

115TH CONGRESS  
1ST SESSION

# H. R. 914

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2017

Mr. COURTNEY (for himself, Mr. SCOTT of Virginia, Mr. TAKANO, Mr. CONYERS, Mr. GENE GREEN of Texas, Mr. POCAN, Ms. SHEA-PORTER, and Ms. TITUS) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

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.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Protecting America’s Workers Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—COVERAGE OF PUBLIC EMPLOYEES, AUTHORIZED EMPLOYEE REPRESENTATIVES, VOLUNTARY EMERGENCY RESPONDERS, AND APPLICATION OF ACT

Sec. 101. Coverage of public employees.

Sec. 102. Authorized employee representatives.

Sec. 103. 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. Occupational safety and health standards.

Sec. 303. Posting of employee rights.

Sec. 304. Employer reporting of work-related injuries, illnesses, deaths and hospitalizations; prohibition on discouraging employee reporting.

Sec. 305. No loss of employee pay for inspections.

Sec. 306. Investigations of fatalities and significant incidents.

Sec. 307. Prohibition on unclassified citations.

Sec. 308. Victims' rights.

Sec. 309. Right to contest citations and penalties.

Sec. 310. Correction of serious, willful, or repeated violations pending contest and procedures for a stay.

Sec. 311. Inaction by the Review Commission.

Sec. 312. Conforming amendments.

Sec. 313. Civil penalties.

Sec. 314. Criminal penalties.

Sec. 315. Prejudgment interest.

TITLE IV—STATE PLANS

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

Sec. 402. Evaluation of repeated violations in State 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.

1 **TITLE I—COVERAGE OF PUBLIC**  
2 **EMPLOYEES, AUTHORIZED**  
3 **EMPLOYEE REPRESENTA-**  
4 **TIVES, VOLUNTARY EMER-**  
5 **GENCY RESPONDERS, AND**  
6 **APPLICATION OF ACT**

7 **SEC. 101. COVERAGE OF PUBLIC EMPLOYEES.**

8 (a) IN GENERAL.—Section 3(5) of the Occupational  
9 Safety and Health Act of 1970 (29 U.S.C. 652(5)) is  
10 amended by striking “but does not include” and all that  
11 follows through the period at the end and inserting “in-  
12 cluding the United States, a State, or a political subdivi-  
13 sion of a State.”.

14 (b) CONSTRUCTION.—Nothing in this Act shall be  
15 construed to affect the application of section 18 of the Oc-  
16 cupational Safety and Health Act of 1970 (29 U.S.C.  
17 667).

18 **SEC. 102. AUTHORIZED EMPLOYEE REPRESENTATIVES.**

19 Section 3 of the Occupational Safety and Health Act  
20 of 1970 (29 U.S.C. 652) is amended by adding at the end  
21 the following:

22 “(15) AUTHORIZED EMPLOYEE REPRESENTA-  
23 TIVE.—The term ‘authorized employee representa-  
24 tive’—

1           “(A) means any person or organization  
2           that for the purposes of this Act represents not  
3           less than one employee at an establishment, fac-  
4           tory, plant, construction site, or other work-  
5           place, or other environment where work is per-  
6           formed by an employee for an employer; and

7           “(B) includes a representative authorized  
8           by employees, a representative of employees, or  
9           any other representative of an employee under  
10          this Act.”.

11 **SEC. 103. APPLICATION OF ACT.**

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

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

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

18          “(1) If a Federal agency has promulgated and is en-  
19 forcing a standard or regulation affecting occupational  
20 safety or health of some or all of the employees within  
21 that agency’s regulatory jurisdiction, and the Secretary  
22 determines that such a standard or regulation as promul-  
23 gated and the manner in which the standard or regulation  
24 is being enforced provides protection to those employees  
25 that is at least as effective as the protection provided to

1 those employees by this Act and the Secretary's enforce-  
2 ment of this Act, the Secretary may publish a certification  
3 notice in the Federal Register. The notice shall set forth  
4 that determination and the reasons for the determination  
5 and certify that the Secretary has ceded jurisdiction to  
6 that Federal agency with respect to the specified standard  
7 or regulation affecting occupational safety or health. In  
8 determining whether to cede jurisdiction to a Federal  
9 agency, the Secretary shall seek to avoid duplication of,  
10 and conflicts between, health and safety requirements.  
11 Such certification shall remain in effect unless and until  
12 rescinded by the Secretary.

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

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

1           “(A) a decision of the Secretary certifying that  
2           the Secretary has ceded jurisdiction to another Fed-  
3           eral agency pursuant to paragraph (1); or

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

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

17          “(4) Nothing in this Act shall apply to working condi-  
18          tions covered by the Federal Mine Safety and Health Act  
19          of 1977 (30 U.S.C. 801 et seq.).”.

20                   **TITLE II—INCREASING**  
21                   **WHISTLEBLOWER PROTECTIONS**

22                   **SEC. 201. ENHANCED PROTECTIONS FROM RETALIATION.**

23           (a) **EMPLOYEE ACTIONS.**—Section 11(c)(1) of the  
24          Occupational Safety and Health Act of 1970 (29 U.S.C.  
25          660(c)(1)) is amended—

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

6           “(A) such”;

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

9           “(B) such employee has”;

10          (3) by striking “in any such proceeding or be-  
11 cause of the exercise” and inserting the following:  
12 “before Congress or in any Federal or State pro-  
13 ceeding related to safety or health;

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

16          “(D) of the exercise”; and

17          (4) by inserting before the period at the end the  
18 following: “, including the reporting of any injury,  
19 illness, or unsafe condition to the employer, agent of  
20 the employer, safety and health committee involved,  
21 or employee safety and health representative in-  
22 volved”.

23          (b) PROHIBITION OF RETALIATION.—Section 11(c)  
24 of such Act (29 U.S.C. 660(c)) is amended by striking  
25 paragraph (2) and inserting the following:

1           “(2) PROHIBITION OF RETALIATION.—(A) No  
2           person shall discharge, or cause to be discharged, or  
3           in any manner discriminate against, or cause to be  
4           discriminated against, an employee for refusing to  
5           perform the employee’s duties if the employee has a  
6           reasonable apprehension that performing such duties  
7           would result in serious injury to, or serious impair-  
8           ment of the health of, the employee or other employ-  
9           ees.

