

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4597

To amend the Occupational Safety and Health Act of 1970.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 1994

Mr. FAWELL (for himself, Mr. GOODLING, Mr. PETRI, Mr. GUNDERSON, Mr. BALLENGER, Ms. MOLINARI, Mr. BARRETT of Nebraska, Mr. HOEKSTRA, Mr. MCKEON, Mr. MILLER of Florida, Mr. GREENWOOD, Mr. PACKARD, Mr. ARMEY, Mr. HEFLEY, Mr. CANADY, Mr. KNOLLENBERG, Mr. STENHOLM, Mr. UPTON, Mr. CUNNINGHAM, Mr. CASTLE, Mr. HANCOCK, Mr. LEWIS of Florida, Mr. PORTER, and Ms. PRYCE of Ohio) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend the Occupational Safety and Health Act of 1970.

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.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Occupational Safety and Health Reform Act”.

6       (b) REFERENCE.—Whenever in this Act an amend-  
7       ment or repeal is expressed in terms of an amendment  
8       to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
2 sion of the Occupational Safety and Health Act of 1970.

3 **SEC. 2. CONGRESSIONAL COVERAGE.**

4 The Occupational Safety and Health Act of 1970 (29  
5 U.S.C. 668) is amended by redesignating sections 20  
6 through 34 as sections 21 through 35, respectively, and  
7 by adding after section 19 the following:

8 “COVERAGE OF THE HOUSE OF REPRESENTATIVES

9 “SEC. 20. (a) Each employing authority and instru-  
10 mentality of Congress shall comply with section 5, with  
11 the occupational safety and health standards issued under  
12 section 6 and with any other requirements and regulations  
13 issued under this Act.

14 “(b) The Secretary shall conduct random inspections  
15 of places of employment under the jurisdiction or control  
16 of employing authorities and the instrumentalities of Con-  
17 gress. Such inspections shall be conducted at least once  
18 during each Congress. The Secretary shall also respond  
19 to any request that meets the conditions of section 8(f).  
20 Such inspections shall identify each condition or practice  
21 which the Secretary believes is a violation of a requirement  
22 under section 5, of an occupational safety and health  
23 standard issued under section 6, or of any regulation is-  
24 sued under this Act. Upon completion of such inspection,  
25 the Secretary shall report all such conditions and practices

1 to the Director of Non-Legislative and Financial Services  
2 of the House of Representatives.

3       “(c) The Director of Non-Legislative and Financial  
4 Services of the House of Representatives, shall, as soon  
5 after the receipt of a report under subsection (b) as is  
6 practicable, appoint a special counsel to seek abatement  
7 of any conditions and practices identified in such report  
8 as not in compliance with the requirements of section 5,  
9 6, 8, or any other provision of this Act and to assess ap-  
10 propriate penalties against the employing authority or in-  
11 strumentality of Congress for noncompliance with such re-  
12 quirements. The requirements and criteria applicable to  
13 the determination and assessment of civil and criminal  
14 penalties under section 17 shall apply with respect to such  
15 noncompliance. Conditions and practices which may result  
16 in a criminal penalty under section 17 shall be referred  
17 to the Attorney General for prosecution.

18       “(d) Any employing authority or instrumentality of  
19 Congress which is assessed a penalty under subsection (c)  
20 may appeal the assessment to the Office of Fair Employ-  
21 ment Practices which shall afford an opportunity for a  
22 hearing and shall thereafter issue a decision based on find-  
23 ings of fact which affirms, modifies, or vacates the actions  
24 of the special counsel appointed under subsection (c). Any  
25 person adversely affected or aggrieved by the decision of

1 the Office of Fair Employment Practices may obtain re-  
2 view of such decision by the United States Court of Ap-  
3 peals for the circuit in which such violation is alleged to  
4 have occurred or by the Court of Appeals for the District  
5 of Columbia Circuit under the standards and conditions  
6 for review of orders by the Commission in section 11.

7       “(e)(1) No person shall discharge or in any manner  
8 discriminate against any employee because such employee  
9 has filed any complaint or instituted or caused to be insti-  
10 tuted under or related to this section or has testified or  
11 is about to testify in any such proceeding or because of  
12 the exercise by such employee on behalf of such employee  
13 or others of any right afforded by this section.

