

116TH CONGRESS
1ST SESSION

H. R. 1074

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2019

Mr. COURTNEY (for himself, Mr. SCOTT of Virginia, Ms. ADAMS, Ms. BONAMICI, Mr. GARAMENDI, Mr. DESAULNIER, Ms. WILSON of Florida, Mr. TAKANO, Mr. GRIJALVA, Mr. ESPAILLAT, Mr. SABLAN, Mr. NORCROSS, Mr. LEVIN of Michigan, Ms. OMAR, Mr. MORELLE, Ms. WILD, Mr. NADLER, Mr. PALLONE, Ms. SCHAKOWSKY, Ms. NORTON, Ms. TITUS, Mr. POCAN, Mr. LYNCH, Ms. MOORE, Ms. LEE of California, Mr. VISCLOSKY, Mr. KRISHNAMOORTHY, and Mrs. LEE of Nevada) introduced the following bill; which was referred to the Committee on Education and Labor

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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

Sec. 1. Short title; table of contents.

**TITLE I—COVERAGE OF PUBLIC EMPLOYEES, AUTHORIZED EM-
PLOYEE REPRESENTATIVES, VOLUNTARY EMERGENCY RE-
SPONDERS, 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**

PART A—DUTIES AND STANDARDS

Sec. 301. General duty of employers.

Sec. 302. Occupational safety and health standards.

PART B—INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

Sec. 311. Posting of employee rights.

Sec. 312. Employer reporting of work-related injuries, illness, deaths, and hos-
pitalizations; prohibition on discouraging employee reporting.

Sec. 313. No loss of employee pay for inspections.

Sec. 314. Investigations of fatalities and significant incidents.

Sec. 315. Recordkeeping.

PART C—CITATIONS

Sec. 321. Period for issuance of a citation.

Sec. 322. Prohibition on unclassified citations.

PART D—RIGHTS OF VICTIMS AND FAMILIES

Sec. 331. Rights of victims and families.

PART E—PROCEDURE FOR ENFORCEMENT

Sec. 341. Right to contest citations and penalties.

Sec. 342. Correction of serious, willful, or repeated violations pending contest
and procedures for a stay.

Sec. 343. Inaction by the Review Commission.

Sec. 344. Conforming amendments.

PART F—PENALTIES

- Sec. 351. Civil penalties.
 Sec. 352. Criminal penalties.
 Sec. 353. 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.
 Sec. 502. Training and employee education.

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-

1 Occupational Safety and Health Act of 1970 (29 U.S.C.
2 667).

3 **SEC. 102. AUTHORIZED EMPLOYEE REPRESENTATIVES.**

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

7 “(15) AUTHORIZED EMPLOYEE REPRESENTA-
8 TIVE.—The term ‘authorized employee representa-
9 tive’—

10 “(A) means any person or organization
11 that for the purposes of this Act represents not
12 less than one employee at an establishment, fac-
13 tory, plant, construction site, or other work-
14 place, or other environment where work is per-
15 formed by an employee for an employer; and

16 “(B) includes a representative authorized
17 by employees, a representative of employees, or
18 any other representative of an employee under
19 this Act.”.

20 **SEC. 103. APPLICATION OF ACT.**

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

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

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

3 “(1) If a Federal agency has promulgated and is en-
4 forcing a standard or regulation affecting occupational
5 safety or health of some or all of the employees within
6 that agency’s regulatory jurisdiction, and the Secretary
7 determines that such a standard or regulation as promul-
8 gated and the manner in which the standard or regulation
9 is being enforced provides protection to those employees
10 that is at least as effective as the protection provided to
11 those employees by this Act and the Secretary’s enforce-
12 ment of this Act, the Secretary may publish a certification
13 notice in the Federal Register. The notice shall set forth
14 that determination and the reasons for the determination
15 and certify that the Secretary has ceded jurisdiction to
16 that Federal agency with respect to the specified standard
17 or regulation affecting occupational safety or health. In
18 determining whether to cede jurisdiction to a Federal
19 agency, the Secretary shall seek to avoid duplication of,
20 and conflicts between, health and safety requirements.
21 Such certification shall remain in effect unless and until
22 rescinded by the Secretary.