10           “(B) For purposes of subparagraph (A), the  
11           circumstances causing the employee’s good-faith be-  
12           lief that performing such duties would pose a safety  
13           or health hazard shall be of such a nature that a  
14           reasonable person, under the circumstances con-  
15           fronting the employee, would conclude that there is  
16           such a hazard. In order to qualify for protection  
17           under this paragraph, the employee, when prac-  
18           ticable, shall have communicated or attempted to  
19           communicate the safety or health concern to the em-  
20           ployer and have not received from the employer a re-  
21           sponse reasonably calculated to allay such concern.”.

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



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

7           “(4) STATUTE OF LIMITATIONS.—

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

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

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

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

21          “(5) INVESTIGATION.—

22                  “(A) IN GENERAL.—An employee may,  
23                  within the time period required under para-  
24                  graph (4)(B), file a complaint with the Sec-  
25                  retary alleging a violation of paragraph (1) or

1 (2). If the complaint alleges a prima facie case,  
2 the Secretary shall conduct an investigation of  
3 the allegations in the complaint, which—

4 “(i) shall include—

5 “(I) interviewing the complain-  
6 ant;

7 “(II) providing the respondent an  
8 opportunity to—

9 “(aa) submit to the Sec-  
10 retary a written response to the  
11 complaint; and

12 “(bb) meet with the Sec-  
13 retary to present statements from  
14 witnesses or provide evidence;  
15 and

16 “(III) providing the complainant  
17 an opportunity to—

18 “(aa) receive any statements  
19 or evidence provided to the Sec-  
20 retary;

21 “(bb) meet with the Sec-  
22 retary; and

23 “(cc) rebut any statements  
24 or evidence; and

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

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

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

9           “(ii) issue a decision granting or de-  
10          nying relief.

11          “(6) PRELIMINARY ORDER FOLLOWING INVES-  
12          TIGATION.—If, after completion of an investigation  
13          under paragraph (5)(A), the Secretary finds reason-  
14          able cause to believe that a violation of paragraph  
15          (1) or (2) has occurred, the Secretary shall issue a  
16          preliminary order providing relief authorized under  
17          paragraph (14) at the same time the Secretary  
18          issues a decision under paragraph (5)(B). If a de  
19          novo hearing is not requested within the time period  
20          required under paragraph (7)(A)(i), such prelimi-  
21          nary order shall be deemed a final order of the Sec-  
22          retary and is not subject to judicial review.

23          “(7) HEARING.—

24          “(A) REQUEST FOR HEARING.—

1           “(i) IN GENERAL.—A de novo hearing  
2           on the record before an administrative law  
3           judge may be requested—

4                   “(I) by the complainant or re-  
5                   spondent within 30 days after receiv-  
6                   ing notification of a decision granting  
7                   or denying relief issued under para-  
8                   graph (5)(B) or paragraph (6) respec-  
9                   tively;

10                   “(II) by the complainant within  
11                   30 days after the date the complaint  
12                   is dismissed without investigation by  
13                   the Secretary under paragraph (5)(A);  
14                   or

15                   “(III) by the complainant within  
16                   120 days after the date of filing the  
17                   complaint, if the Secretary has not  
18                   issued a decision under paragraph  
19                   (5)(B).

20           “(ii) REINSTATEMENT ORDER.—The  
21           request for a hearing shall not operate to  
22           stay any preliminary reinstatement order  
23           issued under paragraph (6).

24           “(B) PROCEDURES.—

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

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

18          “(iii) DECISION.—The administrative  
19          law judge shall issue a decision not later  
20          than 90 days after the date on which a  
21          hearing was requested under this para-  
22          graph and promptly notify, in writing, the  
23          parties and the Secretary of such decision,  
24          including the findings of fact and conclu-  
25          sions of law. If the administrative law

1 judge finds that a violation of paragraph  
2 (1) or (2) has occurred, the judge shall  
3 issue an order for relief under paragraph  
4 (14). If review under paragraph (8) is not  
5 timely requested, such order shall be  
6 deemed a final order of the Secretary that  
7 is not subject to judicial review.

8 “(8) ADMINISTRATIVE APPEAL.—

9 “(A) IN GENERAL.—Not later than 30  
10 days after the date of notification of a decision  
11 and order issued by an administrative law judge  
12 under paragraph (7), the complainant or re-  
13 spondent may file, with objections, an adminis-  
14 trative appeal with an administrative review  
15 body designated by the Secretary (referred to in  
16 this paragraph as the ‘review board’).

17 “(B) STANDARD OF REVIEW.—In review-  
18 ing the decision and order of the administrative  
19 law judge, the review board shall affirm the de-  
20 cision and order if it is determined that the fac-  
21 tual findings set forth therein are supported by  
22 substantial evidence and the decision and order  
23 are made in accordance with applicable law.

24 “(C) DECISIONS.—If the review board  
25 grants an administrative appeal, the review

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

11 “(9) SETTLEMENT IN THE ADMINISTRATIVE  
12 PROCESS.—

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

18 “(B) PUBLIC POLICY CONSIDERATIONS.—  
19 Neither the Secretary, an administrative law  
20 judge, nor the review board conducting a hear-  
21 ing under this subsection shall accept a settle-  
22 ment that contains conditions conflicting with  
23 the rights protected under this Act or that are  
24 contrary to public policy, including a restriction  
25 on a complainant’s right to future employment

1 with employers other than the specific employ-  
2 ers named in a complaint.

