

115TH CONGRESS  
1ST SESSION

# S. 1000

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 SENATE OF THE UNITED STATES

MAY 1, 2017

Mr. FRANKEN (for himself, Mrs. MURRAY, Mr. BROWN, Ms. WARREN, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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

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

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

Sec. 1. Short title; table of contents.  
 Sec. 2. References.

#### TITLE I—COVERAGE OF PUBLIC EMPLOYEES, VOLUNTARY EMERGENCY RESPONDERS, AND APPLICATION OF ACT

Sec. 101. Coverage of public employees.  
 Sec. 102. Authorized employee representative.  
 Sec. 103. Application of Act.

#### TITLE II—INCREASING WHISTLEBLOWER PROTECTIONS

Sec. 201. Enhanced protections from retaliation.

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

Sec. 301. General duty of employers.  
 Sec. 302. Occupational safety and health standards.  
 Sec. 303. Posting of employee rights.  
 Sec. 304. Employer reporting of work-related injuries, illnesses, deaths, and  
 hospitalizations; prohibition on discouraging employee report-  
 ing.  
 Sec. 305. No loss of employee pay for inspections.  
 Sec. 306. Investigations of fatalities and significant incidents.  
 Sec. 307. Prohibition on unclassified citations.  
 Sec. 308. Victims' rights.  
 Sec. 309. Right to contest citations and penalties.  
 Sec. 310. Correction of serious, willful, or repeated violations pending contest  
 and procedures for a stay.  
 Sec. 311. Inaction by the Review Commission.  
 Sec. 312. Conforming amendments.  
 Sec. 313. Civil penalties.  
 Sec. 314. Criminal penalties.  
 Sec. 315. Prejudgment interest.

#### TITLE IV—STATE PLANS

Sec. 401. Concurrent enforcement authority and review of State occupational  
 safety and health plans.  
 Sec. 402. Evaluation of repeated violations in State plans.

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

Sec. 501. Health hazard evaluations by the National Institute for Occupational  
 Safety and Health.

#### TITLE VI—EFFECTIVE DATE

Sec. 601. Effective date.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, whenever in  
 3 this Act an amendment or repeal is expressed in terms  
 4 of an amendment to, or repeal of, a section or other provi-  
 5 sion, the reference shall be considered to be made to a  
 6 section or other provision of the Occupational Safety and  
 7 Health Act of 1970 (29 U.S.C. 651 et seq.).

8 **TITLE I—COVERAGE OF PUBLIC**  
 9 **EMPLOYEES, VOLUNTARY**  
 10 **EMERGENCY RESPONDERS,**  
 11 **AND APPLICATION OF ACT**

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

13 (a) IN GENERAL.—Section 3(5) (29 U.S.C. 652(5))  
 14 is amended by striking “but does not include” and all that  
 15 follows through the period at the end and inserting “in-  
 16 cluding the United States, a State, or a political subdivi-  
 17 sion of a State.”.

18 (b) CONSTRUCTION.—Nothing in this Act shall be  
 19 construed to affect the application of section 18 of the Oc-  
 20 cupational Safety and Health Act of 1970 (29 U.S.C.  
 21 667).

22 **SEC. 102. AUTHORIZED EMPLOYEE REPRESENTATIVE.**

23 Section 3 (29 U.S.C. 652) is amended by adding at  
 24 the end the following:

1           “(15) AUTHORIZED EMPLOYEE REPRESENTA-  
2           TIVE.—The term ‘authorized employee representa-  
3           tive’—

4                   “(A) means any person or organization  
5           that for the purposes of this Act represents 2  
6           or more employees at an establishment, factory,  
7           plant, construction site, or other workplace, or  
8           other environment where work is performed by  
9           employees for an employer; and

10                   “(B) includes a representative authorized  
11           by employees, a representative of employees, or  
12           any other representative of employees under  
13           this Act.”.