23 “(2) The Secretary shall, by regulation, establish pro-
24 cedures by which any person who may be adversely af-
25 fected by a decision of the Secretary certifying that the

1 Secretary has ceded jurisdiction to another Federal agency
2 pursuant to paragraph (1) may petition the Secretary to
3 rescind a certification notice under such paragraph. Upon
4 receipt of such a petition, the Secretary shall investigate
5 the matter involved and shall, not later than 90 days after
6 the receipt of the petition, publish a decision with respect
7 to the petition in the Federal Register.

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

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

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

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

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

4 **TITLE II—INCREASING**
5 **WHISTLEBLOWER PROTECTIONS**

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

7 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the
8 Occupational Safety and Health Act of 1970 (29 U.S.C.
9 660(c)(1)) is amended—

10 (1) by striking “discharge” and all that follows
11 through “because such” and inserting the following:
12 “discharge or cause to be discharged, or in any man-
13 ner discriminate against or cause to be discriminated
14 against, any employee because—

15 “(A) such”;

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

18 “(B) such employee has”;

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

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

25 “(D) of the exercise”; and

1 (4) by inserting before the period at the end the
2 following: “, including the reporting of any injury,
3 illness, or unsafe condition to the employer, agent of
4 the employer, safety and health committee involved,
5 or employee safety and health representative in-
6 volved”.

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

10 “(2) PROHIBITION OF RETALIATION.—(A) No
11 person shall discharge, or cause to be discharged, or
12 in any manner discriminate against, or cause to be
13 discriminated against, an employee for refusing to
14 perform the employee’s duties if the employee has a
15 reasonable apprehension that performing such duties
16 would result in serious injury to, or serious impair-
17 ment of the health of, the employee or other employ-
18 ees.

19 “(B) For purposes of subparagraph (A), the
20 circumstances causing the employee’s good-faith be-
21 lief that performing such duties would pose a safety
22 or health hazard shall be of such a nature that a
23 reasonable person, under the circumstances con-
24 fronting the employee, would conclude that there is
25 such a hazard. In order to qualify for protection

1 under this paragraph, the employee, when prac-
2 ticable, shall have communicated or attempted to
3 communicate the safety or health concern to the em-
4 ployer and have not received from the employer a re-
5 sponse reasonably calculated to allay such concern.”.

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

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

15 “(4) STATUTE OF LIMITATIONS.—

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

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

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

24 “(B) REPEAT VIOLATION.—Except in
25 cases when the employee has been discharged,

1 a violation of paragraph (1) or (2) shall be con-
2 sidered to have occurred on the last date an al-
3 leged repeat violation occurred.

4 “(5) INVESTIGATION.—

5 “(A) IN GENERAL.—An employee may,
6 within the time period required under para-
7 graph (4)(A), file a complaint with the Sec-
8 retary alleging a violation of paragraph (1) or
9 (2). If the complaint alleges a prima facie case,
10 the Secretary shall conduct an investigation of
11 the allegations in the complaint, which—

12 “(i) shall include—

13 “(I) interviewing the complain-
14 ant;

15 “(II) providing the respondent an
16 opportunity to—

17 “(aa) submit to the Sec-
18 retary a written response to the
19 complaint; and

20 “(bb) meet with the Sec-
21 retary to present statements from
22 witnesses or provide evidence;
23 and

24 “(III) providing the complainant
25 an opportunity to—

1 “(aa) receive any statements
2 or evidence provided to the Sec-
3 retary;

4 “(bb) meet with the Sec-
5 retary; and

6 “(cc) rebut any statements
7 or evidence; and

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

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

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

16 “(ii) issue a decision granting or de-
17 nying relief.