3 “(10) INACTION BY THE REVIEW BOARD OR AD-  
4 MINISTRATIVE LAW JUDGE.—

5 “(A) IN GENERAL.—The complainant may  
6 bring a de novo action described in subpara-  
7 graph (B) if—

8 “(i) an administrative law judge has  
9 not issued a decision and order within the  
10 90-day time period required under para-  
11 graph (7)(B)(iii); or

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

16 “(B) DE NOVO ACTION.—Such de novo ac-  
17 tion may be brought at law or equity in the  
18 United States district court for the district  
19 where a violation of paragraph (1) or (2) alleg-  
20 edly occurred or where the complainant resided  
21 on the date of such alleged violation. The court  
22 shall have jurisdiction over such action without  
23 regard to the amount in controversy and to  
24 order appropriate relief under paragraph (14).  
25 Such action shall, at the request of either party



1 to such action, be tried by the court with a  
2 jury.

3 “(11) JUDICIAL REVIEW.—

4 “(A) TIMELY APPEAL TO THE COURT OF  
5 APPEALS.—Any party adversely affected or ag-  
6 grieved by a final decision and order issued  
7 under this subsection may obtain review of such  
8 decision and order in the United States Court  
9 of Appeals for the circuit where the violation,  
10 with respect to which such final decision and  
11 order was issued, allegedly occurred or where  
12 the complainant resided on the date of such al-  
13 leged violation. To obtain such review, a party  
14 shall file a petition for review not later than 60  
15 days after the final decision and order was  
16 issued. Such review shall conform to chapter 7  
17 of title 5, United States Code. The commence-  
18 ment of proceedings under this subparagraph  
19 shall not, unless ordered by the court, operate  
20 as a stay of the final decision and order.

21 “(B) LIMITATION ON COLLATERAL AT-  
22 TACK.—An order and decision with respect to  
23 which review may be obtained under subpara-  
24 graph (A) shall not be subject to judicial review  
25 in any criminal or other civil proceeding.

1           “(12) ENFORCEMENT OF ORDER.—If a re-  
2           spondent fails to comply with an order issued under  
3           this subsection, the Secretary or the complainant on  
4           whose behalf the order was issued may file a civil ac-  
5           tion for enforcement in the United States district  
6           court for the district in which the violation was  
7           found to occur to enforce such order. If both the  
8           Secretary and the complainant file such action, the  
9           action of the Secretary shall take precedence. The  
10          district court shall have jurisdiction to grant all ap-  
11          propriate relief described in paragraph (14).

12           “(13) BURDENS OF PROOF.—

13           “(A) CRITERIA FOR DETERMINATION.—In  
14           making a determination or adjudicating a com-  
15           plaint pursuant to this subsection, the Sec-  
16           retary, administrative law judge, review board,  
17           or a court may determine that a violation of  
18           paragraph (1) or (2) has occurred only if the  
19           complainant demonstrates that any conduct de-  
20           scribed in paragraph (1) or (2) with respect to  
21           the complainant was a contributing factor in  
22           the adverse action alleged in the complaint.

23           “(B) PROHIBITION.—Notwithstanding sub-  
24           paragraph (A), a decision or order that is favor-  
25           able to the complainant shall not be issued in

1 any administrative or judicial action pursuant  
2 to this subsection if the respondent dem-  
3 onstrates by clear and convincing evidence that  
4 the respondent would have taken the same ad-  
5 verse action in the absence of such conduct.

6 “(14) RELIEF.—

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

16 “(i) affirmative action to abate the  
17 violation;

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

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

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

16           “(B) ATTORNEYS’ FEES AND COSTS.—If  
17 the Secretary or an administrative law judge,  
18 review board, or court grants an order for relief  
19 under subparagraph (A), the Secretary, admin-  
20 istrative law judge, review board, or court, re-  
21 spectively, shall assess, at the request of the  
22 employee against the employer—

23           “(i) reasonable attorneys’ fees; and

24           “(ii) costs (including expert witness  
25 fees) reasonably incurred, as determined

1           by the Secretary, administrative law judge,  
2           review board, or court, respectively, in con-  
3           nection with bringing the complaint upon  
4           which the order was issued.

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

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

15          “(17) ELECTION OF VENUE.—

16                 “(A) IN GENERAL.—An employee of an  
17                 employer who is located in a State that has a  
18                 State plan approved under section 18 may file  
19                 a complaint alleging a violation of paragraph  
20                 (1) or (2) by such employer with—

21                         “(i) the Secretary under paragraph  
22                         (5); or

23                         “(ii) a State plan administrator in  
24                         such State.

25          “(B) REFERRALS.—If—

1 “(i) the Secretary receives a complaint  
2 pursuant to subparagraph (A)(i), the Sec-  
3 retary shall not refer such complaint to a  
4 State plan administrator for resolution; or

5 “(ii) a State plan administrator re-  
6 ceives a complaint pursuant to subpara-  
7 graph (A)(ii), the State plan administrator  
8 shall not refer such complaint to the Sec-  
9 retary for resolution.”.

10 (d) RELATION TO ENFORCEMENT.—Section 17(j) of  
11 such Act (29 U.S.C. 666(j)) is amended by inserting be-  
12 fore the period the following: “, including the history of  
13 violations under section 11(c)”.

14 **TITLE III—IMPROVING REPORT-**  
15 **ING, INSPECTION, AND EN-**  
16 **FORCEMENT**

17 **SEC. 301. GENERAL DUTY OF EMPLOYERS.**

18 Section 5 of the Occupational Safety and Health Act  
19 of 1970 (29 U.S.C. 654(a)(1)) is amended—

20 (1) in subsection (a), by amending paragraph  
21 (1) to read as follows:

22 “(1) shall furnish employment and a place of  
23 employment that are free from recognized hazards  
24 that are causing or are likely to cause death or seri-  
25 ous physical harm and that the employer creates or

1 controls or to which the employer exposes any em-  
 2 ployee of the employer or any other person per-  
 3 forming work at the place of employment; and”; and

4 (2) by adding at the end the following new sub-  
 5 section:

6 “(c) Each employee or other person exposed to a haz-  
 7 ard in violation of subsection (a) may constitute a separate  
 8 violation.”.