14   **SEC. 103. APPLICATION OF ACT.**

15           Section 4(b) (29 U.S.C. 653(b)) is amended—

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

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

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

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

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

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

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

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

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

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

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

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

23           (a) **EMPLOYEE ACTIONS.**—Section 11(c)(1) (29  
 24           U.S.C. 660(c)(1)) is amended—

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

6           “(A) such”;

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

9           “(B) such employee has”;

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

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

16          “(D) of the exercise”; and

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

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

1 “(2) PROHIBITION OF RETALIATION.—

2 “(A) IN GENERAL.—No person shall dis-  
3 charge, or cause to be discharged, or in any  
4 manner discriminate against, or cause to be dis-  
5 criminated against, an employee for refusing to  
6 perform the employee’s duties if the employee  
7 has a reasonable apprehension that performing  
8 such duties would result in serious injury to, or  
9 serious impairment of the health of, the em-  
10 ployee or other employees.

11 “(B) CIRCUMSTANCES.—For purposes of  
12 subparagraph (A), the circumstances causing  
13 the employee’s good-faith belief that performing  
14 such duties would pose a safety or health haz-  
15 ard shall be of such a nature that a reasonable  
16 person, under the circumstances confronting the  
17 employee, would conclude that there is such a  
18 hazard. In order to qualify for protection under  
19 this paragraph, the employee, when practicable,  
20 shall have communicated or attempted to com-  
21 municate the safety or health concern to the  
22 employer and have not received from the em-  
23 ployer a response reasonably calculated to allay  
24 such concern.”.



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

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

10          “(4) STATUTE OF LIMITATIONS.—

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

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

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

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

24          “(5) INVESTIGATION.—

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

8                   “(i) shall include—

9                           “(I) interviewing the complain-  
10                          ant;

11                          “(II) providing the respondent an  
12                          opportunity to—

13                                   “(aa) submit to the Sec-  
14                                  retary a written response to the  
15                                  complaint; and

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

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

22                                   “(aa) receive any statements  
23                                  or evidence provided to the Sec-  
24                                  retary;

1 “(bb) meet with the Sec-  
2 retary; and

3 “(cc) rebut any statements  
4 or evidence; and

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

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

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

13 “(ii) issue a decision granting or de-  
14 nying relief.

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

1 nary order shall be deemed a final order of the Sec-  
2 retary and is not subject to judicial review.

3 “(7) HEARING.—

4 “(A) REQUEST FOR HEARING.—

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

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

14 “(II) by the complainant within  
15 30 days after the date the complaint  
16 is dismissed without investigation by  
17 the Secretary under paragraph (5)(A);  
18 or

19 “(III) by the complainant within  
20 120 days after the date of filing the  
21 complaint, if the Secretary has not  
22 issued a decision under paragraph  
23 (5)(B).

24 “(ii) REINSTATEMENT ORDER.—The  
25 request for a hearing shall not operate to

1 stay any preliminary reinstatement order  
2 issued under paragraph (6).

3 “(B) PROCEDURES.—

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

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

21 “(iii) DECISION.—The administrative  
22 law judge shall issue a decision not later  
23 than 90 days after the date on which a  
24 hearing was requested under this para-  
25 graph and promptly notify, in writing, the

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

11 “(8) ADMINISTRATIVE APPEAL.—

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

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

1 substantial evidence and the decision and order  
2 are made in accordance with applicable law.

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

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

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

22 “(B) PUBLIC POLICY CONSIDERATIONS.—  
23 Neither the Secretary, an administrative law  
24 judge, nor the review board conducting a hear-  
25 ing under this subsection shall accept a settle-

