to make the complain-
ant whole, (including back pay, prejudg-
ment interest, and other damages); and

“(iv) expungement of all warnings,
reprimands, or derogatory references that
have been placed in paper or electronic
records or databases of any type relating
to the actions by the complainant that
gave rise to the unfavorable personnel ac-
tion, and, at the complainant’s direction,
transmission of a copy of the decision on
the complaint to any person whom the
complainant reasonably believes may have
received such unfavorable information.

“(B) ATTORNEYS’ FEES AND COSTS.—If
the Secretary or an administrative law judge,
review board, or court grants an order for relief
under subparagraph (A), the Secretary, admin-
istrative law judge, review board, or court, re-

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spectively, shall assess, at the request of the employee against the employer—

“(i) reasonable attorneys’ fees; and
“(ii) costs (including expert witness fees) reasonably incurred, as determined by the Secretary, administrative law judge, review board, or court, respectively, in connection with bringing the complaint upon which the order was issued.

“(15) PROCEDURAL RIGHTS.—The rights and remedies provided for in this subsection may not be waived by any agreement, policy, form, or condition of employment, including by any pre-dispute arbitration agreement or collective bargaining agreement.

“(16) SAVINGS.—Nothing in this subsection shall be construed to diminish the rights, privileges, or remedies of any employee who exercises rights under any Federal or State law or common law, or under any collective bargaining agreement.

“(17) ELECTION OF VENUE.—
“(A) IN GENERAL.—An employee of an employer who is located in a State that has a State plan approved under section 18 may file a complaint alleging a violation of paragraph (1) or (2) by such employer with—
“(i) the Secretary under paragraph (5); or
“(ii) a State plan administrator in such State.
“(B) Referrals.—If—
“(i) the Secretary receives a complaint pursuant to subparagraph (A)(i), the Secretary shall not refer such complaint to a State plan administrator for resolution; or
“(ii) a State plan administrator receives a complaint pursuant to subparagraph (A)(ii), the State plan administrator shall not refer such complaint to the Secretary for resolution.”.
(d) Relation to Enforcement.—Section 17(j) of such Act (29 U.S.C. 666(j)) is amended by inserting before the period the following: “, including the history of violations under section 11(c)”.

Title III—Improving Reporting, Inspection, and Enforcement

Sec. 301. General Duty of Employers.

Section 5 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 654(a)(1)) is amended—
(1) in subsection (a), by amending paragraph (1) to read as follows:

“(1) shall furnish employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm and that the employer creates or controls or to which the employer exposes any employee of the employer or any other person performing work at the place of employment; and”; and

(2) by adding at the end the following new subsection:

“(c) Each employee or other person exposed to a hazard in violation of subsection (a) may constitute a separate violation.”.

SEC. 302. POSTING OF EMPLOYEE RIGHTS.

Section 8(c)(1) of such Act (29 U.S.C. 657(c)(1)) is amended by adding at the end the following new sentence:

“Such regulations shall include provisions requiring employers to post for employees information on the protections afforded under section 11(c).”.
SEC. 303. EMPLOYER REPORTING OF WORK-RELATED INJURIES, ILLNESSES, DEATHS AND HOSPITALIZATIONS; PROHIBITION ON DISCOURAGING EMPLOYEE REPORTING.

Section 8(c)(2) of such Act (29 U.S.C. 657(c)(2)) is amended by adding at the end the following new sentences: “Such regulations shall require site-controlling employers to keep a site log for all recordable injuries and illnesses occurring among all employees on the particular site, including employees of the site-controlling employer or others who are performing work at the particular site (including independent contractors). Such regulations shall require employers to promptly notify the Secretary of any work-related death or work-related injury or illness that results in the in-patient hospitalization of an employee for medical treatment, and shall prohibit the employer from adopting or implementing policies or practices by the employer that have the effect of discouraging accurate recordkeeping and the reporting of work-related injuries or illnesses by any employee or in any manner discriminates or provides for adverse action against any employee for reporting a work-related injury or illness. For purposes of this paragraph, the term ‘site-controlling employer’ means the employer that has primary control over a work site at which employees of more than one employer
work, such as by hiring or coordinating the work of other
employers working at the site.”.