18 “(6) PRELIMINARY ORDER FOLLOWING INVES-
19 TIGATION.—If, after completion of an investigation
20 under paragraph (5)(A), the Secretary finds reason-
21 able cause to believe that a violation of paragraph
22 (1) or (2) has occurred, the Secretary shall issue a
23 preliminary order providing relief authorized under
24 paragraph (14) at the same time the Secretary
25 issues a decision under paragraph (5)(B). If a de

1 novo hearing is not requested within the time period
2 required under paragraph (7)(A)(i), such prelimi-
3 nary order shall be deemed a final order of the Sec-
4 retary and is not subject to judicial review.

5 “(7) HEARING.—

6 “(A) REQUEST FOR HEARING.—

7 “(i) IN GENERAL.—A de novo hearing
8 on the record before an administrative law
9 judge may be requested—

10 “(I) by the complainant or re-
11 spondent within 30 days after receiv-
12 ing notification of a decision granting
13 or denying relief issued under para-
14 graph (5)(B) or a preliminary order
15 under paragraph (6), respectively;

16 “(II) by the complainant within
17 30 days after the date the complaint
18 is dismissed without investigation by
19 the Secretary under paragraph (5)(A);
20 or

21 “(III) by the complainant within
22 120 days after the date of filing the
23 complaint, if the Secretary has not
24 issued a decision under paragraph
25 (5)(B).

1 “(ii) REINSTATEMENT ORDER.—The
2 request for a hearing shall not operate to
3 stay any preliminary reinstatement order
4 issued under paragraph (6).

5 “(B) PROCEDURES.—

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

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

23 “(iii) DECISION.—The administrative
24 law judge shall issue a decision not later
25 than 90 days after the date on which a

1 hearing was requested under this para-
2 graph and promptly notify, in writing, the
3 parties and the Secretary of such decision,
4 including the findings of fact and conclu-
5 sions of law. If the administrative law
6 judge finds that a violation of paragraph
7 (1) or (2) has occurred, the judge shall
8 issue an order for relief under paragraph
9 (14). If review under paragraph (8) is not
10 timely requested, such order shall be
11 deemed a final order of the Secretary that
12 is not subject to judicial review.

13 “(8) ADMINISTRATIVE APPEAL.—

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

22 “(B) STANDARD OF REVIEW.—In review-
23 ing the decision and order of the administrative
24 law judge, the review board shall affirm the de-
25 cision and order if it is determined that the fac-

1 tual findings set forth therein are supported by
2 substantial evidence and the decision and order
3 are made in accordance with applicable law.

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

16 “(9) SETTLEMENT IN THE ADMINISTRATIVE
17 PROCESS.—

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

23 “(B) PUBLIC POLICY CONSIDERATIONS.—
24 Neither the Secretary, an administrative law
25 judge, nor the review board conducting a hear-

1 ing under this subsection shall accept a settle-
2 ment that contains conditions conflicting with
3 the rights protected under this Act or that are
4 contrary to public policy, including a restriction
5 on a complainant’s right to future employment
6 with employers other than the specific employ-
7 ers named in a complaint.

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

10 “(A) IN GENERAL.—The complainant may
11 bring a de novo action described in subpara-
12 graph (B) if—

13 “(i) an administrative law judge has
14 not issued a decision and order within the
15 90-day time period required under para-
16 graph (7)(B)(iii); or

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

21 “(B) DE NOVO ACTION.—Such de novo ac-
22 tion may be brought at law or equity in the
23 United States district court for the district
24 where a violation of paragraph (1) or (2) alleg-
25 edly occurred or where the complainant resided

1 on the date of such alleged violation. The court
2 shall have jurisdiction over such action without
3 regard to the amount in controversy and to
4 order appropriate relief under paragraph (14).
5 Such action shall, at the request of either party
6 to such action, be tried by the court with a
7 jury.