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

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

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

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

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

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



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

7 “(11) JUDICIAL REVIEW.—

8 “(A) TIMELY APPEAL TO THE COURT OF  
9 APPEALS.—Any party adversely affected or ag-  
10 grieved by a final decision and order issued  
11 under this subsection may obtain review of such  
12 decision and order in the United States Court  
13 of Appeals for the circuit where the violation,  
14 with respect to which such final decision and  
15 order was issued, allegedly occurred or where  
16 the complainant resided on the date of such al-  
17 leged violation. To obtain such review, a party  
18 shall file a petition for review not later than 60  
19 days after the final decision and order was  
20 issued. Such review shall conform to chapter 7  
21 of title 5, United States Code. The commence-  
22 ment of proceedings under this subparagraph  
23 shall not, unless ordered by the court, operate  
24 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, or an administrative law judge, review  
 22               board, or court, may determine that a violation  
 23               of 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, or an administrative law judge, review  
14 board, or court, determines that a violation of  
15 paragraph (1) or (2) has occurred, the Sec-  
16 retary, administrative law judge, review board,  
17 or court, respectively, shall have jurisdiction to  
18 order all appropriate relief, including injunctive  
19 relief, and compensatory and exemplary dam-  
20 ages, 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-

sociated with the complainant's employment, including opportunities for promotions to positions with equivalent or better compensation for which the complainant is qualified;

“(iii) compensatory and consequential damages sufficient to make the complainant whole (including back pay, prejudgment interest, and other damages); and

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

“(B) ATTORNEYS' FEES AND COSTS.—If the Secretary or an administrative law judge, review board, or court grants an order for relief under subparagraph (A), the Secretary, administrative 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)  
16 (29 U.S.C. 666(j)) is amended by inserting before the pe-  
17 riod the following: “, including the history of violations  
18 under section 11(c)”.

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

### 22 **SEC. 301. GENERAL DUTY OF EMPLOYERS.**

23 Section 5 (29 U.S.C. 654(a)(1)) is amended—

24 (1) in subsection (a), by amending paragraph

25 (1) to read as follows:

1 “(1) shall furnish employment and a place of  
2 employment that are free from recognized hazards—

3 “(A) that are causing or are likely to cause  
4 death or serious physical harm and that the  
5 employer creates or controls; or

6 “(B) to which the employer exposes any  
7 employee of the employer or any other person  
8 performing work at the place of employment;  
9 and”; 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(a) (29 U.S.C. 655(a)) is amended by strik-  
18 ing “Without regard” and all that follows through “af-  
19 fected employees.” and inserting the following: “(1) With-  
20 out regard to chapters 5 and 6 of title 5, United States  
21 Code, or to the other subsections of this section, the Sec-  
22 retary shall—

23 “(A) as soon as practicable during the period  
24 beginning with the effective date of this Act and  
25 ending 2 years after such date, by rule promulgate

1 as an occupational safety or health standard any na-  
2 tional consensus standard, and any established Fed-  
3 eral standard, unless the Secretary determines that  
4 the promulgation of such a standard would not re-  
5 sult in improved safety or health for specifically des-  
6 ignated employees; and

7 “(B) by rule, not later than 2 years after the  
8 effective date under section 601(a) of the Protecting  
9 America’s Workers Act, update any national con-  
10 sensus standard that has been promulgated or incor-  
11 porated by reference pursuant to this subsection, ex-  
12 cept that such a standard shall not be updated pur-  
13 suant to this subparagraph, if—

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

17 “(ii) the Secretary determines such update  
18 would not result in improved health or safety  
19 for specifically designated employees.

20 “(2) In the event of conflict among any such stand-  
21 ards, including national consensus standards, or in the  
22 event of a consolidation of national consensus standards,  
23 the Secretary shall promulgate the standard which assures  
24 the greatest protection of the safety or health of the af-  
25 fected employees.



1 “(3) No standard, rule, or regulation promulgated  
 2 under this Act, on or after the date of enactment of the  
 3 Protecting America’s Workers Act, shall reduce the pro-  
 4 tection afforded by a health or safety standard, rule, regu-  
 5 lation, or national consensus standard in effect on the day  
 6 before the date of enactment of such Act.”.

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

8 Section 8(c)(1) (29 U.S.C. 657(c)(1)) is amended by  
 9 adding at the end the following new sentence: “Such regu-  
 10 lations shall include provisions requiring employers to post  
 11 for employees information on the protections afforded  
 12 under section 11(c).”.

