

113TH CONGRESS
1ST SESSION

H. R. 1648

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

APRIL 18, 2013

Mr. GEORGE MILLER of California (for himself, Mr. COURTNEY, Ms. TITUS, Mr. HOLT, Mr. NADLER, Mr. GENE GREEN of Texas, Ms. DELAURO, and Mr. PAYNE) 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 AND APPLICATION
OF ACT

Sec. 101. Coverage of public employees.

Sec. 102. 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. Posting of employee rights.

Sec. 303. Employer reporting of work-related injuries, illnesses, deaths and hos-
pitalizations; prohibition on discouraging employee reporting.

Sec. 304. No loss of employee pay for inspections.

Sec. 305. Investigations of fatalities and significant incidents.

Sec. 306. Prohibition on unclassified citations.

Sec. 307. Victims' rights.

Sec. 308. Right to contest citations and penalties.

Sec. 309. Correction of serious, willful, or repeated violations pending contest
and procedures for a stay.

Sec. 310. Conforming amendments.

Sec. 311. Civil penalties.

Sec. 312. Criminal penalties.

Sec. 313. 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 Occupa-
tional Safety and Health.

TITLE VI—EFFECTIVE DATE

Sec. 601. Effective date.

1 **TITLE I—COVERAGE OF PUBLIC**
2 **EMPLOYEES AND APPLICA-**
3 **TION OF ACT**

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

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

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

15 **SEC. 102. APPLICATION OF ACT.**

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

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

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

22 “(1) If a Federal agency has promulgated and is en-
23 forcing a standard or regulation affecting occupational
24 safety or health of some or all of the employees within
25 that agency’s regulatory jurisdiction, and the Secretary

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

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

1 of the petition, publish a decision with respect to the peti-
2 tion in the Federal Register.

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

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

7 “(B) a decision of the Secretary denying a peti-
8 tion to rescind such a certification notice under
9 paragraph (1),

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

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

1 **TITLE II—INCREASING**
2 **WHISTLEBLOWER PROTECTIONS**

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

4 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the
5 Occupational Safety and Health Act of 1970 (29 U.S.C.
6 660(c)(1)) is amended—

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

12 “(A) such”;

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

15 “(B) such employee has”;

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

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

22 “(D) of the exercise”; and

23 (4) by inserting before the period at the end the
24 following: “, including the reporting of any injury,
25 illness, or unsafe condition to the employer, agent of

1 the employer, safety and health committee involved,
2 or employee safety and health representative in-
3 volved”.

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

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

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

1 ployer and have not received from the employer a re-
2 sponse reasonably calculated to allay such concern.”.

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

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

12 “(4) STATUTE OF LIMITATIONS.—

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

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

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

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

1 “(5) INVESTIGATION.—

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

9 “(i) shall include—

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

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

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

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

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

23 “(aa) receive any statements
24 or evidence provided to the Sec-
25 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 paragraph (6) respec-
13 tively;

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, administrative law judge, review board,
22 or a court may determine that a violation of
23 paragraph (1) or (2) has occurred only if the
24 complainant demonstrates that any conduct de-
25 scribed in paragraph (1) or (2) with respect to

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

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

11 “(14) RELIEF.—

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

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

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

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

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

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

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

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

3 “(i) reasonable attorneys’ fees; and

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

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

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

20 “(17) ELECTION OF VENUE.—

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

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

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

5 “(B) REFERRALS.—If—

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

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

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

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

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

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

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

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

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

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

15 **SEC. 302. POSTING OF EMPLOYEE RIGHTS.**

16 Section 8(c)(1) of such Act (29 U.S.C. 657(c)(1)) is
17 amended by adding at the end the following new sentence:
18 “Such regulations shall include provisions requiring em-
19 ployers to post for employees information on the protec-
20 tions afforded under section 11(c).”.

