

118TH CONGRESS  
1ST SESSION

# H. R. 2998

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

APRIL 28, 2023

Mr. COURTNEY (for himself, Mr. SCOTT of Virginia, Ms. WASSERMAN SCHULTZ, Ms. MCCOLLUM, Mr. GRIJALVA, Ms. SCHAKOWSKY, Ms. BONAMICI, Ms. ADAMS, Ms. CASTOR of Florida, Mr. MORELLE, Ms. OMAR, Mr. LARSON of Connecticut, Mrs. HAYES, and Ms. PINGREE) 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,*

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 person  
11 shall discharge, or cause to be discharged, or in any man-  
12 ner discriminate against, or cause to be discriminated  
13 against, an employee for refusing to perform the employ-  
14 ee’s duties if the employee has a reasonable apprehension  
15 that performing such duties would result in serious injury  
16 to, or serious impairment of the health of, the employee  
17 or other employees.

18           “(B) For purposes of subparagraph (A), the cir-  
19 cumstances causing the employee’s good-faith belief that  
20 performing such duties would pose a safety or health haz-  
21 ard shall be of such a nature that a reasonable person,  
22 under the circumstances confronting the employee, would  
23 conclude that there is such a hazard. In order to qualify  
24 for protection under this paragraph, the employee, when  
25 practicable, shall have communicated or attempted to com-



1 municate the safety or health concern to the employer and  
2 have not received from the employer a response reasonably  
3 calculated to allay such concern.”.

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

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

13 “(4) STATUTE OF LIMITATIONS.—

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

17 “(i) the date on which an alleged violation  
18 of paragraph (1) or (2) occurs; or

19 “(ii) the date on which the employee knows  
20 or should reasonably have known that such al-  
21 leged violation occurred.

22 “(B) REPEAT VIOLATION.—Except in cases  
23 when the employee has been discharged, a violation  
24 of paragraph (1) or (2) shall be considered to have

1 occurred on the last date an alleged repeat violation  
2 occurred.

3 “(5) INVESTIGATION.—

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

11 “(i) shall include—

12 “(I) interviewing the complainant;

13 “(II) providing the respondent an op-  
14 portunity to—

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

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

20 “(III) providing the complainant an  
21 opportunity to—

22 “(aa) receive any statements or  
23 evidence provided to the Secretary;

24 “(bb) meet with the Secretary;  
25 and

1                   “(cc) rebut any statements or  
2                   evidence; and

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

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

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

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

12                  “(6) PRELIMINARY ORDER FOLLOWING INVESTIGA-  
13                  TION.—If, after completion of an investigation under  
14                  paragraph (5)(A), the Secretary finds reasonable cause to  
15                  believe that a violation of paragraph (1) or (2) has oc-  
16                  curred, the Secretary shall issue a preliminary order pro-  
17                  viding relief authorized under paragraph (14) at the same  
18                  time the Secretary issues a decision under paragraph  
19                  (5)(B). If a de novo hearing is not requested within the  
20                  time period required under paragraph (7)(A)(i), such pre-  
21                  liminary 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 on  
2 the record before an administrative law judge  
3 may be requested—

4           “(I) by the complainant or respondent  
5 within 30 days after receiving notification  
6 of a decision granting or denying relief  
7 issued under paragraph (5)(B) or a pre-  
8 liminary order under paragraph (6), re-  
9 spectively;

10           “(II) by the complainant within 30  
11 days after the date the complaint is dis-  
12 missed without investigation by the Sec-  
13 retary under paragraph (5)(A); or

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

18           “(ii) REINSTATEMENT ORDER.—The re-  
19 quest for a hearing shall not operate to stay  
20 any preliminary reinstatement order issued  
21 under paragraph (6).

22           “(B) PROCEDURES.—

23           “(i) IN GENERAL.—A hearing requested  
24 under this paragraph shall be conducted expedi-  
25 tiously and in accordance with rules established

1 by the Secretary for hearings conducted by ad-  
2 ministrative law judges.

3 “(ii) SUBPOENAS; PRODUCTION OF EVI-  
4 DENCE.—In conducting any such hearing, the  
5 administrative law judge may issue subpoenas.  
6 The respondent or complainant may request the  
7 issuance of subpoenas that require the deposi-  
8 tion of, or the attendance and testimony of, wit-  
9 nesses and the production of any evidence (in-  
10 cluding any books, papers, documents, or re-  
11 cordings) relating to the matter under consider-  
12 ation.