14       “(2) Any employee who believes that such employee  
15 has been discharged or otherwise discriminated against by  
16 any such person in violation of paragraph (1) may, within  
17 60 days after such violation occurs, file a complaint with  
18 the Office of Fair Employment Practices. Such office shall  
19 provide for a hearing and issue an order based upon find-  
20 ings of fact and conclusions of law. In such an order, such  
21 office may require a person charged with committing a  
22 violation of paragraph (1) to take appropriate affirmative  
23 action, including rehiring or reinstatement of the employee  
24 involved to the employee’s former position with back pay  
25 and interest and may award a prevailing party a reason-

1 able attorney’s fee. Any person adversely affected or ag-  
2 grieved by the decision of such office may obtain review  
3 of such decision by the United States court of appeals for  
4 the circuit in which such violation is alleged to have oc-  
5 curred or by the Court of Appeals for the District of Co-  
6 lumbia circuit under the standards and conditions for re-  
7 view of orders by the Commission under section 11.

8 “(f) For purposes of this section—

9 “(1) the term ‘employing authority’ has the  
10 meaning given such term in the Fair Employment  
11 Practices Resolution (House Resolution 558 of the  
12 One Hundredth Congress, as adopted October 4,  
13 1988, and incorporated into rule LI of the Rules of  
14 the House of Representatives of the One Hundred  
15 and Second Congress); and

16 “(2) the term ‘instrumentalities of the Con-  
17 gress’ includes the Architect of the Capitol, the Li-  
18 brary of Congress, the Congressional Budget Office,  
19 the General Accounting Office, the Government  
20 Printing Office, the Office of Technology Assess-  
21 ment, and the United States Botanic Garden.”.

22 **SEC. 3. STANDARD SETTING.**

23 (a) STANDARDS.—Section 6(b)(5) (29 U.S.C.  
24 655(b)(5)) is amended to read as follows:

1           “(5) The development of standards under this  
2 section shall be based upon the latest scientific data  
3 in the field and on such research, demonstrations,  
4 experiments, and such other information as may be  
5 appropriate. In establishing such standards, the Sec-  
6 retary shall consider and make findings concerning  
7 the appropriateness of the standard to the following  
8 factors:

9           “(A) The standard is needed to address a  
10 significant risk of material impairment to work-  
11 ers and will substantially reduce that risk.

12           “(B) The standard is feasible.

13           “(C) There is a reasonable relationship be-  
14 tween the costs and benefits of the standard.

15           “(D) The standard will provide protection  
16 to workers in the most cost-effective manner  
17 and minimize employment loss due to the  
18 standard in the affected industries and sectors  
19 of industries.

20           “(E) Whenever practicable, the standard  
21 shall be expressed in terms of objective criteria  
22 and of the performance desired.”.

23           (b) STANDARD PRIORITIES.—The second sentence of  
24 section 6(g) (29 U.S.C. 655(g)) is amended to read as  
25 follows: “In determining the priority for establishing

1 standards dealing with toxic materials or harmful physical  
2 agents, the Secretary shall consider the number of workers  
3 exposed to the substance, the nature and severity of poten-  
4 tial impairment, and the likelihood of such impairment  
5 based upon such information as the Secretary shall obtain  
6 from the Environmental Protection Agency, the Depart-  
7 ment of Health and Human Services, and other appro-  
8 priate sources.”.

9 (c) PROCEDURE.—Section 6(b)(1) (29 U.S.C.  
10 655(b)(1)) is amended by striking out all after “Act” the  
11 first time it appears and inserting in lieu thereof the fol-  
12 lowing: “, the Secretary shall promulgate such rule in ac-  
13 cordance with subchapter IV of chapter 5 of title 5, United  
14 States Code, unless the Secretary determines on the basis  
15 of the factors listed in section 583 of title 5, United States  
16 Code, that such procedure would be inappropriate. The re-  
17 quirements of this paragraph do not alter in any manner  
18 the requirements otherwise applicable to the Secretary’s  
19 action in promulgating an occupational health and safety  
20 standard.”.

21 (d) REGULATORY FLEXIBILITY ANALYSIS.—Section  
22 6 (29 U.S.C. 655) is amended by adding at the end the  
23 following:

24 “(h) In promulgating any occupational safety and  
25 health standard under subsection (b), the Secretary shall

1 perform a regulatory flexibility analysis described in sec-  
2 tions 603 and 604 of title 5, United States Code.