8 “(11) JUDICIAL REVIEW.—

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

1 “(B) LIMITATION ON COLLATERAL AT-
2 TACK.—An order and decision with respect to
3 which review may be obtained under subpara-
4 graph (A) shall not be subject to judicial review
5 in any criminal or other civil proceeding.

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

17 “(13) BURDENS OF PROOF.—

18 “(A) CRITERIA FOR DETERMINATION.—In
19 making a determination or adjudicating a com-
20 plaint pursuant to this subsection, the Sec-
21 retary, administrative law judge, review board,
22 or a court may determine that a violation of
23 paragraph (1) or (2) has occurred only if the
24 complainant demonstrates that any conduct de-
25 scribed in paragraph (1) or (2) with respect to

1 the complainant was a contributing factor in
2 the adverse action alleged in the complaint.

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

11 “(14) RELIEF.—

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

21 “(i) affirmative action to abate the
22 violation;

23 “(ii) reinstatement without loss of po-
24 sition or seniority, and restoration of the
25 terms, rights, conditions, and privileges as-

1 sociated with the complainant’s employ-
2 ment, including opportunities for pro-
3 motions to positions with equivalent or bet-
4 ter compensation for which the complain-
5 ant is qualified;

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

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

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

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

3 “(i) reasonable attorneys’ fees; and

4 “(ii) costs (including expert witness
5 fees) reasonably incurred, as determined
6 by the Secretary, administrative law judge,
7 review board, or court, respectively, in con-
8 nection with bringing the complaint upon
9 which the order was issued.

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

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

20 “(17) ELECTION OF VENUE.—

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

1 “(i) the Secretary under paragraph
2 (5); or

3 “(ii) a State plan administrator in
4 such State.

5 “(B) REFERRALS.—If—

6 “(i) the Secretary receives a complaint
7 pursuant to subparagraph (A)(i), the Sec-
8 retary shall not refer such complaint to a
9 State plan administrator for resolution; or

10 “(ii) a State plan administrator re-
11 ceives a complaint pursuant to subpara-
12 graph (A)(ii), the State plan administrator
13 shall not refer such complaint to the Sec-
14 retary for resolution.”.

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

19 **TITLE III—IMPROVING REPORT-**
20 **ING, INSPECTION, AND EN-**
21 **FORCEMENT**

22 **PART A—DUTIES AND STANDARDS**

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

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

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

3 “(1) shall furnish employment and a place of
4 employment that are free from recognized hazards
5 that are causing or are likely to cause death or seri-
6 ous physical harm and that the employer creates or
7 controls or to which the employer exposes any em-
8 ployee of the employer or any other person per-
9 forming work at the place of employment; and”;

10 (2) by adding at the end the following new sub-
11 section:

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

15 **SEC. 302. OCCUPATIONAL SAFETY AND HEALTH STAND-**
16 **ARDS.**

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

19 (1) in subsection (a)—

20 (A) by striking “Without regard” and in-
21 serting “(1) Without regard”;

22 (B) by striking “chapter 5” and inserting
23 “chapters 5 and 6”;

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

1 “(A) as soon as practicable”;

2 (D) by striking “In the” and inserting the
3 following:

4 “(2) In the”;

5 (E) by striking “designated employees.”
6 and inserting “designated employees; and”;

7 (F) by adding at the end of paragraph (1)
8 (as designated by subparagraph (A)) the fol-
9 lowing:

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

18 “(i) the standard has been superseded
19 by a standard promulgated pursuant to
20 subsection (b); or

21 “(ii) the Secretary determines such
22 update would not result in improved health
23 or safety for specifically designated em-
24 ployees.”; and

1 (G) in paragraph (2) (as designated by
2 subparagraph (D)), by inserting “including na-
3 tional consensus standards, or in the event of a
4 consolidation of national consensus standards,”
5 after “conflict among any such standards,”;
6 and

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

8 “(h) No standard, rule, or regulation promulgated
9 under this Act shall reduce the protection afforded by an
10 existing health or safety standard, rule, regulation, or na-
11 tional consensus standard.”.

