

115TH CONGRESS
1ST SESSION

H. R. 914

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2017

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

A BILL

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

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

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

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

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

Sec. 1. Short title; table of contents.

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

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

TITLE II—INCREASING WHISTLEBLOWER PROTECTIONS

- Sec. 201. Enhanced protections from retaliation.

TITLE III—IMPROVING REPORTING, INSPECTION, AND ENFORCEMENT

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

TITLE IV—STATE PLANS

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

TITLE V—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

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

TITLE VI—EFFECTIVE DATE

- Sec. 601. Effective date.

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

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

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

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

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

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

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

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

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

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

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

14 (1) by redesignating paragraphs (2), (3), and
15 (4) as paragraphs (5), (6), and (7), respectively; and
16 (2) by striking paragraph (1) and inserting the
17 following:

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

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

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

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

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

4 “(B) a decision of the Secretary denying a peti-
 5 tion to rescind such a certification notice under
 6 paragraph (1),
 7 may, not later than 60 days after such decision is pub-
 8 lished in the Federal Register, file a petition challenging
 9 such decision with the United States Court of Appeals for
 10 the circuit in which such person resides or such person
 11 has a principal place of business, for judicial review of
 12 such decision. A copy of the petition shall be forthwith
 13 transmitted by the clerk of the court to the Secretary. The
 14 Secretary’s decision shall be set aside if found to be arbi-
 15 trary, capricious, an abuse of discretion, or otherwise not
 16 in accordance with law.

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

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

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

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

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

6 “(A) such”;

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

9 “(B) such employee has”;

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

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

16 “(D) of the exercise”; and

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

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

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

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

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

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

7 “(4) STATUTE OF LIMITATIONS.—

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

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

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

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

21 “(5) INVESTIGATION.—

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

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

4 “(i) shall include—

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(7) HEARING.—

24 “(A) REQUEST FOR HEARING.—

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

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

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

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

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

24 “(B) PROCEDURES.—

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

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

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

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

8 “(8) ADMINISTRATIVE APPEAL.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(11) JUDICIAL REVIEW.—

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

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

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

12 “(13) BURDENS OF PROOF.—

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

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

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

6 “(14) RELIEF.—

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

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

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

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

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

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

23 “(i) reasonable attorneys’ fees; and

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

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

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

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

15 “(17) ELECTION OF VENUE.—

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

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

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

25 “(B) REFERRALS.—If—

1 “(i) the Secretary receives a complaint
 2 pursuant to subparagraph (A)(i), the Sec-
 3 retary shall not refer such complaint to a
 4 State plan administrator for resolution; or
 5 “(ii) a State plan administrator re-
 6 ceives a complaint pursuant to subpara-
 7 graph (A)(ii), the State plan administrator
 8 shall not refer such complaint to the Sec-
 9 retary for resolution.”.

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

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

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

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

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

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

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

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

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

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

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

13 (1) in subsection (a)—

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

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

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

20 “(A) as soon as practicable”;

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

23 “(2) In the”;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(A) INCIDENT RESULTING IN DEATH.—

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

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

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

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

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

17 **SEC. 308. VICTIMS’ RIGHTS.**

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

21 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (1) in the first sentence—

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

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

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

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

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

3 (3) by amending the last sentence—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(e) INACTION BY REVIEW COMMISSION.—

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

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

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

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

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

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

tion of violations designated as serious, willful, or repeated,” after “(which period shall not begin to run”.

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

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

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

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

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

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

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

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

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

14 (1) in subsection (a)—

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

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

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

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

8 (2) in subsection (b)—

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

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

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

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

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

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

7 (b) INFLATION ADJUSTMENT.—Section 17 is further
 8 amended by inserting after subsection (d) the following:
 9 “(e) Amounts provided under this section for civil
 10 penalties shall be adjusted by the Secretary once each
 11 year, not later than January 15 of such year, to account
 12 for the percentage increase or decrease in the Consumer
 13 Price Index for all urban consumers during such period,
 14 consistent with the requirements of the Federal Civil Pen-
 15 alties Inflation Adjustment Act of 1990 (28 U.S.C. 2461
 16 note).”.

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

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

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

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

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

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

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

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

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

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

3 (4) by inserting after subsection (j) (as redesignig-
4 nated by section 310) the following:

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

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

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

24 “(A) a substantial risk of death;

25 “(B) protracted unconsciousness;

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

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

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

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

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

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

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

3 **TITLE IV—STATE PLANS**

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

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

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

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

1 failure is of such a nature that the State should be given
2 the opportunity to remedy the deficiencies, and provide no-
3 tice of the Secretary's findings and initial determination.
4 “(2) If the Secretary makes an initial determination
5 to reassert and exercise concurrent enforcement authority
6 while the State is given an opportunity to remedy the defi-
7 ciencies, the Secretary shall afford the State an oppor-
8 tunity for a public hearing within 15 days of such request,
9 provided that such request is made not later than 10 days
10 after Secretary's notice to the State. The Secretary shall
11 review and consider the testimony, evidence, or written
12 comments, and not later than 30 days following such hear-
13 ing, make a determination to affirm, reverse, or modify
14 the Secretary's initial determination to reassert and exer-
15 cise concurrent enforcement authority under sections 8, 9,
16 10, 13, and 17 with respect to standards promulgated
17 under section 6 and obligations under section 5(a). Fol-
18 lowing such a determination by the Secretary, or in the
19 event that the State does not request a hearing within the
20 timeframe set forth in this paragraph, the Secretary may
21 reassert and exercise such concurrent enforcement author-
22 ity, while a final determination is pending under para-
23 graph (3) or until the Secretary has determined that the
24 State has remedied the deficiencies as provided under
25 paragraph (4). Such determination shall be published in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **TITLE VI—EFFECTIVE DATE**

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

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

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

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

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

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

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