SEC. 304. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.

Section 8(e) (29 U.S.C. 657(e)) is amended by insert-
ing after the first sentence the following: “Time spent by
an employee participating in or aiding any such inspection
shall be deemed to be hours worked and no employee shall
suffer any loss of wages, benefits, or other terms and con-
ditions of employment for having participated in or aided
any such inspection.”.

SEC. 305. INVESTIGATIONS OF FATALITIES AND SIGNIFI-
CANT INCIDENTS.

Section 8 (29 U.S.C. 657) is amended by adding at
the end the following new subsection:

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

“(1) IN GENERAL.—The Secretary shall investigate
any significant incident or an incident resulting in death
that occurs in a place of employment.

“(2) EVIDENCE PRESERVATION.—If a significant in-
cident or an incident resulting in death occurs in a place
of employment, the employer shall promptly notify the
Secretary of the incident involved and shall take appro-
priate measures to prevent the destruction or alteration
of any evidence that would assist in investigating the inci-
dent. The appropriate measures required by this para-
graph do not prevent an employer from taking action on
a worksite to prevent injury to employees or substantial
damage to property or to avoid disruption of essential
services necessary to public safety, provided that if an em-
ployer takes such action, the employer shall notify the Sec-
retary of the action in a timely fashion.

“(3) DEFINITIONS.—In this subsection:

“(A) INCIDENT RESULTING IN DEATH.—The
term ‘incident resulting in death’ means an incident
that results in the death of an employee.

“(B) SIGNIFICANT INCIDENT.—The term ‘sig-
nificant incident’ means an incident that results in
the in-patient hospitalization of 2 or more employees
for medical treatment.”.

SEC. 306. PROHIBITION ON UNCLASSIFIED CITATIONS.

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

“(d) No citation for a violation of this Act may be
issued, modified, or settled under this section without a
designation enumerated in section 17 with respect to such
violation.”.
SEC. 307. VICTIMS’ RIGHTS.

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

“SEC. 9A. VICTIMS’ RIGHTS.

“(a) Rights Before the Secretary.—A victim or the representative of a victim, shall be afforded the right, with respect to an inspection or investigation conducted under section 8 to—

“(1) meet with the Secretary regarding the inspection or investigation conducted under such section before the Secretary’s decision to issue a citation or take no action;

“(2) receive, at no cost, a copy of any citation or report, issued as a result of such inspection or investigation, at the same time as the employer receives such citation or report;

“(3) be informed of any notice of contest or addition of parties to the proceedings filed under section 10(c); and

“(4) be provided notification of the date and time or any proceedings, service of pleadings, and other relevant documents, and an explanation of the rights of the employer, employee and employee representative, and victim to participate in proceedings conducted under section 10(c).
“(b) Rights Before the Commission.—Upon request, a victim or representative of a victim shall be afforded the right with respect to a work-related bodily injury or death to—

“(1) be notified of the time and date of any proceeding before the Commission;

“(2) receive pleadings and any decisions relating to the proceedings; and

“(3) be provided an opportunity to appear and make a statement in accordance with the rules prescribed by the Commission.

“(c) Modification of Citation.—Before entering into an agreement to withdraw or modify a citation issued as a result of an inspection or investigation of an incident under section 8, the Secretary shall notify a victim or representative of a victim and provide the victim or representative of a victim with an opportunity to appear and make a statement before the parties conducting settlement negotiations. In lieu of an appearance, the victim or representative of the victim may elect to submit a letter to the Secretary and the parties.

“(d) Secretary Procedures.—The Secretary shall establish procedures—

“(1) to inform victims of their rights under this section; and
“(2) for the informal review of any claim of a
denial of such a right.

“(e) COMMISSION PROCEDURES AND CONSIDER-
ATIONS.—The Commission shall—

“(1) establish procedures relating to the rights
of victims to be heard in proceedings before the
Commission; and

“(2) in rendering any decision, provide due con-
sideration to any statement or information provided
by any victim before the Commission.