12 **PART B—INSPECTIONS, INVESTIGATIONS, AND**
13 **RECORDKEEPING**

14 **SEC. 311. POSTING OF EMPLOYEE RIGHTS.**

15 Section 8(c)(1) of the Occupational Safety and
16 Health Act of 1970 (29 U.S.C. 657(c)(1)) is amended by
17 adding at the end the following new sentence: “Such regu-
18 lations shall include provisions requiring employers to post
19 for employees information on the protections afforded
20 under section 11(c).”.

1 **SEC. 312. EMPLOYER REPORTING OF WORK-RELATED INJU-**
2 **RIES, ILLNESS, DEATHS, AND HOSPITALIZA-**
3 **TIONS; PROHIBITION ON DISCOURAGING EM-**
4 **PLOYEE REPORTING.**

5 Section 8(c)(2) of such Act (29 U.S.C. 657(c)(2)) is
6 amended by adding at the end the following: “Such regula-
7 tions shall contain the following:

8 “(A) A requirement that employers
9 promptly notify the Secretary of any work-re-
10 lated death or work-related injury or illness
11 that results in the in-patient hospitalization of
12 any employee for medical treatment, amputa-
13 tion, or loss of an eye.

14 “(B) A prohibition on the adoption or im-
15 plementation by employers of policies or prac-
16 tices that have the effect of discouraging accu-
17 rate recordkeeping and the reporting of work-
18 related injuries or illnesses by any employee, or
19 in any manner discriminates or provides for ad-
20 verse action against any employee for reporting
21 a work-related injury or illness.

22 “(C) A requirement that, at a minimum,
23 employers subject to the requirements of sec-
24 tions 1904.41 and 1902.7(d) of title 29, Code
25 of Federal Regulations (as amended by the
26 final regulations of the Department of Labor

1 published in the Federal Register on May 12,
2 2016 (81 Fed. Reg. 29624 et seq.)) shall, on at
3 least an annual basis, electronically report to
4 the Secretary information from the records of
5 work-related deaths, injuries, and illnesses re-
6 quired to be made and maintained under this
7 paragraph, which shall include the information
8 required to be made and maintained in accord-
9 ance with such sections 1904.41 and 1902.7(d),
10 and a requirement that the Secretary make
11 such reports available to the public in a search-
12 able format.

13 “(D) A requirement that each site-control-
14 ling employer keep, maintain, and make avail-
15 able a site log for all recordable injuries and ill-
16 nesses occurring for any employee at each work
17 site for which the employer is the site-control-
18 ling employer, including employees of the site-
19 controlling employer and others who are per-
20 forming work at such site (including inde-
21 pendent contractors). For purposes of this sub-
22 paragraph, the term ‘site-controlling employer’
23 means the employer that has primary control
24 over a work site at which employees of more
25 than one employer work, such as by hiring or

1 coordinating the work of other employers work-
2 ing at the site.”.

3 **SEC. 313. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.**

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

11 **SEC. 314. INVESTIGATIONS OF FATALITIES AND SIGNIFI-**
12 **CANT INCIDENTS.**

13 Section 8 of such Act (29 U.S.C. 657), as amended
14 by sections 311 through 313, is further amended by add-
15 ing at the end the following new subsection:

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

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

21 “(2) EVIDENCE PRESERVATION.—If a signifi-
22 cant incident or an incident resulting in death oc-
23 curs in a place of employment, the employer shall
24 promptly notify the Secretary of the incident in-
25 volved and shall take appropriate measures to pre-

1 vent the destruction or alteration of any evidence
2 that would assist in investigating the incident. The
3 appropriate measures required by this paragraph do
4 not prevent an employer from taking action on a
5 worksite to prevent injury to employees or substan-
6 tial damage to property or to avoid disruption of es-
7 sential services necessary to public safety, provided
8 that if an employer takes such action, the employer
9 shall notify the Secretary of the action in a timely
10 fashion.