3 “(i) In promulgating any occupational safety and  
4 health standard under subsection (b), the Secretary shall  
5 minimize the time, effort, and costs involved in the reten-  
6 tion, reporting, notifying, or disclosure of information to  
7 the Secretary, to third parties, or to the public to the ex-  
8 tent consistent with the purpose of the standard. Compli-  
9 ance with the requirement of this subsection may be in-  
10 cluded in a review under subsection (f).”.

11 **SEC. 4. APPLICATION OF ACT.**

12 (a) REPORTS.—Section 4(b)(3) (29 U.S.C.  
13 653(b)(3)) is amended to read as follows:

14 “(3) The Secretary shall report on an annual basis  
15 to the Congress on the number and nature of the com-  
16 plaints the Secretary receives which the Secretary does not  
17 respond to because of paragraph (1) of this subsection.  
18 The Secretary shall include in such report the Secretary’s  
19 recommendation for legislation to avoid unnecessary dupli-  
20 cation and to achieve coordination between this Act and  
21 other Federal laws.”.

22 (b) PURPOSES.—Section 4 (29 U.S.C. 653) is amend-  
23 ed by adding at the end the following:

24 “(c) In order to carry out the purposes of this Act  
25 to encourage employer and employees in their efforts to

1 reduce the number of occupational safety and health haz-  
2 ards—

3 “(1) an employee participation committee or  
4 plan—

5 “(A) in which employees participate,

6 “(B) which exists for the purpose, in whole  
7 or in part, of dealing with employees concerning  
8 the safety or health of working conditions or re-  
9 lated matters, and

10 “(C) which does not have, claim, or seek  
11 authority to negotiate or enter into collective  
12 bargaining agreements with the employer or to  
13 amend existing collective bargaining agreements  
14 between the employer and any labor organiza-  
15 tion,

16 shall not constitute a ‘labor organization’ for pur-  
17 poses of section 8(a)(2) of the National Labor Rela-  
18 tions Act or a representative for purposes of sections  
19 1 and 2 of the Railway Labor Act, and

20 “(2) records of safety and health inspections,  
21 audits, or reviews conducted by an employer and not  
22 required by this Act shall not be required to be dis-  
23 closed to the Secretary except as may be necessary  
24 to determine eligibility for an exemption from in-  
25 spection under section 8A.”.

1 **SEC. 5. VARIANCES.**

2 Section 6(d) (29 U.S.C. 655(d)) is amended by add-  
3 ing at the end the following: “If the Secretary has failed  
4 to act on an application for a variance within 180 days  
5 of the filing of such application, the variance shall be  
6 deemed to have been issued as of the date of such filing  
7 unless the delay in the Secretary’s action is caused by ac-  
8 tions or inactions of the applicant.”.

9 **SEC. 6. INSPECTIONS.**

10 (a) TRAINING AND AUTHORITY OF SECRETARY.—  
11 Section 8 (29 U.S.C. 657) is amended by redesignating  
12 subsection (g) as subsection (l) and by adding after sub-  
13 section (f) the following:

14 “(g) Inspections conducted under this section shall  
15 be conducted by at least one individual who has training  
16 in and is knowledgeable of the industry or types of hazards  
17 being inspected.

18 “(h) The Secretary shall enter into agreements with  
19 other Federal agencies and with States to train inspection  
20 personnel of agencies which conduct inspections of employ-  
21 ers to inspect places of employment to determine if em-  
22 ployee fire protection is adequate and shall establish a sys-  
23 tem for referral of fire hazards to the Secretary after noti-  
24 fication to the employer, if the employer fails to take cor-  
25 rective actions.

1       “(i)(1) Except as provided in paragraph (2), the Sec-  
2 retary shall not conduct routine inspections of, or enforce  
3 any standard, rule, regulation, or order under this Act  
4 with respect to, any person who is engaged in a farming  
5 operation which does not maintain a temporary labor  
6 camp and employs 10 or fewer employees or any employer  
7 of not more than 10 employees if such employer is in-  
8 cluded within a category of employers having an occupa-  
9 tional injury or a lost work day case rate (determined  
10 under the Standard Industrial Classification Code for  
11 which such data are published) which is less than the na-  
12 tional average rate as most recently published by the Sec-  
13 retary acting through the Bureau of Labor Statistics  
14 under section 25.