“(f) FAMILY LIAISONS.—The Secretary shall des-
ignate at least 1 employee at each area office of the Occu-
pational Safety and Health Administration to serve as a
family liaison to—

“(1) keep victims informed of the status of in-
vestigations, enforcement actions, and settlement ne-
gotiations; and

“(2) assist victims in asserting their rights
under this section.

“(g) DEFINITION.—In this section, the term ‘victim’
means—

“(1) an employee, including a former employee,
who has sustained a work-related injury or illness
that is the subject of an inspection or investigation
conducted under section 8; or
“(2) a family member (as further defined by
the Secretary) of a victim described in paragraph
(1), if—

“(A) the victim dies as a result of a inci-
dent that is the subject of an inspection or in-
vestigation conducted under section 8; or

“(B) the victim sustains a work-related in-
jury or illness that is the subject of an inspec-
tion or investigation conducted under section 8,
and the victim because of incapacity cannot rea-
sonably exercise the rights under this section.”.

SEC. 308. RIGHT TO CONTEST CITATIONS AND PENALTIES.

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

(1) in the first sentence—

(A) by inserting after “that he intends to
contest a citation issued under section (9)” the
following: “(or a modification of a citation
issued under this section)”;

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

(C) by inserting after “files a notice with
the Secretary alleging” the following: “that the
citation fails properly to designate the violation as serious, willful, or repeated, that the proposed penalty is not adequate, or”;

(2) by inserting after the first sentence, the following: “The pendency of a contest before the Commission shall not bar the Secretary from inspecting a place of employment or from issuing a citation under section 9.”; and

(3) by amending the last sentence—

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

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

SEC. 309. CORRECTION OF SERIOUS, WILLFUL, OR REPEATED VIOLATIONS PENDING CONTEST AND PROCEDURES FOR A STAY.

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

“(d) Correction of Serious, Willful, or Repeated Violations Pending Contest and Procedures for a Stay.—

“(1) Period permitted for correction of serious, willful, or repeated violations.—
For each violation which the Secretary designates as serious, willful, or repeated, the period permitted for the correction of the violation shall begin to run upon receipt of the citation.

“(2) Filing of a motion of contest.—The filing of a notice of contest by an employer—

“(A) shall not operate as a stay of the period for correction of a violation designated as serious, willful, or repeated; and

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

“(3) Criteria and rules of procedure for stays.—

“(A) Motion for a stay.—An employer that receives a citation alleging a violation designated as serious, willful, or repeated and that files a notice of contest to the citation asserting that the time set for abatement of the alleged violation is unreasonable or challenging the existence of the alleged violation may file with the Commission a motion to stay the period for the abatement of the violation.

“(B) Criteria.—In determining whether a stay should be issued on the basis of a motion
filed under subparagraph (A), the Commission may grant a stay only if the employer has demonstrated—

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

“(ii) that a stay will not adversely affect the health and safety of workers.

“(C) Rules of Procedure.—The Commission shall develop rules of procedure for conducting a hearing on a motion filed under subparagraph (A) on an expedited basis. At a minimum, such rules shall provide:

“(i) That a hearing before an administrative law judge shall occur not later than 15 days following the filing of the motion for a stay (unless extended at the request of the employer), and shall provide for a decision on the motion not later than 15 days following the hearing (unless extended at the request of the employer).

“(ii) That a decision of an administrative law judge on a motion for stay is rendered on a timely basis.
“(iii) That if a party is aggrieved by a decision issued by an administrative law judge regarding the stay, such party has the right to file an objection with the Commission not later than 5 days after receipt of the administrative law judge’s decision. Within 10 days after receipt of the objection, a Commissioner, if a quorum is seated pursuant to section 12(f), shall decide whether to grant review of the objection. If, within 10 days after receipt of the objection, no decision is made on whether to review the decision of the administrative law judge, the Commission declines to review such decision, or no quorum is seated, the decision of the administrative law judge shall become a final order of the Commission. If the Commission grants review of the objection, the Commission shall issue a decision regarding the stay not later than 30 days after receipt of the objection. If the Commission fails to issue such decision within 30 days, the decision of the administrative law judge shall become a final order of the Commission.
“(iv) For notification to employees or representatives of affected employees of requests for such hearings and shall provide affected employees or representatives of affected employees an opportunity to participate as parties to such hearings.”.