13 **SEC. 304. EMPLOYER REPORTING OF WORK-RELATED INJU-**  
 14 **RIES, ILLNESSES, DEATHS, AND HOS-**  
 15 **PITALIZATIONS; PROHIBITION ON DISCOUR-**  
 16 **AGING EMPLOYEE REPORTING.**

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

1 lated death or work-related injury or illness that results  
2 in the in-patient hospitalization of an employee for medical  
3 treatment, amputation, or loss of an eye, and shall pro-  
4 hibit the employer from adopting or implementing policies  
5 or practices by the employer that have the effect of dis-  
6 couraging accurate recordkeeping and the reporting of  
7 work-related injuries or illnesses by any employee or in  
8 any manner discriminates or provides for adverse action  
9 against any employee for reporting a work-related injury  
10 or illness. For purposes of this paragraph, the term ‘site-  
11 controlling employer’ means the employer that has pri-  
12 mary control over a work site at which employees of more  
13 than one employer work, such as by hiring or coordinating  
14 the work of other employers working at the site.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

12   **SEC. 308. VICTIMS’ RIGHTS.**

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

16   **“SEC. 9A. VICTIMS’ RIGHTS.**

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

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

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

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

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

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

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

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

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

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

11       “(d) SECRETARY PROCEDURES.—The Secretary shall  
12 establish procedures—

13               “(1) to inform victims of their rights under this  
14 section; and

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

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

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

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

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

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

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

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

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

16               “(2) a family member (as further defined by  
17       the Secretary) of a victim described in paragraph  
18       (1), if—

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

22                       “(B) the victim sustains a work-related in-  
23       jury or illness that is the subject of an inspec-  
24       tion or investigation conducted under section 8,

1           and the victim because of incapacity cannot rea-  
2           sonably exercise the rights under this section.”.

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

4       Section 10(c) (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)(a)”  
8           the 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(a)” the following: “(in-  
12           cluding a modification of a citation issued  
13           under such section)”; and

14           (C) by inserting after “files a notice with  
15           the Secretary alleging” the following: “that the  
16           citation fails to properly 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) in the last sentence—



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

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

6 **SEC. 310. CORRECTION OF SERIOUS, WILLFUL, OR RE-**  
 7 **PEATED VIOLATIONS PENDING CONTEST AND**  
 8 **PROCEDURES FOR A STAY.**

9 Section 10 (29 U.S.C. 659) is amended by adding  
 10 at the end the following:

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

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

16 For each violation which the Secretary designates as  
 17 serious, willful, or repeated, the period permitted for  
 18 the correction of the violation shall begin to run  
 19 upon receipt of the citation.

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

22 “(A) shall not operate as a stay of the pe-  
 23 riod for correction of a violation designated as  
 24 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 the following:

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.”.

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

2 Section 10 (29 U.S.C. 659), as amended by section  
3 310, is further amended by adding at the end the fol-  
4 lowing:

5 “(e) INACTION BY REVIEW COMMISSION.—

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

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

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

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

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

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

1 (b) JUDICIAL REVIEW.—The first sentence of section  
 2 11(a) (29 U.S.C. 660(a)) is amended—

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

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

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

12 (c) FAILURE TO CORRECT VIOLATIONS.—Section  
 13 17(d) (29 U.S.C. 666(d)) is amended to read as follows:

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

ceeding under section 10 initiated by the employer in good faith and not solely for delay of avoidance of penalties) may be assessed a civil penalty of not more than \$7,000 for each day during which such failure or violation continues.”.

**SEC. 313. CIVIL PENALTIES.**

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

(1) in subsection (a)—

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

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

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

1            ployees such penalty shall not be less than  
 2            \$25,000 for each such violation.”;

3            (2) in subsection (b)—

4                    (A) by striking “\$7,000” and inserting  
 5                    “\$12,675”; and

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

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

17            (4) in subsection (d), as amended by section  
 18            312(c), by striking “\$7,000” each place it occurs  
 19            and inserting “\$12,675”;

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

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



1 (b) INFLATION ADJUSTMENT.—Section 17, as  
 2 amended by subsection (a), is further amended by insert-  
 3 ing after subsection (d) the following:

4 “(e) Amounts provided under this section for civil  
 5 penalties shall be adjusted by the Secretary once each  
 6 year, not later than January 15 of such year, to account  
 7 for any percentage increase or decrease in the Consumer  
 8 Price Index for all urban consumers, and consistent with  
 9 the requirements of the Federal Civil Penalties Inflation  
 10 Adjustment Act of 1990 (28 U.S.C. 2461 note).”.