13 “(iii) DECISION.—The administrative law  
14 judge shall issue a decision not later than 90  
15 days after the date on which a hearing was re-  
16 quested under this paragraph and promptly no-  
17 tify, in writing, the parties and the Secretary of  
18 such decision, including the findings of fact and  
19 conclusions of law. If the administrative law  
20 judge finds that a violation of paragraph (1) or  
21 (2) has occurred, the judge shall issue an order  
22 for relief under paragraph (14). If review under  
23 paragraph (8) is not timely requested, such  
24 order shall be deemed a final order of the Sec-  
25 retary that is not subject to judicial review.

1 “(8) ADMINISTRATIVE APPEAL.—

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

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

16 “(C) DECISIONS.—If the review board grants  
17 an administrative appeal, the review board shall  
18 issue a final decision and order affirming or revers-  
19 ing, in whole or in part, the decision under review  
20 by not later than 90 days after receipt of the admin-  
21 istrative appeal. If it is determined that a violation  
22 of paragraph (1) or (2) has occurred, the review  
23 board shall issue a final decision and order providing  
24 relief authorized under paragraph (14). Such deci-

1 sion and order shall constitute final agency action  
2 with respect to the matter appealed.

3 “(9) SETTLEMENT IN THE ADMINISTRATIVE PROC-  
4 ESS.—

5 “(A) IN GENERAL.—At any time before  
6 issuance of a final order, an investigation or pro-  
7 ceeding under this subsection may be terminated on  
8 the basis of a settlement agreement entered into by  
9 the parties.

10 “(B) PUBLIC POLICY CONSIDERATIONS.—Nei-  
11 ther the Secretary, an administrative law judge, nor  
12 the review board conducting a hearing under this  
13 subsection shall accept a settlement that contains  
14 conditions conflicting with the rights protected under  
15 this Act or that are contrary to public policy, includ-  
16 ing a restriction on a complainant’s right to future  
17 employment with employers other than the specific  
18 employers named in a complaint.

19 “(10) INACTION BY THE REVIEW BOARD OR ADMIN-  
20 ISTRATIVE LAW JUDGE.—

21 “(A) IN GENERAL.—The complainant may  
22 bring a de novo action described in subparagraph  
23 (B) if—

24 “(i) an administrative law judge has not  
25 issued a decision and order within the 90-day

1 time period required under paragraph  
2 (7)(B)(iii); or

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

6 “(B) DE NOVO ACTION.—Such de novo action  
7 may be brought at law or equity in the United  
8 States district court for the district where a violation  
9 of paragraph (1) or (2) allegedly occurred or where  
10 the complainant resided on the date of such alleged  
11 violation. The court shall have jurisdiction over such  
12 action without regard to the amount in controversy  
13 and to order appropriate relief under paragraph  
14 (14). Such action shall, at the request of either  
15 party to such action, be tried by the court with a  
16 jury.

17 “(11) JUDICIAL REVIEW.—

18 “(A) TIMELY APPEAL TO THE COURT OF AP-  
19 PEALS.—Any party adversely affected or aggrieved  
20 by a final decision and order issued under this sub-  
21 section may obtain review of such decision and order  
22 in the United States Court of Appeals for the circuit  
23 where the violation, with respect to which such final  
24 decision and order was issued, allegedly occurred or  
25 where the complainant resided on the date of such



1       alleged violation. To obtain such review, a party  
2       shall file a petition for review not later than 60 days  
3       after the final decision and order was issued. Such  
4       review shall conform to chapter 7 of title 5, United  
5       States Code. The commencement of proceedings  
6       under this subparagraph shall not, unless ordered by  
7       the court, operate as a stay of the final decision and  
8       order.

9               “(B) LIMITATION ON COLLATERAL ATTACK.—  
10       An order and decision with respect to which review  
11       may be obtained under subparagraph (A) shall not  
12       be subject to judicial review in any criminal or other  
13       civil proceeding.

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

24              “(13) BURDENS OF PROOF.—

1           “(A) CRITERIA FOR DETERMINATION.—In mak-  
2           ing a determination or adjudicating a complaint pur-  
3           suant to this subsection, the Secretary, administra-  
4           tive law judge, review board, or a court may deter-  
5           mine that a violation of paragraph (1) or (2) has oc-  
6           curred only if the complainant demonstrates that  
7           any conduct described in paragraph (1) or (2) with  
8           respect to the complainant was a contributing factor  
9           in the adverse action alleged in the complaint.