15       “(2) Paragraph (1) shall, in the case of persons who  
16 are not engaged in farming operations, not prevent the  
17 Secretary from—

18               “(A) providing under this Act consultations,  
19 technical assistance, and educational and training  
20 services and conducting under this Act surveys and  
21 studies;

22               “(B) conducting inspections or investigations in  
23 response to employee’s complaints, issuing citations  
24 for violations of this Act found during such an in-  
25 spection, and assessing a penalty for violations

1 which are not corrected within a reasonable abate-  
2 ment period;

3 “(C) taking any action authorized by this Act  
4 with respect to imminent dangers;

5 “(D) taking any action authorized by this Act  
6 with respect to health standards;

7 “(E) taking any action authorized by this Act  
8 with respect to a report of an employment accident  
9 which is fatal to at least one employee or which re-  
10 sults in hospitalization of at least 3 employees and  
11 taking any action pursuant to an investigation of  
12 such report; and

13 “(F) taking any action authorized by this Act  
14 with respect to complaints of discrimination against  
15 employees for exercising their rights under this  
16 Act.”.

17 (b) EMPLOYEE NOTICE.—Section 8(f)(1) (29 U.S.C.  
18 657(f)(1)) is amended—

19 (1) by striking out “he shall make” and insert-  
20 ing in lieu thereof “the Secretary may make”,

21 (2) by striking out “determines there” in the  
22 third sentence and inserting in lieu thereof “deter-  
23 mines that there”, and

24 (3) by striking out “he shall notify” and insert-  
25 ing in lieu thereof “or that the facts alleged in the

1 notification do not justify an exercise of the Sec-  
2 retary's inspection authority under subsection (a) for  
3 any reason consistent with the standard used by the  
4 Secretary to choose subjects for inspection under  
5 that subsection, the Secretary shall notify”.

6 **SEC. 7. CONSULTATION, VOLUNTARY COMPLIANCE INCEN-**  
7 **TIVES, AND TECHNICAL ASSISTANCE.**

8 (a) PROGRAMS.—The Occupational Safety and  
9 Health Act of 1970 is amended by inserting after section  
10 8 the following:

11 “WORKSITE-BASED INCENTIVES

12 “SEC. 8A.(a) The Secretary of Labor shall establish  
13 an office to promote, administer, and coordinate the pro-  
14 grams and activities described in this section.

15 “(b)(1) The Secretary shall by regulation establish a  
16 program to encourage voluntary employer and employee  
17 efforts to provide safe and healthful working conditions.

18 “(2) In establishing a program under paragraph (1),  
19 the Secretary shall, in accordance with paragraph (3), pro-  
20 vide an exemption from all safety and health inspections  
21 and investigations with respect to a place of employment  
22 maintained by an employer, except inspections and inves-  
23 tigation conducted for the purpose of—

24 “(A) determining the cause of a workplace  
25 accident which resulted in the death of one or more

1 employees or the hospitalization of 3 or more  
2 employees,

3 “(B) responding to a request for an inspection  
4 pursuant to paragraph (6)(A), or

5 “(C) carrying out a special emphasis program  
6 under section 12.

7 “(3) In order to qualify for the exemption provided  
8 under paragraph (2), an employer shall provide evidence  
9 that—

10 “(A) the place of employment or conditions of  
11 employment have, during the preceding year, been  
12 reviewed or inspected under—

13 “(i) a consultation program provided by re-  
14 cipients of grants under section 7(c)(1) or  
15 24(g),

16 “(ii) a certification or consultation pro-  
17 gram provided by an insurance carrier or other  
18 private business entity pursuant to a State pro-  
19 gram, law, or regulation, or

20 “(iii) a workplace consultation program  
21 provided by any other person certified by the  
22 Secretary for purposes of providing such con-  
23 sultations and the program under clause (i) or  
24 (ii) or this clause includes means of assuring  
25 that serious hazards identified in the consulta-

1           tion are corrected within an appropriate time,  
2           or

3           “(B) the place of employment has an exemplary  
4           safety record and the employer maintains a safety  
5           and health program for the workplace which in-  
6           cludes—

7                   “(i) procedures for assessing hazards to  
8                   the employer’s employees which are inherent to  
9                   the employer’s operations or business;