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

12 “(A) INCIDENT RESULTING IN DEATH.—
13 The term ‘incident resulting in death’ means an
14 incident that results in the death of an em-
15 ployee.

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

20 **SEC. 315. RECORDKEEPING.**

21 (a) RULE REQUIRED.—Not later than 180 days after
22 the date of enactment of this Act, the Occupational Safety
23 and Health Administration shall issue a final rule amend-
24 ing its recordkeeping regulations under section 8(c) of the

1 Occupational Safety and Health Act of 1970 (29 U.S.C.
2 657(c)) to clarify that—

3 (1) the duty to make and maintain accurate
4 records of work-related injuries and illnesses is an
5 ongoing obligation;

6 (2) the duty to make and maintain such records
7 continues for as long as the employer is required to
8 keep records of the recordable injury or illness; and

9 (3) such duty does not expire solely because the
10 employer fails to create the necessary records when
11 first required to do so.

12 (b) AUTHORIZATION.—Subsection (a) shall be consid-
13 ered a specific authorization by Congress in accordance
14 with section 801(b)(2) of title 5, United States Code, with
15 respect to the issuance of a new recordkeeping rule.

16 **PART C—CITATIONS**

17 **SEC. 321. PERIOD FOR ISSUANCE OF A CITATION.**

18 Section 9(c) of the Occupational Safety and Health
19 Act of 1970 (29 U.S.C. 658(c)) is amended by adding at
20 the end the following: “For purposes of this subsection,
21 a violation continues to occur for as long as an employer
22 has not satisfied the requirements, rules, standards, or-
23 ders, and regulations referenced in subsection (a).”.

1 **SEC. 322. PROHIBITION ON UNCLASSIFIED CITATIONS.**

2 Section 9 of the Occupational Safety and Health Act
3 of 1970 (29 U.S.C. 658) is further amended by adding
4 at the end the following:

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

9 **PART D—RIGHTS OF VICTIMS AND FAMILIES**

10 **SEC. 331. RIGHTS OF VICTIMS AND FAMILIES.**

11 The Occupational Safety and Health Act of 1970 (29
12 U.S.C. 651 et seq.) is amended by inserting after section
13 9 (29 U.S.C. 658) the following:

14 **“SEC. 9A. VICTIMS’ RIGHTS.**

15 “(a) RIGHTS BEFORE THE SECRETARY.—A victim or
16 the representative of a victim, shall be afforded the right,
17 with respect to an inspection or investigation conducted
18 under section 8 to—

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

23 “(2) receive, at no cost, a copy of any citation
24 or report, issued as a result of such inspection or in-
25 vestigation, at the same time as the employer re-
26 ceives such citation or report;

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

4 “(4) be provided notification of the date and
5 time or any proceedings, service of pleadings, and
6 other relevant documents, and an explanation of the
7 rights of the employer, employee and employee rep-
8 resentative, and victim to participate in proceedings
9 conducted under section 10(c).

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

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

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

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

21 “(c) MODIFICATION OF CITATION.—Before entering
22 into an agreement to withdraw or modify a citation issued
23 as a result of an inspection or investigation of an incident
24 under section 8, the Secretary shall notify a victim or rep-
25 resentative of a victim and provide the victim or represent-

1 ative of a victim with an opportunity to appear and make
2 a statement before the parties conducting settlement nego-
3 tiations. In lieu of an appearance, the victim or represent-
4 ative of the victim may elect to submit a letter to the Sec-
5 retary and the parties.