10           “(B) PROHIBITION.—Notwithstanding subpara-  
11           graph (A), a decision or order that is favorable to  
12           the complainant shall not be issued in any adminis-  
13           trative or judicial action pursuant to this subsection  
14           if the respondent demonstrates by clear and con-  
15           vincing evidence that the respondent would have  
16           taken the same adverse action in the absence of such  
17           conduct.

18           “(14) RELIEF.—

19           “(A) ORDER FOR RELIEF.—If the Secretary,  
20           administrative law judge, review board, or a court  
21           determines that a violation of paragraph (1) or (2)  
22           has occurred, the Secretary, administrative law  
23           judge, review board, or court, respectively, shall have  
24           jurisdiction to order all appropriate relief, including

1 injunctive relief, compensatory and exemplary dam-  
2 ages, including—

3 “(i) affirmative action to abate the viola-  
4 tion;

5 “(ii) reinstatement without loss of position  
6 or seniority, and restoration of the terms,  
7 rights, conditions, and privileges associated with  
8 the complainant’s employment, including oppor-  
9 tunities for promotions to positions with equiva-  
10 lent or better compensation for which the com-  
11 plainant is qualified;

12 “(iii) compensatory and consequential  
13 damages sufficient to make the complainant  
14 whole (including back pay, prejudgment inter-  
15 est, and other damages); and

16 “(iv) expungement of all warnings, rep-  
17 rimands, or derogatory references that have  
18 been placed in paper or electronic records or  
19 databases of any type relating to the actions by  
20 the complainant that gave rise to the unfavor-  
21 able personnel action, and, at the complainant’s  
22 direction, transmission of a copy of the decision  
23 on the complaint to any person whom the com-  
24 plainant reasonably believes may have received  
25 such unfavorable information.

1           “(B) ATTORNEYS’ FEES AND COSTS.—If the  
2           Secretary or an administrative law judge, review  
3           board, or court grants an order for relief under sub-  
4           paragraph (A), the Secretary, administrative law  
5           judge, review board, or court, respectively, shall as-  
6           sess, at the request of the employee against the em-  
7           ployer—

8                   “(i) reasonable attorneys’ fees; and

9                   “(ii) costs (including expert witness fees)  
10           reasonably incurred, as determined by the Sec-  
11           retary, administrative law judge, review board,  
12           or court, respectively, in connection with bring-  
13           ing the complaint upon which the order was  
14           issued.

15           “(15) PROCEDURAL RIGHTS.—The rights and rem-  
16           edies provided for in this subsection may not be waived  
17           by any agreement, policy, form, or condition of employ-  
18           ment, including by any pre-dispute arbitration agreement  
19           or collective bargaining agreement.

20           “(16) SAVINGS.—Nothing in this subsection shall be  
21           construed to diminish the rights, privileges, or remedies  
22           of any employee who exercises rights under any Federal  
23           or State law or common law, or under any collective bar-  
24           gaining agreement.

25           “(17) ELECTION OF VENUE.—

1           “(A) IN GENERAL.—An employee of an em-  
2           ployer who is located in a State that has a State  
3           plan approved under section 18 may file a complaint  
4           alleging a violation of paragraph (1) or (2) by such  
5           employer with—

6                   “(i) the Secretary under paragraph (5); or

7                   “(ii) a State plan administrator in such  
8           State.

9           “(B) REFERRALS.—If—

10                   “(i) the Secretary receives a complaint  
11           pursuant to subparagraph (A)(i), the Secretary  
12           shall not refer such complaint to a State plan  
13           administrator for resolution; or

14                   “(ii) a State plan administrator receives a  
15           complaint pursuant to subparagraph (A)(ii), the  
16           State plan administrator shall not refer such  
17           complaint to the Secretary for resolution.”.

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

1 **TITLE III—IMPROVING REPORT-**  
2 **ING, INSPECTION, AND EN-**  
3 **FORCEMENT**

4 **PART A—DUTIES AND STANDARDS**

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

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

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

10 “(1) shall furnish employment and a place of  
11 employment that are free from recognized hazards  
12 that are causing or are likely to cause death or seri-  
13 ous physical harm and that the employer creates or  
14 controls or to which the employer exposes any em-  
15 ployee of the employer or any other person per-  
16 forming work at the place of employment; and”;

17 (2) by adding at the end the following new sub-  
18 section:

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

22 **SEC. 302. OCCUPATIONAL SAFETY AND HEALTH STAND-**  
23 **ARDS.**

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

1 (1) in subsection (a)—

2 (A) by striking “Without regard” and in-  
3 serting “(1) Without regard”;

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

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

8 “(A) as soon as practicable”;