SEC. 310. CONFORMING AMENDMENTS.

(a) Violations Designated as Serious, Willful, or Repeated.—The first sentence of section 10(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 659(b)) is amended by inserting “, with the exception of violations designated as serious, willful, or repeated,” after “(which period shall not begin to run”.

(b) Judicial Review.—The first sentence of section 11(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(a)) is amended—

(1) by inserting “(or the failure of the Commission, including an administrative law judge, to make a timely decision on a request for a stay under section 10(d))” after “an order”;

(2) by striking “subsection (c)” and inserting “subsections (c) and (d)”;

and

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

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

“(d) Any employer who fails to correct a violation designated by the Secretary as serious, willful, or repeated and for which a citation has been issued under section 9(a) within the period permitted for its correction (and a stay has not been issued by the Commission under section 10(d)) may be assessed a civil penalty of not more than $7,000 for each day during which such failure or violation continues. Any employer who fails to correct any other violation for which a citation has been issued under section 9(a) of this title within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay of avoidance of penalties) may be assessed a civil penalty of not more than $7,000 for each day during which such failure or violation continues.”.

SEC. 311. CIVIL PENALTIES.

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

(1) in subsection (a)—
(A) by striking “$70,000” and inserting “$120,000”; 

(B) by striking “$5,000” and inserting “$8,000”; and 

(C) by adding at the end the following: “In determining whether a violation is repeated, the Secretary or the Commission shall consider the employer’s history of violations under this Act and under State occupational safety and health plans established under section 18. If such a willful or repeated violation caused or contributed to the death of an employee, such civil penalty amounts shall be increased to not more than $250,000 for each such violation, but not less than $50,000 for each such violation, except that for an employer with 25 or fewer employees such penalty shall not be less than $25,000 for each such violation.”; 

(2) in subsection (b)— 

(A) by striking “$7,000” and inserting “$12,000”; and 

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

(3) in subsection (c), by striking “$7,000” and
inserting “$12,000”;

(4) in subsection (d), as amended, by striking
“$7,000” each place it occurs and inserting
“$12,000”;

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

(6) in subsection (j) (as so redesignated) by
striking “$7,000” and inserting “$12,000”.

(b) INFLATION ADJUSTMENT.—Section 17 is further
amended by inserting after subsection (d) the following:
“(e) Amounts provided under this section for civil
penalties shall be adjusted by the Secretary at least once
during each 4-year period beginning January 1, 2015, to
account for the percentage increase or decrease in the
Consumer Price Index for all urban consumers during
such period.”.
SEC. 312. CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) (as amended by section 310) is further amended—

(1) by amending subsection (f) (as redesignated by section 310) to read as follows:

“(f)(1) Any employer who knowingly violates any standard, rule, or order promulgated under section 6 of this Act, or of any regulation prescribed under this Act, and that violation caused or significantly contributed to the death of any employee, shall, upon conviction, be punished by a fine in accordance with title 18, United States Code, or by imprisonment for not more than 10 years, or both, except that if the conviction is for a violation committed after a first conviction of such person under this subsection or subsection (i), punishment shall be by a fine in accordance title 18, United States Code, or by imprisonment for not more than 20 years, or by both.

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

(2) by amending subsection (g) (as redesignated by section 310) to read as follows:

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

(3) in subsection (h) (as redesignated by section 310), by striking “fine of not more than $10,000, or by imprisonment for not more than six months,” and inserting “fine in accordance with title 18, United States Code, or by imprisonment for not more than 5 years,”; and

(4) by inserting after subsection (j) (as redesignated by section 310) the following:

“(k)(1) Any employer who knowingly violates any standard, rule, or order promulgated under section 6, or any regulation prescribed under this Act, and that violation caused or significantly contributed to serious bodily harm to any employee but does not cause death to any employee, shall, upon conviction, be punished by a fine in accordance with title 18, United States Code, or by imprisonment for not more than 5 years, or by both, except that if the conviction is for a violation committed after a first conviction of such person under this subsection or subsection (e), punishment shall be by a fine in accordance with title 18, United States Code, or by imprisonment for not more than 10 years, or by both.
“(2) For the purpose of this subsection, the term ‘employer’ means, in addition to the definition contained in section 3 of this Act, any officer or director.