1 **SEC. 303. EMPLOYER REPORTING OF WORK-RELATED INJU-**
2 **RIES, ILLNESSES, DEATHS AND HOSPITALIZA-**
3 **TIONS; PROHIBITION ON DISCOURAGING EM-**
4 **PLOYEE REPORTING.**

5 Section 8(c)(2) of such Act (29 U.S.C. 657(c)(2)) is
6 amended by adding at the end the following new sen-
7 tences: “Such regulations shall require site-controlling em-
8 ployers to keep a site log for all recordable injuries and
9 illnesses occurring among all employees on the particular
10 site, including employees of the site-controlling employer
11 or others who are performing work at the particular site
12 (including independent contractors). Such regulations
13 shall require employers to promptly notify the Secretary
14 of any work-related death or work-related injury or illness
15 that results in the in-patient hospitalization of an em-
16 ployee for medical treatment, and shall prohibit the em-
17 ployer from adopting or implementing policies or practices
18 by the employer that have the effect of discouraging accu-
19 rate recordkeeping and the reporting of work-related inju-
20 ries or illnesses by any employee or in any manner dis-
21 criminate or provides for adverse action against any em-
22 ployee for reporting a work-related injury or illness. For
23 purposes of this paragraph, the term ‘site-controlling em-
24 ployer’ means the employer that has primary control over
25 a work site at which employees of more than one employer

1 work, such as by hiring or coordinating the work of other
2 employers working at the site.”.

3 **SEC. 304. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.**

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

11 **SEC. 305. INVESTIGATIONS OF FATALITIES AND SIGNIFI-**
12 **CANT INCIDENTS.**

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

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

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

20 “(2) EVIDENCE PRESERVATION.—If a significant in-
21 cident or an incident resulting in death occurs in a place
22 of employment, the employer shall promptly notify the
23 Secretary of the incident involved and shall take appro-
24 priate measures to prevent the destruction or alteration
25 of any evidence that would assist in investigating the inci-

1 dent. The appropriate measures required by this para-
2 graph do not prevent an employer from taking action on
3 a worksite to prevent injury to employees or substantial
4 damage to property or to avoid disruption of essential
5 services necessary to public safety, provided that if an em-
6 ployer takes such action, the employer shall notify the Sec-
7 retary of the action in a timely fashion.

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

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

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

16 **SEC. 306. PROHIBITION ON UNCLASSIFIED CITATIONS.**

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

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

1 **SEC. 307. VICTIMS' RIGHTS.**

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

5 **“SEC. 9A. VICTIMS' RIGHTS.**

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

10 “(1) meet with the Secretary regarding the in-
11 spection or investigation conducted under such sec-
12 tion before the Secretary's decision to issue a cita-
13 tion or take no action;

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

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

21 “(4) be provided notification of the date and
22 time or any proceedings, service of pleadings, and
23 other relevant documents, and an explanation of the
24 rights of the employer, employee and employee rep-
25 resentative, and victim to participate in proceedings
26 conducted under section 10(c).

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

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

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

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

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

22 “(d) SECRETARY PROCEDURES.—The Secretary shall
23 establish procedures—

24 “(1) to inform victims of their rights under this
25 section; and

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

3 “(e) COMMISSION PROCEDURES AND CONSIDER-
4 ATIONS.—The Commission shall—

5 “(1) establish procedures relating to the rights
6 of victims to be heard in proceedings before the
7 Commission; and

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

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

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

18 “(2) assist victims in asserting their rights
19 under this section.

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

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

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

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

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

12 **SEC. 308. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

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

15 (1) in the first sentence—

16 (A) by inserting after “that he intends to
17 contest a citation issued under section (9)” the
18 following: “(or a modification of a citation
19 issued under this section)”;

20 (B) by inserting after “the issuance of a
21 citation under section 9” the following: “(in-
22 cluding a modification of a citation issued
23 under such section)”;

24 (C) by inserting after “files a notice with
25 the Secretary alleging” the following: “that the

1 citation fails properly to designate the violation
2 as serious, willful, or repeated, that the pro-
3 posed penalty is not adequate, or”;

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

9 (3) by amending the last sentence—

10 (A) by inserting “employers and” after
11 “Commission shall provide”; and

12 (B) by inserting before the period at the
13 end “, and notification of any modification of a
14 citation”.

15 **SEC. 309. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
16 **PEATED VIOLATIONS PENDING CONTEST AND**
17 **PROCEDURES FOR A STAY.**

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

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

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

1 For each violation which the Secretary designates as
2 serious, willful, or repeated, the period permitted for
3 the correction of the violation shall begin to run
4 upon receipt of the citation.

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

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

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

13 “(3) CRITERIA AND RULES OF PROCEDURE FOR
14 STAYS.—

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

24 “(B) CRITERIA.—In determining whether
25 a stay should be issued on the basis of a motion

1 filed under subparagraph (A), the Commission
2 may grant a stay only if the employer has dem-
3 onstrated—

4 “(i) a substantial likelihood of success
5 on the areas contested under subparagraph
6 (A); and

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

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

14 “(i) That a hearing before an admin-
15 istrative law judge shall occur not later
16 than 15 days following the filing of the
17 motion for a stay (unless extended at the
18 request of the employer), and shall provide
19 for a decision on the motion not later than
20 15 days following the hearing (unless ex-
21 tended at the request of the employer).