9 (D) by striking “In the” and inserting the  
10 following:

11 “(2) In the”;

12 (E) by striking “designated employees.”  
13 and inserting “designated employees; and”;

14 (F) by adding after paragraph (1) (as des-  
15 ignated by subparagraph (A)) the following:

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

1 “(i) the standard has been superseded  
2 by a standard promulgated pursuant to  
3 subsection (b); or

4 “(ii) the Secretary determines such  
5 update would not result in improved health  
6 or safety for specifically designated em-  
7 ployees.”; and

8 (G) in paragraph (2) (as designated by  
9 subparagraph (D)), by inserting “including na-  
10 tional consensus standards, or in the event of a  
11 consolidation of national consensus standards,”  
12 after “conflict among any such standards,”;  
13 and

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

15 “(h) No standard, rule, or regulation promulgated  
16 under this Act shall reduce the protection afforded by an  
17 existing health or safety standard, rule, regulation, or na-  
18 tional consensus standard.”.

19 **PART B—INSPECTIONS, INVESTIGATIONS, AND**

20 **RECORDKEEPING**

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

22 Section 8(c)(1) of the Occupational Safety and  
23 Health Act of 1970 (29 U.S.C. 657(c)(1)) is amended by  
24 adding at the end the following new sentence: “Such regu-  
25 lations shall include provisions requiring employers to post



1 for employees information on the protections afforded  
2 under section 11(c).”.

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

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

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

15 “(B) A prohibition on the adoption or imple-  
16 mentation by employers of policies or practices that  
17 have the effect of discouraging accurate record-  
18 keeping and the reporting of work-related injuries or  
19 illnesses by any employee, or in any manner dis-  
20 criminate or provides for adverse action against any  
21 employee for reporting a work-related injury or ill-  
22 ness.

23 “(C) A requirement that, at a minimum, em-  
24 ployers subject to the requirements of sections  
25 1904.41 and 1902.7(d) of title 29, Code of Federal

1 Regulations (as amended by the final regulations of  
2 the Department of Labor published in the Federal  
3 Register on May 12, 2016 (81 Fed. Reg. 29624 et  
4 seq.)) shall, on at least an annual basis, electroni-  
5 cally report to the Secretary information from the  
6 records of work-related deaths, injuries, and illnesses  
7 required to be made and maintained under this  
8 paragraph, which shall include the information re-  
9 quired to be made and maintained in accordance  
10 with such sections 1904.41 and 1902.7(d), and a re-  
11 quirement that the Secretary make such reports  
12 available to the public in a searchable format.

13 “(D) A requirement that each site-controlling  
14 employer keep, maintain, and make available a site  
15 log for all recordable injuries and illnesses occurring  
16 for any employee at each work site for which the  
17 employer is the site-controlling employer, including  
18 employees of the site-controlling employer and others  
19 who are performing work at such site (including  
20 independent contractors). For purposes of this sub-  
21 paragraph, the term ‘site-controlling employer’  
22 means the employer that has primary control over a  
23 work site at which employees of more than one em-  
24 ployer work, such as by hiring or coordinating the  
25 work of other employers working at the site.”.

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

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

9 **SEC. 314. INVESTIGATIONS OF FATALITIES AND SIGNIFI-**  
10 **CANT INCIDENTS.**

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

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

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

19 “(2) EVIDENCE PRESERVATION.—If a signifi-  
20 cant incident or an incident resulting in death oc-  
21 curs in a place of employment, the employer shall  
22 promptly notify the Secretary of the incident in-  
23 volved and shall take appropriate measures to pre-  
24 vent the destruction or alteration of any evidence  
25 that would assist in investigating the incident. The  
26 appropriate measures required by this paragraph do

1 not prevent an employer from taking action on a  
2 worksite to prevent injury to employees or substan-  
3 tial damage to property or to avoid disruption of es-  
4 sential services necessary to public safety, provided  
5 that if an employer takes such action, the employer  
6 shall notify the Secretary of the action in a timely  
7 fashion.