10                   “(ii) procedures for correcting or control-  
11                   ling such hazards in a timely manner based  
12                   upon the severity of the hazard; and

13                   “(iii) employee participation in the pro-  
14                   gram which participation includes at the least—

15                           “(I) regular consultation between the  
16                           employer and non-supervisory employees  
17                           regarding safety and health issues;

18                           “(II) assurances that participating  
19                           non-supervisory employees have training or  
20                           expertise on safety and health issues con-  
21                           sistent with their responsibilities; and

22                           “(III) opportunity for non-supervisory  
23                           employees to make recommendations re-  
24                           garding hazards in the workplace and to  
25                           receive responses or to implement improve-

1                   ments in response to such recommenda-  
2                   tions.

3           “(4) The Secretary may require that an employer in  
4 order to claim the exemption give certification to the Sec-  
5 retary and notice to the employer’s employees of such eli-  
6 gibility.

7           “(5)(A) The program established under paragraph  
8 (1) shall provide that only a penalty assessed under sec-  
9 tion 17(a) shall be reduced by 40 percent in any case in  
10 which the employer maintains a written safety and health  
11 program for the worksite at which the violation for which  
12 the penalty was assessed took place.

13           “(B) No penalty shall be assessed against an em-  
14 ployer for a violation except where an employer has failed  
15 to correct a violation within a reasonable time set for  
16 abatement or a violation which creates an imminent dan-  
17 ger or has caused death or a willful violation which has  
18 caused serious injury to an employee if the worksite at  
19 which the violation occurred has been reviewed or in-  
20 spected under a program described in section 8A(c)(1)  
21 during the one year period before the date of the citation  
22 for such violation.

23           “(6) The Secretary shall, within 6 months after the  
24 date of the enactment of the Occupational Safety and  
25 Health Reform Act, establish a program for the certifi-

1 cation of safety and health consultants to conduct inspec-  
2 tions under this section.

3 “(c)(1) The Secretary shall give special recognition  
4 to worksites and companies and other organizations which  
5 have implemented particularly effective approaches to ad-  
6 dressing occupational safety and health in the workplace,  
7 including those which provide for effective employee in-  
8 volvement in improving safety and health, and which are  
9 as a consequence deserving of special recognition. Such  
10 recognition may include the exemptions from inspections  
11 and reductions in penalties described in subsection (b).

12 “(2) A worksite or company or organization to which  
13 an award is made under paragraph (1) and which agrees  
14 to help other American companies or organizations im-  
15 prove their occupational safety and health may publicize  
16 its receipt of such award and use the award in its advertis-  
17 ing.

18 “(3)(A) Subject to subparagraph (B), separate cri-  
19 teria for recognition shall be used for qualifying organiza-  
20 tions and companies in each of the following categories:

21 “(i) Small businesses.

22 “(ii) Other companies or their subsidiaries.

23 “(iii) Companies which primarily perform con-  
24 struction work.

1       “(B) The Secretary may at any time expand, sub-  
2 divide, or otherwise modify the list of categories within  
3 which awards may be made as initially in effect under sub-  
4 paragraph (A) and may establish separate awards for  
5 other organizations and companies including units of gov-  
6 ernment.

7       “(4) An organization or company may qualify for an  
8 award under paragraph (1) only if it—

9           “(A) applies to the Secretary in writing, for the  
10       award,

11           “(B) permits a rigorous evaluation of its occu-  
12       pational safety and health operations, and

13           “(C) meets such requirements and specifica-  
14       tions as the Secretary determines to be appropriate  
15       to achieve the objectives of this subsection.

16 In applying subparagraph (C) with respect to any organi-  
17 zation or company, the Secretary shall rely upon an inten-  
18 sive evaluation of the occupational safety and health oper-  
19 ation. The examination should encompass all aspects of  
20 the organization’s or company’s current occupational safe-  
21 ty and health practice. The award shall be given only to  
22 organizations and companies which have demonstrated  
23 outstanding performance in their occupational safety and  
24 health practices and which demonstrate effective occupa-

1 tional safety and health practices through the training and  
2 involvement of all levels of personnel.

3 “(5) The Secretary shall ensure that all program par-  
4 ticipants receive the complete results of their audits as  
5 well as detailed explanations of all suggestions for im-  
6 provements. The Secretary shall also provide information  
7 about the awards and the successful quality improvement  
8 strategies and programs of the award-winning participants  
9 to all participants and other appropriate groups.