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

1 “(iii) That if a party is aggrieved by
2 a decision issued by an administrative law
3 judge regarding the stay, such party has
4 the right to file an objection with the Com-
5 mission not later than 5 days after receipt
6 of the administrative law judge’s decision.
7 Within 10 days after receipt of the objec-
8 tion, a Commissioner, if a quorum is seat-
9 ed pursuant to section 12(f), shall decide
10 whether to grant review of the objection.
11 If, within 10 days after receipt of the ob-
12 jection, no decision is made on whether to
13 review the decision of the administrative
14 law judge, the Commission declines to re-
15 view such decision, or no quorum is seated,
16 the decision of the administrative law
17 judge shall become a final order of the
18 Commission. If the Commission grants re-
19 view of the objection, the Commission shall
20 issue a decision regarding the stay not
21 later than 30 days after receipt of the ob-
22 jection. If the Commission fails to issue
23 such decision within 30 days, the decision
24 of the administrative law judge shall be-
25 come a final order of the Commission.

1 “(iv) For notification to employees or
2 representatives of affected employees of re-
3 quests for such hearings and shall provide
4 affected employees or representatives of af-
5 fected employees an opportunity to partici-
6 pate as parties to such hearings.”.

7 **SEC. 310. CONFORMING AMENDMENTS.**

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

14 (b) JUDICIAL REVIEW.—The first sentence of section
15 11(a) of the Occupational Safety and Health Act of 1970
16 (29 U.S.C. 660(a)) is amended—

17 (1) by inserting “(or the failure of the Commis-
18 sion, including an administrative law judge, to make
19 a timely decision on a request for a stay under sec-
20 tion 10(d))” after “an order”;

21 (2) by striking “subsection (c)” and inserting
22 “subsections (c) and (d)”; and

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

1 (c) FAILURE TO CORRECT VIOLATIONS.—Section
2 17(d) of the Occupational Safety and Health Act of 1970
3 (29 U.S.C. 666(d)) is amended to read as follows:

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

21 **SEC. 311. CIVIL PENALTIES.**

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

25 (1) in subsection (a)—

1 (A) by striking “\$70,000” and inserting
2 “\$120,000”;

3 (B) by striking “\$5,000” and inserting
4 “\$8,000”; and

5 (C) by adding at the end the following: “In
6 determining whether a violation is repeated, the
7 Secretary or the Commission shall consider the
8 employer’s history of violations under this Act
9 and under State occupational safety and health
10 plans established under section 18. If such a
11 willful or repeated violation caused or contrib-
12 uted to the death of an employee, such civil
13 penalty amounts shall be increased to not more
14 than \$250,000 for each such violation, but not
15 less than \$50,000 for each such violation, ex-
16 cept that for an employer with 25 or fewer em-
17 ployees such penalty shall not be less than
18 \$25,000 for each such violation.”;

19 (2) in subsection (b)—

20 (A) by striking “\$7,000” and inserting
21 “\$12,000”; and

22 (B) by adding at the end the following: “If
23 such a violation caused or contributed to the
24 death of an employee, such civil penalty
25 amounts shall be increased to not more than

1 \$50,000 for each such violation, but not less
2 than \$20,000 for each such violation, except
3 that for an employer with 25 or fewer employ-
4 ees such penalty shall not be less than \$10,000
5 for each such violation.”;

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

8 (4) in subsection (d), as amended, by striking
9 “\$7,000” each place it occurs and inserting
10 “\$12,000”;

11 (5) by redesignating subsections (e) through (i)
12 as subsections (f) through (j), and subsections (j)
13 through (l) as subsections (l) through (n) respec-
14 tively; and

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

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

19 “(e) Amounts provided under this section for civil
20 penalties shall be adjusted by the Secretary at least once
21 during each 4-year period beginning January 1, 2015, to
22 account for the percentage increase or decrease in the
23 Consumer Price Index for all urban consumers during
24 such period.”.