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

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

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

17 **SEC. 315. RECORDKEEPING.**

18 (a) RULE REQUIRED.—Not later than 180 days after  
19 the date of enactment of this Act, the Occupational Safety  
20 and Health Administration shall issue a final rule amend-  
21 ing its recordkeeping regulations under section 8(c) of the  
22 Occupational Safety and Health Act of 1970 (29 U.S.C.  
23 657(c)) to clarify that—

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

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

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

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

## 14                                   **PART C—CITATIONS**

### 15       **SEC. 321. PERIOD FOR ISSUANCE OF A CITATION.**

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

### 22       **SEC. 322. PROHIBITION ON UNCLASSIFIED CITATIONS.**

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

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

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

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

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

10 **“SEC. 9A. VICTIMS’ RIGHTS.**

11 “(a) RIGHTS BEFORE THE SECRETARY.—A victim or  
12 the representative of a victim, shall be afforded the right,  
13 with respect to an inspection or investigation conducted  
14 under section 8 to—

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

19 “(2) receive, at no cost, a copy of any citation  
20 or report, issued as a result of such inspection or in-  
21 vestigation, at the same time as the employer re-  
22 ceives such citation or report;

23 “(3) be informed of any notice of contest or ad-  
24 dition of parties to the proceedings filed under sec-  
25 tion 10(e); and

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

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

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

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

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

18          “(c) MODIFICATION OF CITATION.—Before entering  
19          into an agreement to withdraw or modify a citation issued  
20          as a result of an inspection or investigation of an incident  
21          under section 8, the Secretary shall notify a victim or rep-  
22          resentative of a victim and provide the victim or represent-  
23          ative of a victim with an opportunity to appear and make  
24          a statement before the parties conducting settlement nego-  
25          tiations. In lieu of an appearance, the victim or represent-

1 ative of the victim may elect to submit a letter to the Sec-  
2 retary and the parties.

3 “(d) SECRETARY PROCEDURES.—The Secretary shall  
4 establish procedures—

5 “(1) to inform victims of their rights under this  
6 section; and

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

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

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

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

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

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

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



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

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

7 “(2) a family member (as further defined by  
8 the Secretary) of a victim described in paragraph  
9 (1), if—

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

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

18 **PART E—PROCEDURE FOR ENFORCEMENT**

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

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

22 (1) in the first sentence—

23 (A) by inserting after “that he intends to  
24 contest a citation issued under section (9)” the

1 following: “(or a modification of a citation  
2 issued under this section)”;

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

7 (C) by inserting after “files a notice with  
8 the Secretary alleging” the following: “that the  
9 citation fails properly to designate the violation  
10 as serious, willful, or repeated, that the pro-  
11 posed penalty is not adequate, or”;

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

17 (3) by amending the last sentence—

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

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

1 **SEC. 342. CORRECTION OF SERIOUS, WILLFUL, OR RE-**  
2 **PEATED VIOLATIONS PENDING CONTEST AND**  
3 **PROCEDURES FOR A STAY.**

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

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

10 “(1) PERIOD PERMITTED FOR CORRECTION OF  
11 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—

12 For each violation which the Secretary designates as  
13 serious, willful, or repeated, the period permitted for  
14 the correction of the violation shall begin to run  
15 upon receipt of the citation.

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

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

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

24 “(3) CRITERIA AND RULES OF PROCEDURE FOR  
25 STAYS.—

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

10           “(B) CRITERIA.—In determining whether  
11           a stay should be issued on the basis of a motion  
12           filed under subparagraph (A), the Commission  
13           may grant a stay only if the employer has dem-  
14           onstrated—

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

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

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

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

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

12          “(iii) That if a party is aggrieved by  
13          a decision issued by an administrative law  
14          judge regarding the stay, such party has  
15          the right to file an objection with the Com-  
16          mission not later than 5 days after receipt  
17          of the administrative law judge’s decision.  
18          Within 10 days after receipt of the objec-  
19          tion, a Commissioner, if a quorum is seat-  
20          ed pursuant to section 12(f), shall decide  
21          whether to grant review of the objection.  
22          If, within 10 days after receipt of the ob-  
23          jection, no decision is made on whether to  
24          review the decision of the administrative  
25          law judge, the Commission declines to re-

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

12 “(iv) For notification to employees or  
13 representatives of affected employees of re-  
14 quests for such hearings and shall provide  
15 affected employees or representatives of af-  
16 fected employees an opportunity to partici-  
17 pate as parties to such hearings.”.

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

19 Section 10 of the Occupational Safety and Health Act  
20 of 1970 (29 U.S.C. 659), as amended by sections 341 and  
21 342, is further amended by adding at the end the fol-  
22 lowing:

23 “(e) INACTION BY REVIEW COMMISSION.—

24 “(1) IN GENERAL.—A decision or order issued  
25 by an administrative law judge of the Commission

1 for which a petition for review has been filed in a  
2 timely manner, and for which 1 year after the Com-  
3 mission has accepted such petition and directed that  
4 such petition be reviewed by the Commission, the  
5 Commission has failed to issue a final decision or  
6 order because the Commission lacks a quorum—

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

9 “(B) may be appealed pursuant to section  
10 11(a).