10 “(6) The Secretary is authorized to seek and accept  
11 gifts, including in kind assistance, from public and private  
12 sources to carry out the program under this subsection.

13 “(7) The Secretary shall prepare and submit to the  
14 President and the Congress, within 3 years after the date  
15 of the enactment of this section, a report on the progress,  
16 findings, and conclusions of activities conducted pursuant  
17 to this subsection along with recommendations for possible  
18 modifications thereof.

19 “(d) This subsection authorizes the consultative serv-  
20 ices to employers provided under cooperative agreements  
21 between the States and the Occupational Safety and  
22 Health Administration and described in part 1908 of title  
23 39 of the Code of Federal Regulations.

24 “(e) In addition to the other programs in this section,  
25 the Secretary shall establish programs to provide edu-

1 cation, training, and technical assistance to employers and  
2 employees to assist them in the provision of safe and  
3 healthful workplaces and compliance with the require-  
4 ments of this Act.

5 “(f) Not less than one-fourth of the annual appro-  
6 priation made to the Secretary to carry out this Act shall  
7 be expended to carry out this section.”.

8 (b) DEFINITION.—Section 3 (29 U.S.C. 652) is  
9 amended by adding at the end the following:

10 “(15) The term ‘exemplary safety record’  
11 means such record as the Secretary shall annually  
12 determine for each industry. Such record shall in-  
13 clude employers which have had, in the most recent  
14 reporting period, no employee death caused by occu-  
15 pational injury and fewer lost workdays due to occu-  
16 pational injury and illness than the average for the  
17 industry of which the employer is a part.”.

18 **SEC. 8. EMPLOYER DEFENSES.**

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

21 “(d) No citation may be issued under subsection (a)  
22 to an employer unless the employer knew or with the exer-  
23 cise of reasonable diligence would have known of the pres-  
24 ence of the alleged violation. No citation shall be issued  
25 under subsection (a) to an employer for an alleged viola-

1 tion of section 5, any standard, rule, or order promulgated  
2 pursuant to section 6, any other regulation promulgated  
3 under this Act, or any other occupational safety and  
4 health standard if such employer demonstrates that—

5           “(1) employees of such employer have been pro-  
6           vided with the proper training and equipment to pre-  
7           vent such a violation;

8           “(2) work rules designed to prevent such a vio-  
9           lation have been established and adequately commu-  
10          nicated to employees by such employer and the em-  
11          ployer has taken reasonable measures to discipline  
12          employees when violations of such work rules have  
13          been discovered;

14          “(3) the failure of employees to observe work  
15          rules led to the violation; and

16          “(4) reasonable steps have been taken by such  
17          employer to discover any such violation.

18          “(e) A citation issued under subsection (a) to an em-  
19          ployer who violates the requirements of any standard, rule,  
20          or order promulgated pursuant to section 6 or any other  
21          regulation promulgated under this Act shall be vacated if  
22          such employer demonstrates that employees of such em-  
23          ployer were protected by alternative methods equally or  
24          more protective of the employee’s safety and health than

1 those required by such standard, rule, order, or regulation  
2 in the factual circumstances underlying the citation.

3 “(f) Subsections (d) and (e) shall not be construed  
4 to eliminate or modify other defenses which may exist to  
5 any citation.”.

6 **SEC. 9. THE OCCUPATIONAL SAFETY AND HEALTH REVIEW**  
7 **COMMISSION.**

8 (a) SECTION 10.—Section 10(c) (29 U.S.C 659(c))  
9 is amended—

10 (1) in the first sentence, by striking out “fifteen  
11 working days” and inserting in lieu thereof “30  
12 working days”, and

13 (2) by striking out the second sentence and in-  
14 serting in lieu thereof the following: “The Commis-  
15 sion shall issue an order, based on de novo findings  
16 of fact and de novo conclusions of law, affirming,  
17 modifying, or vacating the Secretary’s citation or  
18 proposed penalty or directing other appropriate re-  
19 lief. Such order shall become final 30 days after it  
20 is issued.”.

21 (b) SECTION 11.—Section 11(a) (29 U.S.C 660(a) is  
22 amended by inserting after “conclusive” at the end of the  
23 sixth sentence the following: “and the Commission’s con-  
24 clusions with respect to questions of law shall be given  
25 deference if reasonable”.