9 **SEC. 302. OCCUPATIONAL SAFETY AND HEALTH STAND-**  
 10 **ARDS.**

11 Section 6 of the Occupational Safety and Health Act  
 12 of 1970 (29 U.S.C. 655) is amended—

13 (1) in subsection (a)—

14 (A) by striking “Without regard” and in-  
 15 serting “(1) Without regard”;

16 (B) by striking “chapter 5” and inserting  
 17 “chapters 5 and 6”;

18 (C) by striking “shall, as soon as prac-  
 19 ticable” and inserting the following: “shall—”

20 “(A) as soon as practicable”;

21 (D) by striking “In the” and inserting the  
 22 following:

23 “(2) In the”;

24 (E) by striking “designated employees.”  
 25 and inserting “designated employees; and”;

1 (F) by adding at the end of paragraph (1)  
2 (as designated by subparagraph (A)) the fol-  
3 lowing:

4 “(B) not later than 2 years after the effec-  
5 tive date of section 601(a) of the Protecting  
6 America’s Workers Act, by rule update any na-  
7 tional consensus standard that has been pro-  
8 mulgated or incorporated by reference pursuant  
9 to this subsection, except that such a standard  
10 shall not be updated pursuant to this subpara-  
11 graph, if—

12 “(i) the standard has been superseded  
13 by a standard promulgated pursuant to  
14 subsection (b); or

15 “(ii) the Secretary determines such  
16 update would not result in improved health  
17 or safety for specifically designated em-  
18 ployees.”; and

19 (G) in paragraph (2) (as designated by  
20 subparagraph (D)), by inserting “including na-  
21 tional consensus standards, or in the event of a  
22 consolidation of national consensus standards,”  
23 after “conflict among any such standards,”;  
24 and

25 (2) by adding at the end the following:



1 “(h) No standard, rule, or regulation promulgated  
2 under this Act shall reduce the protection afforded by an  
3 existing health or safety standard, rule, regulation, or na-  
4 tional consensus standard.”.

5 **SEC. 303. POSTING OF EMPLOYEE RIGHTS.**

6 Section 8(c)(1) of the Occupational Safety and Health  
7 Act of 1970 (29 U.S.C. 657(c)(1)) is amended by adding  
8 at the end the following new sentence: “Such regulations  
9 shall include provisions requiring employers to post for  
10 employees information on the protections afforded under  
11 section 11(c).”.

12 **SEC. 304. EMPLOYER REPORTING OF WORK-RELATED INJU-**  
13 **RIES, ILLNESSES, DEATHS AND HOSPITALIZA-**  
14 **TIONS; PROHIBITION ON DISCOURAGING EM-**  
15 **PLOYEE REPORTING.**

16 Section 8(c)(2) of such Act (29 U.S.C. 657(c)(2)) is  
17 amended by adding at the end the following new sen-  
18 tences: “Such regulations shall require site-controlling em-  
19 ployers to keep a site log for all recordable injuries and  
20 illnesses occurring among all employees on the particular  
21 site, including employees of the site-controlling employer  
22 or others who are performing work at the particular site  
23 (including independent contractors). Such regulations  
24 shall require employers to promptly notify the Secretary  
25 of any work-related death or work-related injury or illness

1 that results in the in-patient hospitalization of an em-  
2 ployee for medical treatment, amputation, or loss of an  
3 eye, and shall prohibit the employer from adopting or im-  
4 plementing policies or practices by the employer that have  
5 the effect of discouraging accurate recordkeeping and the  
6 reporting of work-related injuries or illnesses by any em-  
7 ployee or in any manner discriminates or provides for ad-  
8 verse action against any employee for reporting a work-  
9 related injury or illness. For purposes of this paragraph,  
10 the term ‘site-controlling employer’ means the employer  
11 that has primary control over a work site at which employ-  
12 ees of more than one employer work, such as by hiring  
13 or coordinating the work of other employers working at  
14 the site.”.

15 **SEC. 305. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.**

16 Section 8(e) of such Act (29 U.S.C. 657(e)) is  
17 amended by inserting after the first sentence the fol-  
18 lowing: “Time spent by an employee participating in or  
19 aiding any such inspection shall be deemed to be hours  
20 worked and no employee shall suffer any loss of wages,  
21 benefits, or other terms and conditions of employment for  
22 having participated in or aided any such inspection.”.

1 **SEC. 306. INVESTIGATIONS OF FATALITIES AND SIGNIFI-**  
2 **CANT INCIDENTS.**

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

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

7 “(1) IN GENERAL.—The Secretary shall inves-  
8 tigate any significant incident or an incident result-  
9 ing in death that occurs in a place of employment.

10 “(2) EVIDENCE PRESERVATION.—If a signifi-  
11 cant incident or an incident resulting in death oc-  
12 curs in a place of employment, the employer shall  
13 promptly notify the Secretary of the incident in-  
14 volved and shall take appropriate measures to pre-  
15 vent the destruction or alteration of any evidence  
16 that would assist in investigating the incident. The  
17 appropriate measures required by this paragraph do  
18 not prevent an employer from taking action on a  
19 worksite to prevent injury to employees or substan-  
20 tial damage to property or to avoid disruption of es-  
21 sential services necessary to public safety, provided  
22 that if an employer takes such action, the employer  
23 shall notify the Secretary of the action in a timely  
24 fashion.

25 “(3) DEFINITIONS.—In this subsection:

1           “(A) INCIDENT RESULTING IN DEATH.—

2           The term ‘incident resulting in death’ means an  
3           incident that results in the death of an em-  
4           ployee.

5           “(B) SIGNIFICANT INCIDENT.—The term  
6           ‘significant incident’ means an incident that re-  
7           sults in the in-patient hospitalization of 2 or  
8           more employees for medical treatment.”.

9   **SEC. 307. PROHIBITION ON UNCLASSIFIED CITATIONS.**

10          Section 9 of the Occupational Safety and Health Act  
11          of 1970 (29 U.S.C. 658) is amended by adding at the end  
12          the following:

13          “(d) No citation for a violation of this Act may be  
14          issued, modified, or settled under this section without a  
15          designation enumerated in section 17 with respect to such  
16          violation.”.