11 **SEC. 314. CRIMINAL PENALTIES.**

12 (a) IN GENERAL.—Section 17 (29 U.S.C. 666), as  
 13 amended by section 313, is further amended—

14 (1) by amending subsection (f) (as redesignated  
 15 by section 313(a)(5)) to read as follows:

16 “(f)(1) Any employer who knowingly violates any  
 17 standard, rule, or order promulgated under section 6 of  
 18 this Act, or of any regulation prescribed under this Act,  
 19 and that violation caused or significantly contributed to  
 20 the death of any employee, shall, upon conviction, be pun-  
 21 ished by a fine in accordance with title 18, United States  
 22 Code, or by imprisonment for not more than 10 years, or  
 23 both, except that if the conviction is for a violation com-  
 24 mitted after a first conviction of such person under this  
 25 subsection or subsection (j), punishment shall be by a fine

1 in accordance title 18, United States Code, or by imprison-  
 2 ment for not more than 20 years, or by both.

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

6 (2) by amending subsection (g) (as redesignated  
 7 by section 313(a)(5)) to read as follows:

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

15 (3) in subsection (h) (as redesignated by section  
 16 313(a)(5)), by striking “fine of not more than  
 17 \$10,000, or by imprisonment for not more than six  
 18 months,” and inserting “fine in accordance with title  
 19 18, United States Code, or by imprisonment for not  
 20 more than 5 years,”; and

21 (4) by inserting after subsection (j) (as redesign-  
 22 ated by section 313(a)(5)) the following:

23 “(k)(1) Any employer who knowingly violates any  
 24 standard, rule, or order promulgated under section 6, or  
 25 any regulation prescribed under this Act, and that viola-

1 tion caused or significantly contributed to serious bodily  
 2 harm to any employee but does not cause death to any  
 3 employee, shall, upon conviction, be punished by a fine in  
 4 accordance with title 18, United States Code, or by impris-  
 5 onment for not more than 5 years, or by both, except that  
 6 if the conviction is for a violation committed after a first  
 7 conviction of such person under this subsection or sub-  
 8 section (f), punishment shall be by a fine in accordance  
 9 with title 18, United States Code, or by imprisonment for  
 10 not more than 10 years, or by both.

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

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

17 “(A) a substantial risk of death;

18 “(B) protracted unconsciousness;

19 “(C) protracted and obvious physical disfigure-  
 20 ment; or

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

24 (b) JURISDICTION FOR PROSECUTION UNDER STATE  
 25 AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C.

1 666), as amended by subsection (a), is further amended  
 2 by adding at the end the following:

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

7 **SEC. 315. PREJUDGMENT INTEREST.**

8 Section 17(n) (29 U.S.C. 666(n)) (as redesignated by  
 9 section 313(a)(5)) is amended by adding at the end the  
 10 following: “Pre-final order interest on such penalties shall  
 11 begin to accrue on the date the party contests a citation  
 12 issued under this Act, and shall end upon the issuance  
 13 of the final order. Such pre-final order interest shall be  
 14 calculated at the current underpayment rate determined  
 15 by the Secretary of the Treasury pursuant to section 6621  
 16 of the Internal Revenue Code of 1986, and shall be com-  
 17 pounded daily. Post-final order interest shall begin to ac-  
 18 crue 30 days after the date a final order of the Commis-  
 19 sion or the court is issued, and shall be charged at the  
 20 rate of 8 percent per year.”.