1 **SEC. 10. DISCRIMINATION.**

2 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-  
3 ing out paragraphs (2) and (3) and inserting in lieu there-  
4 of the following:

5 “(2) Any employee who believes that the employee  
6 has been discharged or otherwise discriminated against by  
7 any person in violation of paragraph (1) or who believes  
8 that the employee has been discharged or discriminated  
9 against because of an action taken by the employee under  
10 section 8(f), may, within 60 days after such violation oc-  
11 curs, file a complaint with the Secretary alleging such dis-  
12 crimination. Upon receipt of such a complaint the Sec-  
13 retary shall notify the person named in the complaint and  
14 begin an investigation to determine if the Secretary  
15 should, on behalf of such employee, request the Commis-  
16 sion to take action on the basis of such complaint. The  
17 Secretary shall make such determination within 90 days  
18 of the filing of such complaint.

19 “(3) If within such 90 days, the Secretary does not  
20 file a complaint on behalf of the complainant with the  
21 Commission, such employee may file such complaint with  
22 the Commission. If such a complaint is filed with the Com-  
23 mission, the Commission shall provide opportunity for a  
24 hearing (in accordance with section 554 of title 5, United  
25 States Code, but without regard to subsection (a)(3) of  
26 such section), and issue an order, based upon findings of

1 fact and conclusions of law. In such an order, the Commis-  
2 sion may require a person charged with committing a vio-  
3 lation of paragraph (1) to take appropriate affirmative ac-  
4 tion, including rehiring or reinstatement of the employee  
5 to the employee's former position with back pay and inter-  
6 est. Upon completion of a proceeding on such order, the  
7 Commission may award the prevailing party a reasonable  
8 attorney's fee. Final orders of the Commission may be ap-  
9 pealed as provided in subsection (a).

10       “(4)(A) Anytime after a complaint has been filed with  
11 the Secretary alleging a violation of paragraph (1), the  
12 complaining employee, the person charged with commit-  
13 ting the violation (referred to in this paragraph as the ‘re-  
14 spondent’), or the Secretary have the right to request that  
15 the complaint be referred to the Federal Mediation and  
16 Conciliation Service (referred to in this paragraph as the  
17 ‘Service’) for mediation of the dispute. In lieu of receiving  
18 mediation services from the Service, the parties may upon  
19 mutual agreement refer the complaint to a mediator other  
20 than one provided by the Service.

21       “(B) During mediation, the respondent and the com-  
22 plaining party may be represented by legal counsel or  
23 other representative of their choice.

24       “(C)(i) All contested proceedings shall be stayed dur-  
25 ing the time for mediation and neither the Secretary or

1 the complaining party shall file a complaint pending com-  
2 pletion of the mediation.

3 “(ii) The mediator shall have 60 days from the time  
4 of the referral to mediate the dispute to complete the me-  
5 diation. If the complaint has not been resolved within such  
6 60-day period or such extension as may be agreed upon,  
7 the mediation shall be deemed to be completed. The par-  
8 ties may extend the mediation for an additional 60 days  
9 by mutual agreement.

10 “(iii) The complaint shall be resolved through medi-  
11 ation in a manner that is mutually agreeable to the par-  
12 ties. Such resolution shall be binding upon the parties and  
13 shall preclude resort to other legal proceedings except as  
14 provided in subparagraph (E).

15 “(D)(i) Any agreement shall be kept confidential by  
16 the parties to the mediation unless all parties to the medi-  
17 ation agree otherwise in writing.

18 “(ii) All communications, oral or written, made in  
19 connection with the mediation (including memoranda,  
20 work product, transcripts, notes, or other materials) shall  
21 be kept confidential by the participants to the mediation.

22 “(iii) The material referred to in clause (ii) shall not  
23 be subject to disclosure through discovery or compulsory  
24 process and shall not be used as evidence in any investiga-  
25 tory, arbitral, judicial, administrative, or other proceeding.

1       “(E) A party to an agreement made pursuant to me-  
2 diation under this paragraph may bring an action to en-  
3 force the agreement in any Federal or State court of com-  
4 petent jurisdiction.

5       “(F) Except as provided in subparagraph (C)(iii),  
6 nothing in this paragraph shall be interpreted to effect or  
7 modify whatever rights and obligations the parties may  
8 have under arbitration agreements or other form of alter-  
9 native dispute resolution mechanisms.”.