1 **SEC. 312. CRIMINAL PENALTIES.**

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

5 (1) by amending subsection (f) (as redesignated
6 by section 310) to read as follows:

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

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

22 (2) by amending subsection (g) (as redesignated
23 by section 310) to read as follows:

24 “(g) Unless otherwise authorized by this Act, any
25 person that knowingly gives, causes to give, or attempts
26 to give or cause to give, advance notice of any inspection

1 conducted under this Act with the intention of impeding,
2 interfering with, or adversely affecting the results of such
3 inspection, shall be fined under title 18, United States
4 Code, imprisoned for not more than 5 years, or both.”;

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

11 (4) by inserting after subsection (j) (as redesign-
12 nated by section 310) the following:

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

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

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

7 “(A) a substantial risk of death;

8 “(B) protracted unconsciousness;

9 “(C) protracted and obvious physical disfigure-
10 ment; or

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

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

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

21 **SEC. 313. PREJUDGMENT INTEREST.**

22 Section 17(n) of the Occupational Safety and Health
23 Act of 1970 (29 U.S.C. 666(n)) (as redesignated by sec-
24 tion 310) is amended by adding at the end the following:
25 “Pre-final order interest on such penalties shall begin to

1 accrue on the date the party contests a citation issued
 2 under this Act, and shall end upon the issuance of the
 3 final order. Such pre-final order interest shall be cal-
 4 culated at the current underpayment rate determined by
 5 the Secretary of the Treasury pursuant to section 6621
 6 of the Internal Revenue Code of 1986, and shall be com-
 7 pounded daily. Post-final order interest shall begin to ac-
 8 crue 30 days after the date a final order of the Commis-
 9 sion or the court is issued, and shall be charged at the
 10 rate of 8 percent per year.”.

11 **TITLE IV—STATE PLANS**

12 **SEC. 401. CONCURRENT ENFORCEMENT AUTHORITY AND** 13 **REVIEW OF STATE OCCUPATIONAL SAFETY** 14 **AND HEALTH PLANS.**

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

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

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

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

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

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

13 “(3) If the Secretary makes an initial determination
14 that the plan should be withdrawn, the Secretary shall
15 provide due notice and the opportunity for a hearing. If
16 based on the evaluation, comments, and evidence, the Sec-
17 retary makes a final determination that there is a failure
18 to comply substantially with any provision of the State
19 plan (or any assurance contained therein), he shall notify
20 the State agency of the withdrawal of approval of such
21 plan and upon receipt of such notice such plan shall cease
22 to be in effect, but the State may retain jurisdiction in
23 any case commenced before the withdrawal of the plan in
24 order to enforce standards under the plan whenever the

1 issues involved do not relate to the reasons for the with-
2 drawal of the plan.

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

21 (2) by adding at the end the following new sub-
22 section:

23 “(i) Not later than 18 months after the date of enact-
24 ment of this subsection, and again 5 years thereafter, the
25 Comptroller General shall complete and issue a review of

1 the effectiveness of State plans to develop and enforce
2 safety and health standards to determine if they are at
3 least as effective as the Federal program and to evaluate
4 whether the Secretary's oversight of State plans is effec-
5 tive. The Comptroller General's evaluation shall assess—

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

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

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

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

24 “(A) enforcement effectiveness, including
25 handling of fatalities, serious incidents and

1 complaints, compliance with inspection proce-
2 dures, hazard recognition, verification of abate-
3 ment, violation classification, citation and pen-
4 alty issuance, including appropriate use of will-
5 ful and repeat citations, and employee involve-
6 ment;

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

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

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

24 “(E) anti-discrimination, including whether
25 discrimination complaints are processed in a

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

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

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

21 “(H) other such factors identified by the
22 Comptroller General, or as requested by the
23 Committee on Education and the Workforce of
24 the House of Representatives or the Committee

1 on Health, Education, Labor, and Pensions of
2 the Senate.”.

3 **SEC. 402. EVALUATION OF REPEATED VIOLATIONS IN**
4 **STATE PLANS.**

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

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

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

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

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

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

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

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

22 **TITLE VI—EFFECTIVE DATE**

23 **SEC. 601. EFFECTIVE DATE.**

24 (a) GENERAL RULE.—Except as provided for in sub-
25 section (b), this Act and the amendments made by this

1 Act shall take effect not later than 90 days after the date
2 of the enactment of this Act.

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

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

19 (2) This Act and the amendments made by this
20 Act shall take effect not later than 36 months after
21 the date of the enactment of this Act with respect
22 to a workplace of a State, or a political subdivision
23 of a State, that does not have a State plan approved
24 under section 18 (29 U.S.C. 667).

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