11 “(2) EXCEPTION.—Paragraph (1) shall not  
12 apply with respect to motions to stay filed under  
13 subsection (d)(3).”.

14 **SEC. 344. CONFORMING AMENDMENTS.**

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

21 (b) JUDICIAL REVIEW.—The first sentence of section  
22 11(a) of the Occupational Safety and Health Act of 1970  
23 (29 U.S.C. 660(a)) is amended—

24 (1) by inserting “(or the failure of the Commis-  
25 sion, including an administrative law judge, to make

1 a timely decision on a petition for a stay or other  
2 review)” after “an order”;

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

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

8 (c) FAILURE TO CORRECT VIOLATIONS.—Section  
9 17(d) of the Occupational Safety and Health Act of 1970  
10 (29 U.S.C. 666(d)) is amended to read as follows:

11 “(d) Any employer who fails to correct a violation  
12 designated by the Secretary as serious, willful, or repeated  
13 and for which a citation has been issued under section 9(a)  
14 within the period permitted for its correction (and a stay  
15 has not been issued by the Commission under section  
16 10(d)) may be assessed a civil penalty of not more than  
17 \$7,000 for each day during which such failure or violation  
18 continues. Any employer who fails to correct any other vio-  
19 lation for which a citation has been issued under section  
20 9(a) of this title within the period permitted for its correc-  
21 tion (which period shall not begin to run until the date  
22 of the final order of the Commission in the case of any  
23 review proceeding under section 10 initiated by the em-  
24 ployer in good faith and not solely for delay of avoidance  
25 of penalties) may be assessed a civil penalty of not more



1 than \$7,000 for each day during which such failure or vio-  
2 lation continues.”.

3 **PART F—PENALTIES**

4 **SEC. 351. CIVIL PENALTIES.**

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

8 (1) in subsection (a)—

9 (A) by striking “\$70,000” and inserting  
10 “\$700,000”;

11 (B) by striking “\$5,000” and inserting  
12 “\$50,000”; and

13 (C) by adding at the end the following: “In  
14 determining whether a violation is repeated, the  
15 Secretary or the Commission shall consider the  
16 employer’s history of violations under this Act  
17 and under State occupational safety and health  
18 plans established under section 18.”;

19 (2) in subsection (b), by striking “\$7,000” and  
20 inserting “\$70,000”;

21 (3) in subsection (c), by striking “\$7,000” and  
22 inserting “\$15,625”;

23 (4) in subsection (d), as amended by section  
24 344(c), by striking “\$7,000” inserting “\$70,000”;

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

5           (6) in subsection (j) (as so redesignated) by  
6           striking “\$7,000” and inserting “\$15,625”.

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

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

19          **SEC. 352. CRIMINAL PENALTIES.**

20          (a) IN GENERAL.—Section 17 of the Occupational  
21          Safety and Health Act of 1970 (29 U.S.C. 666) (as  
22          amended by section 351) is further amended—

23                  (1) by amending subsection (f) (as redesignated  
24                  by section 351(a)(5)) to read as follows:

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

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

16               (2) by amending subsection (g) (as redesignated  
17 by section 351(a)(5)) to read as follows:

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

1           (3) in subsection (h) (as redesignated by section  
2           351(a)(5)), by striking “fine of not more than  
3           \$10,000, or by imprisonment for not more than six  
4           months,” and inserting “fine in accordance with title  
5           18, United States Code, or by imprisonment for not  
6           more than 5 years,”; and

7           (4) by inserting after subsection (j) (as redesignig-  
8           nated by section 351(a)(5)) the following:

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

22          “(2) For the purpose of this subsection, the term ‘em-  
23          ployer’ means, in addition to the definition contained in  
24          section 3 of this Act, any officer or director.