17   **SEC. 308. VICTIMS’ RIGHTS.**

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

21   **“SEC. 9A. VICTIMS’ RIGHTS.**

22          “(a) RIGHTS BEFORE THE SECRETARY.—A victim or  
23          the representative of a victim, shall be afforded the right,  
24          with respect to an inspection or investigation conducted  
25          under section 8 to—

1           “(1) meet with the Secretary regarding the in-  
2           spection or investigation conducted under such sec-  
3           tion before the Secretary’s decision to issue a cita-  
4           tion or take no action;

5           “(2) receive, at no cost, a copy of any citation  
6           or report, issued as a result of such inspection or in-  
7           vestigation, at the same time as the employer re-  
8           ceives such citation or report;

9           “(3) be informed of any notice of contest or ad-  
10          dition of parties to the proceedings filed under sec-  
11          tion 10(c); and

12          “(4) be provided notification of the date and  
13          time or any proceedings, service of pleadings, and  
14          other relevant documents, and an explanation of the  
15          rights of the employer, employee and employee rep-  
16          resentative, and victim to participate in proceedings  
17          conducted under section 10(c).

18          “(b) RIGHTS BEFORE THE COMMISSION.—Upon re-  
19          quest, a victim or representative of a victim shall be af-  
20          forded the right with respect to a work-related bodily in-  
21          jury or death to—

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

24                 “(2) receive pleadings and any decisions relat-  
25                 ing to the proceedings; and

1           “(3) be provided an opportunity to appear and  
2           make a statement in accordance with the rules pre-  
3           scribed by the Commission.

4           “(c) MODIFICATION OF CITATION.—Before entering  
5           into an agreement to withdraw or modify a citation issued  
6           as a result of an inspection or investigation of an incident  
7           under section 8, the Secretary shall notify a victim or rep-  
8           resentative of a victim and provide the victim or represent-  
9           ative of a victim with an opportunity to appear and make  
10          a statement before the parties conducting settlement nego-  
11          tiations. In lieu of an appearance, the victim or represent-  
12          ative of the victim may elect to submit a letter to the Sec-  
13          retary and the parties.

14          “(d) SECRETARY PROCEDURES.—The Secretary shall  
15          establish procedures—

16                 “(1) to inform victims of their rights under this  
17                 section; and

18                 “(2) for the informal review of any claim of a  
19                 denial of such a right.

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

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

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

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

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

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

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

15          “(1) an employee, including a former employee,  
16          who has sustained a work-related injury or illness  
17          that is the subject of an inspection or investigation  
18          conducted under section 8; or

19          “(2) a family member (as further defined by  
20          the Secretary) of a victim described in paragraph  
21          (1), if—

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

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

6 **SEC. 309. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

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

9           (1) in the first sentence—

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

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

18           (C) by inserting after “files a notice with  
19           the Secretary alleging” the following: “that the  
20           citation fails properly to designate the violation  
21           as serious, willful, or repeated, that the pro-  
22           posed penalty is not adequate, or”;

23           (2) by inserting after the first sentence, the fol-  
24           lowing: “The pendency of a contest before the Com-  
25           mission shall not bar the Secretary from inspecting



1 a place of employment or from issuing a citation  
2 under section 9.”; and

3 (3) by amending the last sentence—

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

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

9 **SEC. 310. CORRECTION OF SERIOUS, WILLFUL, OR RE-**  
10 **PEATED VIOLATIONS PENDING CONTEST AND**  
11 **PROCEDURES FOR A STAY.**

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

15 “(d) CORRECTION OF SERIOUS, WILLFUL, OR RE-  
16 PEATED VIOLATIONS PENDING CONTEST AND PROCE-  
17 DURES FOR A STAY.—

18 “(1) PERIOD PERMITTED FOR CORRECTION OF  
19 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—  
20 For each violation which the Secretary designates as  
21 serious, willful, or repeated, the period permitted for  
22 the correction of the violation shall begin to run  
23 upon receipt of the citation.

24 “(2) FILING OF A MOTION OF CONTEST.—The  
25 filing of a notice of contest by an employer—

1           “(A) shall not operate as a stay of the pe-  
2           riod for correction of a violation designated as  
3           serious, willful, or repeated; and

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

7           “(3) CRITERIA AND RULES OF PROCEDURE FOR  
8           STAYS.—

9           “(A) MOTION FOR A STAY.—An employer  
10          that receives a citation alleging a violation des-  
11          ignated as serious, willful, or repeated and that  
12          files a notice of contest to the citation asserting  
13          that the time set for abatement of the alleged  
14          violation is unreasonable or challenging the ex-  
15          istence of the alleged violation may file with the  
16          Commission a motion to stay the period for the  
17          abatement of the violation.

18          “(B) CRITERIA.—In determining whether  
19          a stay should be issued on the basis of a motion  
20          filed under subparagraph (A), the Commission  
21          may grant a stay only if the employer has dem-  
22          onstrated—

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

1                   “(ii) that a stay will not adversely af-  
2                   fect the health and safety of workers.

3                   “(C) RULES OF PROCEDURE.—The Com-  
4                   mission shall develop rules of procedure for con-  
5                   ducting a hearing on a motion filed under sub-  
6                   paragraph (A) on an expedited basis. At a min-  
7                   imum, such rules shall provide:

8                   “(i) That a hearing before an admin-  
9                   istrative law judge shall occur not later  
10                  than 15 days following the filing of the  
11                  motion for a stay (unless extended at the  
12                  request of the employer), and shall provide  
13                  for a decision on the motion not later than  
14                  15 days following the hearing (unless ex-  
15                  tended at the request of the employer).

16                  “(ii) That a decision of an administra-  
17                  tive law judge on a motion for stay is ren-  
18                  dered on a timely basis.