“(3) For purposes of this subsection, the term ‘serious bodily harm’ means bodily injury or illness that involves—

“(A) a substantial risk of death;

“(B) protracted unconsciousness;

“(C) protracted and obvious physical disfigurement; or

“(D) protracted loss or impairment, either temporary or permanent, of the function of a bodily member, organ, or mental faculty.”.

(b) JURISDICTION FOR PROSECUTION UNDER STATE AND LOCAL CRIMINAL LAWS.—Such section is further amended by adding at the end the following:

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

SEC. 313. PREJUDGMENT INTEREST.

Section 17(n) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666(n)) (as redesignated by section 310) is amended by adding at the end the following:

“Pre-final order interest on such penalties shall begin to
accrue on the date the party contests a citation issued under this Act, and shall end upon the issuance of the final order. Such pre-final order interest shall be calculated at the current underpayment rate determined by the Secretary of the Treasury pursuant to section 6621 of the Internal Revenue Code of 1986, and shall be compounded daily. Post-final order interest shall begin to accrue 30 days after the date a final order of the Commission or the court is issued, and shall be charged at the rate of 8 percent per year.”

TITLE IV—STATE PLANS

SEC. 401. CONCURRENT ENFORCEMENT AUTHORITY AND REVIEW OF STATE OCCUPATIONAL SAFETY AND HEALTH PLANS.

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

(1) by amending subsection (f) to read as follows:

“(f)(1) The Secretary shall, on the basis of reports submitted by the State agency and the Secretary’s own inspections, make a continuing evaluation of the manner in which each State that has a plan approved under this section is carrying out such plan. Such evaluation shall include an assessment of whether the State continues to meet the requirements of subsection (c) of this section and
any other criteria or indices of effectiveness specified by
the Secretary in regulations. Whenever the Secretary
finds, on the basis of such evaluation, that in the adminis-
tration of the State plan there is a failure to comply sub-
stantially with any provision of the State plan (or any as-
surance contained therein), the Secretary shall make an
initial determination of whether the failure is of such a
nature that the plan should be withdrawn or whether the
failure is of such a nature that the State should be given
the opportunity to remedy the deficiencies, and provide no-
tice of the Secretary’s findings and initial determination.

“(2) If the Secretary makes an initial determination
to reassert and exercise concurrent enforcement authority
while the State is given an opportunity to remedy the defi-
ciencies, the Secretary shall afford the State an oppor-
tunity for a public hearing within 15 days of such request,
provided that such request is made not later than 10 days
after Secretary’s notice to the State. The Secretary shall
review and consider the testimony, evidence, or written
comments, and not later than 30 days following such hear-
ing, make a determination to affirm, reverse, or modify
the Secretary’s initial determination to reassert and exer-
cise concurrent enforcement authority under sections 8, 9,
10, 13, and 17 with respect to standards promulgated
under section 6 and obligations under section 5(a). Fol-
lowing such a determination by the Secretary, or in the event that the State does not request a hearing within the timeframe set forth in this paragraph, the Secretary may reassert and exercise such concurrent enforcement authority, while a final determination is pending under paragraph (3) or until the Secretary has determined that the State has remedied the deficiencies as provided under paragraph (4). Such determination shall be published in the Federal Register. The procedures set forth in section 18(g) shall not apply to a determination by the Secretary to reassert and exercise such concurrent enforcement authority.