21 **TITLE IV—STATE PLANS**

22 **SEC. 401. CONCURRENT ENFORCEMENT AUTHORITY AND**  
 23 **REVIEW OF STATE OCCUPATIONAL SAFETY**  
 24 **AND HEALTH PLANS.**

25 Section 18 (29 U.S.C. 667) is amended—

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

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

21       “(2) If the Secretary makes an initial determination  
22 to reassert and exercise concurrent enforcement authority  
23 while the State is given an opportunity to remedy the defi-  
24 ciencies, the Secretary shall afford the State an oppor-  
25 tunity for a public hearing within 15 days of such request,

1 provided that such request is made not later than 10 days  
2 after the Secretary's notice to the State. The Secretary  
3 shall review and consider the testimony, evidence, or writ-  
4 ten comments, and not later than 30 days following such  
5 hearing, make a determination to affirm, reverse, or mod-  
6 ify the Secretary's initial determination to reassert and ex-  
7 ercise concurrent enforcement authority under sections 8,  
8 9, 10, 13, and 17 with respect to standards promulgated  
9 under section 6 and obligations under section 5(a). Fol-  
10 lowing such a determination by the Secretary, or in the  
11 event that the State does not request a hearing within the  
12 timeframe set forth in this paragraph, the Secretary may  
13 reassert and exercise such concurrent enforcement author-  
14 ity, while a final determination is pending under para-  
15 graph (3) or until the Secretary has determined that the  
16 State has remedied the deficiencies as provided under  
17 paragraph (4). Such determination shall be published in  
18 the Federal Register. The procedures set forth in sub-  
19 section (g) shall not apply to a determination by the Sec-  
20 retary to reassert and exercise such concurrent enforce-  
21 ment authority.

22       “(3) If the Secretary makes an initial determination  
23 that the plan should be withdrawn, the Secretary shall  
24 provide due notice and the opportunity for a hearing. If  
25 based on the evaluation, comments, and evidence, the Sec-

1   retary makes a final determination that there is a failure  
2   to comply substantially with any provision of the State  
3   plan (or any assurance contained therein), the Secretary  
4   shall notify the State agency of the withdrawal of approval  
5   of such plan and upon receipt of such notice such plan  
6   shall cease to be in effect, but the State may retain juris-  
7   diction in any case commenced before the withdrawal of  
8   the plan in order to enforce standards under the plan  
9   whenever the issues involved do not relate to the reasons  
10  for the withdrawal of the plan.

11       “(4) If the Secretary makes a determination that the  
12  State should be provided the opportunity to remedy the  
13  deficiencies, the Secretary shall provide the State an op-  
14  portunity to respond to the Secretary’s findings and the  
15  opportunity to remedy such deficiencies within a time pe-  
16  riod established by the Secretary, not to exceed 1 year.  
17  The Secretary may extend and revise the time period to  
18  remedy such deficiencies, if the State’s legislature is not  
19  in session during this 1-year time period, or if the State  
20  demonstrates that it is not feasible to correct the defi-  
21  ciencies in the time period set by the Secretary, and the  
22  State has a plan to correct the deficiencies within a rea-  
23  sonable time period. If the Secretary finds that the State  
24  agency has failed to remedy such deficiencies within the  
25  time period specified by the Secretary and that the State

1 plan continues to fail to comply substantially with a provi-  
 2 sion of the State plan, the Secretary shall withdraw the  
 3 State plan as provided for in paragraph (3).’; and

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

6 “(i) Not later than 18 months after the date of enact-  
 7 ment of this subsection, and again 5 years thereafter, the  
 8 Comptroller General of the United States shall complete  
 9 and issue a review of the effectiveness of State plans to  
 10 develop and enforce safety and health standards to deter-  
 11 mine if they are at least as effective as the Federal pro-  
 12 gram and to evaluate whether the Secretary’s oversight  
 13 of State plans is effective. The Comptroller General’s eval-  
 14 uation shall assess—

15 “(1) the effectiveness of the Secretary’s over-  
 16 sight of State plans, including the indices of effec-  
 17 tiveness used by the Secretary;

18 “(2) whether the Secretary’s investigations in  
 19 response to Complaints About State Program Ad-  
 20 ministration (CASPA) are adequate, whether signifi-  
 21 cant policy issues have been identified by head-  
 22 quarters, and whether corrective actions are fully  
 23 implemented by each State;