19                  “(iii) That if a party is aggrieved by  
20                  a decision issued by an administrative law  
21                  judge regarding the stay, such party has  
22                  the right to file an objection with the Com-  
23                  mission not later than 5 days after receipt  
24                  of the administrative law judge’s decision.  
25                  Within 10 days after receipt of the objec-

1           tion, a Commissioner, if a quorum is seat-  
2           ed pursuant to section 12(f), shall decide  
3           whether to grant review of the objection.  
4           If, within 10 days after receipt of the ob-  
5           jection, no decision is made on whether to  
6           review the decision of the administrative  
7           law judge, the Commission declines to re-  
8           view such decision, or no quorum is seated,  
9           the decision of the administrative law  
10          judge shall become a final order of the  
11          Commission. If the Commission grants re-  
12          view of the objection, the Commission shall  
13          issue a decision regarding the stay not  
14          later than 30 days after receipt of the ob-  
15          jection. If the Commission fails to issue  
16          such decision within 30 days, the decision  
17          of the administrative law judge shall be-  
18          come a final order of the Commission.

19                 “(iv) For notification to employees or  
20                 representatives of affected employees of re-  
21                 quests for such hearings and shall provide  
22                 affected employees or representatives of af-  
23                 fected employees an opportunity to partici-  
24                 pate as parties to such hearings.”.

1 **SEC. 311. INACTION BY THE REVIEW COMMISSION.**

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

5 “(e) INACTION BY REVIEW COMMISSION.—

6 “(1) IN GENERAL.—A decision or order issued  
7 by an administrative law judge of the Commission  
8 for which a petition for review has been filed in a  
9 timely manner, and for which 1 year after the Com-  
10 mission has accepted such petition and directed that  
11 such petition be reviewed by the Commission, the  
12 Commission has failed to issue a final decision or  
13 order because the Commission lacks a quorum—

14 “(A) shall be deemed a final decision or  
15 order of the Commission; and

16 “(B) may be appealed pursuant to section  
17 11(a).

18 “(2) EXCEPTION.—Paragraph (1) shall not  
19 apply with respect to motions to stay filed under  
20 subsection (d)(3).”.

21 **SEC. 312. CONFORMING AMENDMENTS.**

22 (a) VIOLATIONS DESIGNATED AS SERIOUS, WILL-  
23 FUL, OR REPEATED.—The first sentence of section 10(b)  
24 of the Occupational Safety and Health Act of 1970 (29  
25 U.S.C. 659(b)) is amended by inserting “, with the excep-

1 tion of violations designated as serious, willful, or re-  
2 peated,” after “(which period shall not begin to run”.

3 (b) JUDICIAL REVIEW.—The first sentence of section  
4 11(a) of the Occupational Safety and Health Act of 1970  
5 (29 U.S.C. 660(a)) is amended—

6 (1) by inserting “(or the failure of the Commis-  
7 sion, including an administrative law judge, to make  
8 a timely decision on a petition for a stay or other  
9 review)” after “an order”;

10 (2) by striking “subsection (c)” and inserting  
11 “subsection (c), (d), or (e)”;

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

15 (c) FAILURE TO CORRECT VIOLATIONS.—Section  
16 17(d) of the Occupational Safety and Health Act of 1970  
17 (29 U.S.C. 666(d)) is amended to read as follows:

18 “(d) Any employer who fails to correct a violation  
19 designated by the Secretary as serious, willful, or repeated  
20 and for which a citation has been issued under section 9(a)  
21 within the period permitted for its correction (and a stay  
22 has not been issued by the Commission under section  
23 10(d)) may be assessed a civil penalty of not more than  
24 \$7,000 for each day during which such failure or violation  
25 continues. Any employer who fails to correct any other vio-

1 lation for which a citation has been issued under section  
2 9(a) of this title within the period permitted for its correc-  
3 tion (which period shall not begin to run until the date  
4 of the final order of the Commission in the case of any  
5 review proceeding under section 10 initiated by the em-  
6 ployer in good faith and not solely for delay of avoidance  
7 of penalties) may be assessed a civil penalty of not more  
8 than \$7,000 for each day during which such failure or vio-  
9 lation continues.”.

10 **SEC. 313. CIVIL PENALTIES.**

11 (a) IN GENERAL.—Section 17 of the Occupational  
12 Safety and Health Act of 1970 (29 U.S.C. 666) is amend-  
13 ed—

14 (1) in subsection (a)—

15 (A) by striking “\$70,000” and inserting  
16 “\$126,749”;

17 (B) by striking “\$5,000” and inserting  
18 “\$9,054”; and

19 (C) by adding at the end the following: “In  
20 determining whether a violation is repeated, the  
21 Secretary or the Commission shall consider the  
22 employer’s history of violations under this Act  
23 and under State occupational safety and health  
24 plans established under section 18. If such a  
25 willful or repeated violation caused or contrib-

1           uted to the death of an employee, such civil  
2           penalty amounts shall be increased to not more  
3           than \$250,000 for each such violation, but not  
4           less than \$50,000 for each such violation, ex-  
5           cept that for an employer with 25 or fewer em-  
6           ployees such penalty shall not be less than  
7           \$25,000 for each such violation.”;

8           (2) in subsection (b)—

9                   (A) by striking “\$7,000” and inserting  
10                   “\$12,675”; and

11                   (B) by adding at the end the following: “If  
12                   such a violation caused or contributed to the  
13                   death of an employee, such civil penalty  
14                   amounts shall be increased to not more than  
15                   \$50,000 for each such violation, but not less  
16                   than \$20,000 for each such violation, except  
17                   that for an employer with 25 or fewer employ-  
18                   ees such penalty shall not be less than \$10,000  
19                   for each such violation.”;

20           (3) in subsection (c), by striking “\$7,000” and  
21           inserting “\$12,675”;

22           (4) in subsection (d), as amended by section  
23           312(c), by striking “\$7,000” each place it occurs  
24           and inserting “\$12,675”;



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

5           (6) in subsection (j) (as so redesignated) by  
6           striking “\$7,000” and inserting “\$12,675”.