1           “(3) For purposes of this subsection, the term ‘seri-  
2   ous bodily harm’ means bodily injury or illness that in-  
3   volves—

4           “(A) a substantial risk of death;

5           “(B) protracted unconsciousness;

6           “(C) protracted and obvious physical disfigure-  
7   ment; or

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

11       (b) JURISDICTION FOR PROSECUTION UNDER STATE  
12   AND LOCAL CRIMINAL LAWS.—Such section 17 (29  
13   U.S.C. 666) is further amended by adding at the end the  
14   following:

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

19   **SEC. 353. PREJUDGMENT INTEREST.**

20       Section 17(n) of the Occupational Safety and Health  
21   Act of 1970 (29 U.S.C. 666(n)) (as redesignated by sec-  
22   tion 351(a)(5)) is amended by adding at the end the fol-  
23   lowing: “Pre-final order interest on such penalties shall  
24   begin to accrue on the date the party contests a citation  
25   issued under this Act, and shall end upon the issuance

1 of the final order. Such pre-final order interest shall be  
2 calculated at the current underpayment rate determined  
3 by the Secretary of the Treasury pursuant to section 6621  
4 of the Internal Revenue Code of 1986, and shall be com-  
5 pounded daily. Post-final order interest shall begin to ac-  
6 crue 30 days after the date a final order of the Commis-  
7 sion or the court is issued, and shall be charged at the  
8 rate of 8 percent per year.”.

## 9 **TITLE IV—STATE PLANS**

### 10 **SEC. 401. CONCURRENT ENFORCEMENT AUTHORITY AND** 11 **REVIEW OF STATE OCCUPATIONAL SAFETY** 12 **AND HEALTH PLANS.**

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

15 (1) by amending subsection (f) to read as fol-  
16 lows:

17 “(f)(1) The Secretary shall, on the basis of reports  
18 submitted by the State agency and the Secretary’s own  
19 inspections, make a continuing evaluation of the manner  
20 in which each State that has a plan approved under this  
21 section is carrying out such plan. Such evaluation shall  
22 include an assessment of whether the State continues to  
23 meet the requirements of subsection (c) of this section and  
24 any other criteria or indices of effectiveness specified by  
25 the Secretary in regulations. Whenever the Secretary

1 finds, on the basis of such evaluation, that in the adminis-  
2 tration of the State plan there is a failure to comply sub-  
3 stantially with any provision of the State plan (or any as-  
4 surance contained therein), the Secretary shall make an  
5 initial determination of whether the failure is of such a  
6 nature that the plan should be withdrawn or whether the  
7 failure is of such a nature that the State should be given  
8 the opportunity to remedy the deficiencies, and provide no-  
9 tice of the Secretary's findings and initial determination.

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

1 timeframe set forth in this paragraph, the Secretary may  
2 reassert and exercise such concurrent enforcement author-  
3 ity, while a final determination is pending under para-  
4 graph (3) or until the Secretary has determined that the  
5 State has remedied the deficiencies as provided under  
6 paragraph (4). Such determination shall be published in  
7 the Federal Register. The procedures set forth in section  
8 18(g) shall not apply to a determination by the Secretary  
9 to reassert and exercise such concurrent enforcement au-  
10 thority.

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



1           “(4) If the Secretary makes a determination that the  
2 State should be provided the opportunity to remedy the  
3 deficiencies, the Secretary shall provide the State an op-  
4 portunity to respond to the Secretary’s findings and the  
5 opportunity to remedy such deficiencies within a time pe-  
6 riod established by the Secretary, not to exceed 1 year.  
7 The Secretary may extend and revise the time period to  
8 remedy such deficiencies, if the State’s legislature is not  
9 in session during this 1-year time period, or if the State  
10 demonstrates that it is not feasible to correct the defi-  
11 ciencies in the time period set by the Secretary, and the  
12 State has a plan to correct the deficiencies within a rea-  
13 sonable time period. If the Secretary finds that the State  
14 agency has failed to remedy such deficiencies within the  
15 time period specified by the Secretary and that the State  
16 plan continues to fail to comply substantially with a provi-  
17 sion of the State plan, the Secretary shall withdraw the  
18 State plan as provided for in paragraph (3).”;

19           (2) by adding at the end the following new sub-  
20 section:

21           “(i) Not later than 18 months after the date of enact-  
22 ment of this subsection, and again 5 years thereafter, the  
23 Comptroller General shall complete and issue a review of  
24 the effectiveness of State plans to develop and enforce  
25 safety and health standards to determine if they are at

1 least as effective as the Federal program and to evaluate  
2 whether the Secretary's oversight of State plans is effec-  
3 tive. The Comptroller General's evaluation shall assess—

4           “(1) the effectiveness of the Secretary's over-  
5           sight of State plans, including the indices of effec-  
6           tiveness used by the Secretary;

7           “(2) whether the Secretary's investigations in  
8           response to Complaints About State Plan Adminis-  
9           tration (CASPA) are adequate, whether significant  
10          policy issues have been identified by headquarters  
11          and corrective actions are fully implemented by each  
12          State;