6 “(d) SECRETARY PROCEDURES.—The Secretary shall
7 establish procedures—

8 “(1) to inform victims of their rights under this
9 section; and

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

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

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

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

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

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

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

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

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

12 “(2) a family member (as further defined by
13 the Secretary) of a victim described in paragraph
14 (1), if—

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

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

1 **PART E—PROCEDURE FOR ENFORCEMENT**

2 **SEC. 341. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

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

5 (1) in the first sentence—

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

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

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

19 (2) by inserting after the first sentence, the fol-
20 lowing: “The pendency of a contest before the Com-
21 mission shall not bar the Secretary from inspecting
22 a place of employment or from issuing a citation
23 under section 9.”; and

24 (3) by amending the last sentence—

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

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

4 **SEC. 342. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
5 **PEATED VIOLATIONS PENDING CONTEST AND**
6 **PROCEDURES FOR A STAY.**

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

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

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

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

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

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

4 “(3) CRITERIA AND RULES OF PROCEDURE FOR
5 STAYS.—

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

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

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

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

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

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

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

17 “(iii) That if a party is aggrieved by
18 a decision issued by an administrative law
19 judge regarding the stay, such party has
20 the right to file an objection with the Com-
21 mission not later than 5 days after receipt
22 of the administrative law judge’s decision.
23 Within 10 days after receipt of the objec-
24 tion, a Commissioner, if a quorum is seat-
25 ed pursuant to section 12(f), shall decide

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

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

23 **SEC. 343. INACTION BY THE REVIEW COMMISSION.**

24 Section 10 of the Occupational Safety and Health Act
25 of 1970 (29 U.S.C. 659), as amended by sections 341 and

1 342, is further amended by adding at the end the fol-
2 lowing:

3 “(e) INACTION BY REVIEW COMMISSION.—

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

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

14 “(B) may be appealed pursuant to section
15 11(a).

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

19 **SEC. 344. CONFORMING AMENDMENTS.**

20 (a) VIOLATIONS DESIGNATED AS SERIOUS, WILL-
21 FUL, OR REPEATED.—The first sentence of section 10(b)
22 of the Occupational Safety and Health Act of 1970 (29
23 U.S.C. 659(b)) is amended by inserting “, with the excep-
24 tion of violations designated as serious, willful, or re-
25 peated,” after “(which period shall not begin to run”.

1 (b) JUDICIAL REVIEW.—The first sentence of section
2 11(a) of the Occupational Safety and Health Act of 1970
3 (29 U.S.C. 660(a)) is amended—

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

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

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

13 (c) FAILURE TO CORRECT VIOLATIONS.—Section
14 17(d) of the Occupational Safety and Health Act of 1970
15 (29 U.S.C. 666(d)) is amended to read as follows:

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

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

8 **PART F—PENALTIES**

9 **SEC. 351. CIVIL PENALTIES.**

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

13 (1) in subsection (a)—

14 (A) by striking “\$70,000” and inserting
15 “\$129,336”;

16 (B) by striking “\$5,000” and inserting
17 “\$9,472”; and

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

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

7 (2) in subsection (b)—

8 (A) by striking “\$7,000” and inserting
9 “\$13,260”; and

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

19 (3) in subsection (c), by striking “\$7,000” and
20 inserting “\$13,260”;

21 (4) in subsection (d), as amended by section
22 344(c), by striking “\$7,000” each place it occurs
23 and inserting “\$13,260”;

24 (5) by redesignating subsections (e) through (i)
25 and subsections (j) through (l), as subsections (f)

1 through (j) and subsections (l) through (n), respec-
2 tively; and

3 (6) in subsection (j) (as so redesignated) by
4 striking “\$7,000” and inserting “\$13,260”.