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

“(4) If the Secretary makes a determination that the State should be provided the opportunity to remedy the deficiencies, the Secretary shall provide the State an opportunity to respond to the Secretary’s findings and the opportunity to remedy such deficiencies within a time period established by the Secretary, not to exceed 1 year. The Secretary may extend and revise the time period to remedy such deficiencies, if the State’s legislature is not in session during this 1-year time period, or if the State demonstrates that it is not feasible to correct the deficiencies in the time period set by the Secretary, and the State has a plan to correct the deficiencies within a reasonable time period. If the Secretary finds that the State agency has failed to remedy such deficiencies within the time period specified by the Secretary and that the State plan continues to fail to comply substantially with a provision of the State plan, the Secretary shall withdraw the State plan as provided for in paragraph (3).”; and

(2) by adding at the end the following new subsection:

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

“(1) the effectiveness of the Secretary’s oversight of State plans, including the indices of effectiveness used by the Secretary;

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

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

“(4) whether State plans are as effective as the Federal program in preventing occupational injuries, illnesses and deaths, and investigating discrimination complaints, through an evaluation of at least 20 percent of approved State plans, and which shall cover—

“(A) enforcement effectiveness, including handling of fatalities, serious incidents and
complaints, compliance with inspection procedures, hazard recognition, verification of abatement, violation classification, citation and penalty issuance, including appropriate use of willful and repeat citations, and employee involvement;

“(B) inspections, the number of programmed health and safety inspections at private and public sector establishments, and whether the State targets the highest hazard private sector work sites and facilities in that State;

“(C) budget and staffing, including whether the State is providing adequate budget resources to hire, train and retain sufficient numbers of qualified staff, including timely filling of vacancies;

“(D) administrative review, including the quality of decisions, consistency with Federal precedence, transparency of proceedings, decisions and records are available to the public, adequacy of State defense, and whether the State appropriately appeals adverse decisions;

“(E) anti-discrimination, including whether discrimination complaints are processed in a
timely manner, whether supervisors and investigators are properly trained to investigate discrimination complaints, whether a case file review indicates merit cases are properly identified consistent with Federal policy and procedure, whether employees are notified of their rights, and whether there is an effective process for employees to appeal the dismissal of a complaint;

“(F) program administration, including whether the State’s standards and policies are at least as effective as the Federal program and are updated in a timely manner, and whether National Emphasis Programs that are applicable in such States are adopted and implemented in a manner that is at least as effective as the Federal program;

“(G) whether the State plan satisfies the requirements for approval set forth in this section and its implementing regulations; and

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

SEC. 402. EVALUATION OF REPEATED VIOLATIONS IN STATE PLANS.

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

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

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

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

“(9) provides that in determining whether a violation is repeated, the State shall consider the employer’s violations within the State, in conjunction with the employer’s history of violations under other States’ occupational safety and health plans approved by the Secretary and the employer’s history of violations in those States where the Secretary has jurisdiction under this Act, in a manner that is at least as effective as provided under section 17.”.
TITLE V—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

SEC. 501. HEALTH HAZARD EVALUATIONS BY THE NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH.

Section 20(a)(6) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(6)) is amended by striking the second sentence and inserting the following: “The Secretary shall determine following a written request by any employer, authorized representative of current or former employees, physician, other Federal agency, or State or local health department, specifying with reasonable particularity the grounds on which the request is made, whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found or whether any physical agents, equipment, or working condition found or used has potentially hazardous effects; and shall submit such determination both to employers and affected employees as soon as possible.”.

TITLE VI—EFFECTIVE DATE

SEC. 601. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided for in subsection (b), this Act and the amendments made by this
Act shall take effect not later than 90 days after the date
of the enactment of this Act.

(b) Exception for States and Political Sub-
divisions.—The following are exceptions to the effective
date described in subsection (a):

(1) A State that has a State plan approved
under section 18 (29 U.S.C. 667) shall amend its
State plan to conform with the requirements of this
Act and the amendments made by this Act not later
than 12 months after the date of the enactment of
this Act. The Secretary of Labor may extend the pe-
riod for a State to make such amendments to its
State plan by not more than 12 months, if the
State’s legislature is not in session during the 12-
month period beginning with the date of the enact-
ment of this Act. Such amendments to the State
plan shall take effect not later than 90 days after
the adoption of such amendments by such State.

(2) This Act and the amendments made by this
Act shall take effect not later than 36 months after
the date of the enactment of this Act with respect
to a workplace of a State, or a political subdivision
of a State, that does not have a State plan approved