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

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

22                 “(A) enforcement effectiveness, including  
23                 handling of fatalities, serious incidents and  
24                 complaints, compliance with inspection proce-  
25                 dures, hazard recognition, verification of abate-

1           ment, violation classification, citation and pen-  
2           alty issuance, including appropriate use of will-  
3           ful and repeat citations, and employee involve-  
4           ment;

5           “(B) inspections, the number of pro-  
6           grammed health and safety inspections at pri-  
7           vate and public sector establishments, and  
8           whether the State targets the highest hazard  
9           private sector work sites and facilities in that  
10          State;

11          “(C) budget and staffing, including wheth-  
12          er the State is providing adequate budget re-  
13          sources to hire, train and retain sufficient num-  
14          bers of qualified staff, including timely filling of  
15          vacancies;

16          “(D) administrative review, including the  
17          quality of decisions, consistency with Federal  
18          precedent, transparency of proceedings, deci-  
19          sions and records are available to the public,  
20          adequacy of State defense, and whether the  
21          State appropriately appeals adverse decisions;

22          “(E) anti-discrimination, including whether  
23          discrimination complaints are processed in a  
24          timely manner, whether supervisors and inves-  
25          tigators are properly trained to investigate dis-

1           crimination complaints, whether a case file re-  
2           view indicates merit cases are properly identi-  
3           fied consistent with Federal policy and proce-  
4           dure, whether employees are notified of their  
5           rights, and whether there is an effective process  
6           for employees to appeal the dismissal of a com-  
7           plaint;

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

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

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

1 **SEC. 402. EVALUATION OF REPEATED VIOLATIONS IN**  
2 **STATE PLANS.**

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

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

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

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

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

1 **TITLE V—NATIONAL INSTITUTE**  
2 **FOR OCCUPATIONAL SAFETY**  
3 **AND HEALTH**

4 **SEC. 501. HEALTH HAZARD EVALUATIONS BY THE NA-**  
5 **TIONAL INSTITUTE FOR OCCUPATIONAL**  
6 **SAFETY AND HEALTH.**

7 Section 20(a)(6) of the Occupational Safety and  
8 Health Act of 1970 (29 U.S.C. 669(a)(6)) is amended by  
9 striking the second sentence and inserting the following:  
10 “The Secretary shall determine following a written request  
11 by any employer, authorized representative of current or  
12 former employees, physician, other Federal agency, or  
13 State or local health department, specifying with reason-  
14 able particularity the grounds on which the request is  
15 made, whether any substance normally found in the place  
16 of employment has potentially toxic effects in such con-  
17 centrations as used or found or whether any physical  
18 agents, equipment, or working condition found or used has  
19 potentially hazardous effects; and shall submit such deter-  
20 mination both to employers and affected employees as  
21 soon as possible.”.

22 **SEC. 502. TRAINING AND EMPLOYEE EDUCATION.**

23 Paragraph (1) of section 21(c) of the Occupational  
24 Safety and Health Act of 1970 (29 U.S.C. 670(c)) is  
25 amended to read as follows: “(1) provide for the establish-

1 ment and supervision of programs for the education and  
2 training of employers and employees in the recognition,  
3 avoidance, and prevention of unsafe or unhealthful work-  
4 ing conditions, and employee rights and employer respon-  
5 sibilities under this Act, which shall include grant pro-  
6 grams to provide grants for nonprofit organizations (in-  
7 cluding grants to develop or expand the capacity of such  
8 organizations to provide safety and health training, edu-  
9 cation, and related assistance to the targeted audiences,  
10 grants for the training of employees and employers on oc-  
11 cupational safety and health hazards of particular concern  
12 or for particular industries, or groups of workers at high  
13 risk of injury, illness, or exposure to hazards, and grants  
14 for the development of training materials on particular  
15 topics), and”.

## 16 **TITLE VI—EFFECTIVE DATE**

### 17 **SEC. 601. EFFECTIVE DATE.**

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

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

1           (1) A State that has a State plan approved  
2 under section 18 of the Occupational Safety and  
3 Health Act of 1970 (29 U.S.C. 667) shall amend its  
4 State plan to conform with the requirements of this  
5 Act and the amendments made by this Act not later  
6 than 12 months after the date of the enactment of  
7 this Act. The Secretary of Labor may extend the pe-  
8 riod for a State to make such amendments to its  
9 State plan by not more than 12 months, if the  
10 State's legislature is not in session during the 12-  
11 month period beginning with the date of the enact-  
12 ment of this Act. Such amendments to the State  
13 plan shall take effect not later than 90 days after  
14 the adoption of such amendments by such State.

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

○