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

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

10           “(A) enforcement effectiveness, including  
11           handling of fatalities, serious incidents and  
12           complaints, compliance with inspection proce-  
13           dures, hazard recognition, verification of abate-  
14           ment, violation classification, citation and pen-  
15           alty issuance, including appropriate use of will-  
16           ful and repeat citations, and employee involve-  
17           ment;

18           “(B) inspections, the number of pro-  
19           grammed health and safety inspections at pri-  
20           vate and public sector establishments, and  
21           whether the State targets the highest hazard  
22           private sector worksites and facilities in that  
23           State;

24           “(C) budget and staffing, including wheth-  
25           er the State is providing adequate budget re-

1 sources to hire, train, and retain sufficient  
2 numbers of qualified staff, including timely fill-  
3 ing of vacancies;

4 “(D) administrative review, including the  
5 quality of decisions, consistency with Federal  
6 precedence, transparency of proceedings, avail-  
7 ability of decisions and records to the public,  
8 adequacy of State defense, and whether the  
9 State appropriately appeals adverse decisions;

10 “(E) anti-discrimination, including whether  
11 discrimination complaints are processed in a  
12 timely manner, whether supervisors and inves-  
13 tigators are properly trained to investigate dis-  
14 crimination complaints, whether a case file re-  
15 view indicates merit cases are properly identi-  
16 fied consistent with Federal policy and proce-  
17 dure, whether employees are notified of their  
18 rights, and whether there is an effective process  
19 for employees to appeal the dismissal of a com-  
20 plaint;

21 “(F) program administration, including  
22 whether the State’s standards and policies are  
23 at least as effective as the Federal program and  
24 are updated in a timely manner, and whether  
25 National Emphasis Programs that are applica-

1           ble in such States are adopted and implemented  
 2           in a manner that is at least as effective as the  
 3           Federal program;

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

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

13 **SEC. 402. EVALUATION OF REPEATED VIOLATIONS IN**  
 14 **STATE PLANS.**

15          Section 18(c) (29 U.S.C. 668(c)) is amended—

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

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

20           (3) by adding at the end the following new  
 21          paragraph:

22           “(9) provides that in determining whether a  
 23          violation is repeated, the State shall consider the  
 24          employer’s violations within the State, in conjunction  
 25          with the employer’s history of violations under other

1 States' occupational safety and health plans ap-  
 2 proved by the Secretary and the employer's history  
 3 of violations in those States where the Secretary has  
 4 jurisdiction under this Act, in a manner that is at  
 5 least as effective as provided under section 17.”.

6 **TITLE V—NATIONAL INSTITUTE**  
 7 **FOR OCCUPATIONAL SAFETY**  
 8 **AND HEALTH**

9 **SEC. 501. HEALTH HAZARD EVALUATIONS BY THE NA-**  
 10 **TIONAL INSTITUTE FOR OCCUPATIONAL**  
 11 **SAFETY AND HEALTH.**

12 Section 20(a)(6) (29 U.S.C. 669(a)(6)) is amended  
 13 by striking the second sentence and inserting the fol-  
 14 lowing: “The Secretary shall determine following a written  
 15 request by any employer, authorized representative of cur-  
 16 rent or former employees, physician, other Federal agency,  
 17 or State or local health department, specifying with rea-  
 18 sonable particularity the grounds on which the request is  
 19 made, whether any substance normally found in the place  
 20 of employment has potentially toxic effects in such con-  
 21 centrations as used or found, or whether any physical  
 22 agents, equipment, or working condition found or used has  
 23 potentially hazardous effects. The Secretary shall submit  
 24 such determination both to employers and affected em-  
 25 ployees as soon as possible.”.

# 1       **TITLE VI—EFFECTIVE DATE**

## 2   **SEC. 601. EFFECTIVE DATE.**

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

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

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

24           (2) This Act and the amendments made by this  
25 Act shall take effect not later than 36 months after

1       the date of the enactment of this Act with respect  
2       to a workplace of a State, or a political subdivision  
3       of a State, that does not have a State plan approved  
4       under such section 18.

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