7           (b) INFLATION ADJUSTMENT.—Section 17 is further  
8           amended by inserting after subsection (d) the following:

9           “(e) Amounts provided under this section for civil  
10          penalties shall be adjusted by the Secretary once each  
11          year, not later than January 15 of such year, to account  
12          for the percentage increase or decrease in the Consumer  
13          Price Index for all urban consumers during such period,  
14          consistent with the requirements of the Federal Civil Pen-  
15          alties Inflation Adjustment Act of 1990 (28 U.S.C. 2461  
16          note).”.

17       **SEC. 314. CRIMINAL PENALTIES.**

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

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

23               “(f)(1) Any employer who knowingly violates any  
24               standard, rule, or order promulgated under section 6 of  
25               this Act, or of any regulation prescribed under this Act,

1 and that violation caused or significantly contributed to  
2 the death of any employee, shall, upon conviction, be pun-  
3 ished by a fine in accordance with title 18, United States  
4 Code, or by imprisonment for not more than 10 years, or  
5 both, except that if the conviction is for a violation com-  
6 mitted after a first conviction of such person under this  
7 subsection or subsection (i), punishment shall be by a fine  
8 in accordance title 18, United States Code, or by imprison-  
9 ment for not more than 20 years, or by both.

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

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

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

22 (3) in subsection (h) (as redesignated by section  
23 310), by striking “fine of not more than \$10,000, or  
24 by imprisonment for not more than six months,”  
25 and inserting “fine in accordance with title 18,

1 United States Code, or by imprisonment for not  
2 more than 5 years,”; and

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

5 “(k)(1) Any employer who knowingly violates any  
6 standard, rule, or order promulgated under section 6, or  
7 any regulation prescribed under this Act, and that violation caused or significantly contributed to serious bodily  
8 harm to any employee but does not cause death to any  
9 employee, shall, upon conviction, be punished by a fine in  
10 accordance with title 18, United States Code, or by imprisonment for not more than 5 years, or by both, except that  
11 if the conviction is for a violation committed after a first  
12 conviction of such person under this subsection or subsection (e), punishment shall be by a fine in accordance  
13 with title 18, United States Code, or by imprisonment for  
14 not more than 10 years, or by both.

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

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

24 “(A) a substantial risk of death;

25 “(B) protracted unconsciousness;

1           “(C) protracted and obvious physical disfigure-  
2           ment; or

3           “(D) protracted loss or impairment, either tem-  
4           porary or permanent, of the function of a bodily  
5           member, organ, or mental faculty.”.

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

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

13 **SEC. 315. PREJUDGMENT INTEREST.**

14           Section 17(n) of the Occupational Safety and Health  
15 Act of 1970 (29 U.S.C. 666(n)) (as redesignated by sec-  
16 tion 310) is amended by adding at the end the following:  
17 “Pre-final order interest on such penalties shall begin to  
18 accrue on the date the party contests a citation issued  
19 under this Act, and shall end upon the issuance of the  
20 final order. Such pre-final order interest shall be cal-  
21 culated at the current underpayment rate determined by  
22 the Secretary of the Treasury pursuant to section 6621  
23 of the Internal Revenue Code of 1986, and shall be com-  
24 pounded daily. Post-final order interest shall begin to ac-  
25 crue 30 days after the date a final order of the Commis-

1 sion or the court is issued, and shall be charged at the  
2 rate of 8 percent per year.”.

## 3 **TITLE IV—STATE PLANS**

### 4 **SEC. 401. CONCURRENT ENFORCEMENT AUTHORITY AND** 5 **REVIEW OF STATE OCCUPATIONAL SAFETY** 6 **AND HEALTH PLANS.**

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

9 (1) by amending subsection (f) to read as fol-  
10 lows:

11 “(f)(1) The Secretary shall, on the basis of reports  
12 submitted by the State agency and the Secretary’s own  
13 inspections, make a continuing evaluation of the manner  
14 in which each State that has a plan approved under this  
15 section is carrying out such plan. Such evaluation shall  
16 include an assessment of whether the State continues to  
17 meet the requirements of subsection (c) of this section and  
18 any other criteria or indices of effectiveness specified by  
19 the Secretary in regulations. Whenever the Secretary  
20 finds, on the basis of such evaluation, that in the adminis-  
21 tration of the State plan there is a failure to comply sub-  
22 stantially with any provision of the State plan (or any as-  
23 surance contained therein), the Secretary shall make an  
24 initial determination of whether the failure is of such a  
25 nature that the plan should be withdrawn or whether the

1 failure is of such a nature that the State should be given  
2 the opportunity to remedy the deficiencies, and provide no-  
3 tice of the Secretary's findings and initial determination.

4       “(2) If the Secretary makes an initial determination  
5 to reassert and exercise concurrent enforcement authority  
6 while the State is given an opportunity to remedy the defi-  
7 ciencies, the Secretary shall afford the State an oppor-  
8 tunity for a public hearing within 15 days of such request,  
9 provided that such request is made not later than 10 days  
10 after Secretary's notice to the State. The Secretary shall  
11 review and consider the testimony, evidence, or written  
12 comments, and not later than 30 days following such hear-  
13 ing, make a determination to affirm, reverse, or modify  
14 the Secretary's initial determination to reassert and exer-  
15 cise concurrent enforcement authority under sections 8, 9,  
16 10, 13, and 17 with respect to standards promulgated  
17 under section 6 and obligations under section 5(a). Fol-  
18 lowing such a determination by the Secretary, or in the  
19 event that the State does not request a hearing within the  
20 timeframe set forth in this paragraph, the Secretary may  
21 reassert and exercise such concurrent enforcement author-  
22 ity, while a final determination is pending under para-  
23 graph (3) or until the Secretary has determined that the  
24 State has remedied the deficiencies as provided under  
25 paragraph (4). Such determination shall be published in

1 the Federal Register. The procedures set forth in section  
2 18(g) shall not apply to a determination by the Secretary  
3 to reassert and exercise such concurrent enforcement au-  
4 thority.