5 (b) INFLATION ADJUSTMENT.—Section 17 of such
6 Act (29 U.S.C. 666), as amended by subsection (a), is fur-
7 ther amended by inserting after subsection (d) the fol-
8 lowing:

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. 352. 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 351) is further amended—

21 (1) by amending subsection (f) (as redesignated
22 by section 351(a)(5)) 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 with title 18, United States Code, or by im-
9 prisonment 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 351(a)(5)) 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
23 351(a)(5)), by striking “fine of not more than
24 \$10,000, or by imprisonment for not more than six
25 months,” and inserting “fine in accordance with title

1 18, 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 351(a)(5)) 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 17 (29
8 U.S.C. 666) is further amended by adding at the end the
9 following:

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

14 **SEC. 353. PREJUDGMENT INTEREST.**

15 Section 17(n) of the Occupational Safety and Health
16 Act of 1970 (29 U.S.C. 666(n)) (as redesignated by sec-
17 tion 351(a)(5)) is amended by adding at the end the fol-
18 lowing: “Pre-final order interest on such penalties shall
19 begin to accrue on the date the party contests a citation
20 issued under this Act, and shall end upon the issuance
21 of the final order. Such pre-final order interest shall be
22 calculated at the current underpayment rate determined
23 by the Secretary of the Treasury pursuant to section 6621
24 of the Internal Revenue Code of 1986, and shall be com-
25 pounded daily. Post-final order interest shall begin to ac-

1 crue 30 days after the date a final order of the Commis-
2 sion or the court is issued, and shall be charged at the
3 rate of 8 percent per year.”.

4 **TITLE IV—STATE PLANS**

5 **SEC. 401. CONCURRENT ENFORCEMENT AUTHORITY AND** 6 **REVIEW OF STATE OCCUPATIONAL SAFETY** 7 **AND HEALTH PLANS.**

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

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

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

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

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

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

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

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

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

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

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

23 “(1) the effectiveness of the Secretary’s over-
24 sight of State plans, including the indices of effec-
25 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 precedent, 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 Labor of the
17 House of Representatives or the Committee on
18 Health, Education, Labor, and Pensions of the
19 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 **SEC. 502. TRAINING AND EMPLOYEE EDUCATION.**

11 Paragraph (1) of section 21(c) of the Occupational
12 Safety and Health Act of 1970 (29 U.S.C. 670(c)) is
13 amended to read as follows: “(1) provide for the establish-
14 ment and supervision of programs for the education and
15 training of employers and employees in the recognition,
16 avoidance, and prevention of unsafe or unhealthful work-
17 ing conditions, and employee rights and employer respon-
18 sibilities under this Act, which shall include grant pro-
19 grams to provide grants for nonprofit organizations (in-
20 cluding grants to develop or expand the capacity of such
21 organizations to provide safety and health training, edu-
22 cation, and related assistance to the targeted audiences,
23 grants for the training of employees and employers on oc-
24 cupational safety and health hazards of particular concern
25 or for particular industries, or groups of workers at high

1 risk of injury, illness, or exposure to hazards, and grants
2 for the development of training materials on particular
3 topics), and”.

4 **TITLE VI—EFFECTIVE DATE**

5 **SEC. 601. EFFECTIVE DATE.**

6 (a) GENERAL RULE.—Except as provided for in sub-
7 section (b), this Act and the amendments made by this
8 Act shall take effect on the date that is 90 days after the
9 date of the enactment of this Act.

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

13 (1) A State that has a State plan approved
14 under section 18 of the Occupational Safety and
15 Health Act of 1970 (29 U.S.C. 667) shall amend its
16 State plan to conform with the requirements of this
17 Act and the amendments made by this Act not later
18 than 12 months after the date of the enactment of
19 this Act. The Secretary of Labor may extend the pe-
20 riod for a State to make such amendments to its
21 State plan by not more than 12 months, if the
22 State’s legislature is not in session during the 12-
23 month period beginning with the date of the enact-
24 ment of this Act. Such amendments to the State

1 plan shall take effect not later than 90 days after
2 the adoption of such amendments by such State.

3 (2) This Act and the amendments made by this
4 Act shall take effect on the date that is 36 months
5 after the date of the enactment of this Act with re-
6 spect to a workplace of a State, or a political sub-
7 division of a State, that does not have a State plan
8 approved under such section 18 (29 U.S.C. 667).

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