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

19       “(4) If the Secretary makes a determination that the  
20 State should be provided the opportunity to remedy the  
21 deficiencies, the Secretary shall provide the State an op-  
22 portunity to respond to the Secretary’s findings and the  
23 opportunity to remedy such deficiencies within a time pe-  
24 riod established by the Secretary, not to exceed 1 year.  
25 The Secretary may extend and revise the time period to

1 remedy such deficiencies, if the State’s legislature is not  
2 in session during this 1-year time period, or if the State  
3 demonstrates that it is not feasible to correct the defi-  
4 ciencies in the time period set by the Secretary, and the  
5 State has a plan to correct the deficiencies within a rea-  
6 sonable time period. If the Secretary finds that the State  
7 agency has failed to remedy such deficiencies within the  
8 time period specified by the Secretary and that the State  
9 plan continues to fail to comply substantially with a provi-  
10 sion of the State plan, the Secretary shall withdraw the  
11 State plan as provided for in paragraph (3).”;

12           (2) by adding at the end the following new sub-  
13           section:

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

22                   “(1) the effectiveness of the Secretary’s over-  
23                   sight of State plans, including the indices of effec-  
24                   tiveness used by the Secretary;



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

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

10          “(4) whether State plans are as effective as the  
11          Federal program in preventing occupational injuries,  
12          illnesses and deaths, and investigating discrimina-  
13          tion complaints, through an evaluation of at least 20  
14          percent of approved State plans, and which shall  
15          cover—

16                 “(A) enforcement effectiveness, including  
17                 handling of fatalities, serious incidents and  
18                 complaints, compliance with inspection proce-  
19                 dures, hazard recognition, verification of abate-  
20                 ment, violation classification, citation and pen-  
21                 alty issuance, including appropriate use of will-  
22                 ful and repeat citations, and employee involve-  
23                 ment;

24                 “(B) inspections, the number of pro-  
25                 grammed health and safety inspections at pri-

1           vate and public sector establishments, and  
2           whether the State targets the highest hazard  
3           private sector work sites and facilities in that  
4           State;

5           “(C) budget and staffing, including wheth-  
6           er the State is providing adequate budget re-  
7           sources to hire, train and retain sufficient num-  
8           bers of qualified staff, including timely filling of  
9           vacancies;

10          “(D) administrative review, including the  
11          quality of decisions, consistency with Federal  
12          precedence, transparency of proceedings, deci-  
13          sions and records are available to the public,  
14          adequacy of State defense, and whether the  
15          State appropriately appeals adverse decisions;

16          “(E) anti-discrimination, including whether  
17          discrimination complaints are processed in a  
18          timely manner, whether supervisors and inves-  
19          tigators are properly trained to investigate dis-  
20          crimination complaints, whether a case file re-  
21          view indicates merit cases are properly identi-  
22          fied consistent with Federal policy and proce-  
23          dure, whether employees are notified of their  
24          rights, and whether there is an effective process

1 for employees to appeal the dismissal of a com-  
2 plaint;

3 “(F) program administration, including  
4 whether the State’s standards and policies are  
5 at least as effective as the Federal program and  
6 are updated in a timely manner, and whether  
7 National Emphasis Programs that are applica-  
8 ble in such States are adopted and implemented  
9 in a manner that is at least as effective as the  
10 Federal program;

11 “(G) whether the State plan satisfies the  
12 requirements for approval set forth in this sec-  
13 tion and its implementing regulations; and

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

20 **SEC. 402. EVALUATION OF REPEATED VIOLATIONS IN**  
21 **STATE PLANS.**

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

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

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

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

5 “(9) provides that in determining whether a  
6 violation is repeated, the State shall consider the  
7 employer’s violations within the State, in conjunction  
8 with the employer’s history of violations under other  
9 States’ occupational safety and health plans ap-  
10 proved by the Secretary and the employer’s history  
11 of violations in those States where the Secretary has  
12 jurisdiction under this Act, in a manner that is at  
13 least as effective as provided under section 17.”.

14 **TITLE V—NATIONAL INSTITUTE**  
15 **FOR OCCUPATIONAL SAFETY**  
16 **AND HEALTH**

17 **SEC. 501. HEALTH HAZARD EVALUATIONS BY THE NA-**  
18 **TIONAL INSTITUTE FOR OCCUPATIONAL**  
19 **SAFETY AND HEALTH.**

20 Section 20(a)(6) of the Occupational Safety and  
21 Health Act of 1970 (29 U.S.C. 669(a)(6)) is amended by  
22 striking the second sentence and inserting the following:  
23 “The Secretary shall determine following a written request  
24 by any employer, authorized representative of current or  
25 former employees, physician, other Federal agency, or

1 State or local health department, specifying with reason-  
2 able particularity the grounds on which the request is  
3 made, whether any substance normally found in the place  
4 of employment has potentially toxic effects in such con-  
5 centrations as used or found or whether any physical  
6 agents, equipment, or working condition found or used has  
7 potentially hazardous effects; and shall submit such deter-  
8 mination both to employers and affected employees as  
9 soon as possible.”.

## 10 **TITLE VI—EFFECTIVE DATE**

### 11 **SEC. 601. EFFECTIVE DATE.**

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

16 (b) EXCEPTION FOR STATES AND POLITICAL SUB-  
17 DIVISIONS.—The following are exceptions to the effective  
18 date described in subsection (a):

19 (1) A State that has a State plan approved  
20 under section 18 (29 U.S.C. 667) shall amend its  
21 State plan to conform with the requirements of this  
22 Act and the amendments made by this Act not later  
23 than 12 months after the date of the enactment of  
24 this Act. The Secretary of Labor may extend the pe-  
25 riod for a State to make such amendments to its

1 State plan by not more than 12 months, if the  
2 State's legislature is not in session during the 12-  
3 month period beginning with the date of the enact-  
4 ment of this Act. Such amendments to the State  
5 plan shall take effect not later than 90 days after  
6 the adoption of such amendments by such State.

7 (2) This Act and the amendments made by this  
8 Act shall take effect not later than 36 months after  
9 the date of the enactment of this Act with respect  
10 to a workplace of a State, or a political subdivision  
11 of a State, that does not have a State plan approved  
12 under section 18 (29 U.S.C. 667).

○