10 **SEC. 11. ENFORCEMENT.**

11       (a) SPECIAL CONDITIONS AND PRACTICES.—Section  
12 13 (29 U.S.C. 662) is amended by striking out subsection  
13 (c), by redesignating subsections (a) and (b) as sub-  
14 sections (b) and (c), respectively, and by inserting before  
15 subsection (b) (as so redesignated) the following:

16       “(a)(1) If the Secretary determines, on the basis of  
17 an inspection or investigation under this section, that a  
18 condition or practice in a place of employment is such that  
19 an imminent danger to safety or health exists that could  
20 reasonably be expected to cause death or serious physical  
21 harm or permanent impairment of the health or functional  
22 capacity of employees if not corrected immediately or be-  
23 fore the imminence of such danger can be eliminated  
24 through the enforcement procedures otherwise provided by  
25 this Act, the Secretary may so inform the employer and

1 provide notice to the affected employees and shall request  
2 that the condition or practice be corrected immediately or  
3 that employees be immediately removed from exposure to  
4 such danger. The notice shall be removed by the Secretary  
5 from the place of employment not later than 72 hours  
6 after the notice was first posted unless a court in an action  
7 brought under subsection (c) requires that the notice be  
8 maintained. The Secretary shall not prevent the continued  
9 activity of employees whose presence is necessary to avoid,  
10 correct, or remove such imminent danger or to maintain  
11 the capacity of a continuous process operation to resume  
12 normal operations without a cessation of operations or  
13 where cessation of operations is necessary, to permit such  
14 to be accomplished in a safe and orderly way.

15 “(2) No person shall discharge or in any manner dis-  
16 criminate against any employee because such employee  
17 has refused to perform a duty that has been identified as  
18 the source of an imminent danger by a notice posted pur-  
19 suant to paragraph (1).”.

20 (b) MANDATORY SPECIAL EMPHASIS.—Section 8 (29  
21 U.S.C. 657), as amended by section 6, is amended by add-  
22 ing at the end the following:

23 “(j)(1) The Secretary shall establish and carry out  
24 a special emphasis program for identifying and correcting

1 existing or newly recognized hazards in selected industries  
2 and operations and high hazard industries and operations.

3 “(2) Each special emphasis program under para-  
4 graph (1) shall consist of a planned and coordinated ef-  
5 fort, including outreach, education and training programs,  
6 and inspections. Before beginning any such program, the  
7 Secretary shall meet and discuss with representatives of  
8 employers and employees in the industries affected by  
9 such program the intended goals and benefits of such pro-  
10 gram, the number of inspections under such program, and  
11 the nature of other activities planned. To the extent prac-  
12 ticable, the Secretary shall coordinate efforts with such  
13 representatives. Each such program shall have a date of  
14 termination and shall include methods of evaluating the  
15 effectiveness of the program in reducing illness and injury  
16 in the targeted industries or operations.”.

17 (c) INVESTIGATIONS OF DEATHS AND SERIOUS INCI-  
18 DENTS.—Section 8 (29 U.S.C. 657), as amended by sub-  
19 section (b), is amended by adding at the end the following:

20 “(k)(1) The Secretary shall investigate any work-re-  
21 lated death or serious incident.

22 “(2) If a death or serious incident occurs in a place  
23 of employment covered by this Act, the employer shall no-  
24 tify the Secretary of the death or serious incident.

1       “(3) As used in this subsection, the term ‘serious in-  
2 cident’ means an incident that results in the hospitaliza-  
3 tion of 3 or more employees. The Secretary shall by regu-  
4 lation define ‘hospitalization’.”.

5 **SEC. 12. PENALTIES.**

6       (a) IN GENERAL.—Section 17 (29 U.S.C. 666) is  
7 amended by striking out subsections (a), (b), (c), (j), and  
8 (k), by redesignating subsections (d), (e), (f), (g), (h), (i),  
9 and (l) as subsections (b), (c), (d), (e), (f), (g), and (h),  
10 and by inserting after “17.” the following:

11       “(a) Any employer who violates the requirements of  
12 section 5, any standard, rule, or order promulgated pursu-  
13 ant to section 6, or any other regulation promulgated  
14 under this Act may be assessed a civil penalty of not more  
15 than \$7,000. The Commission shall have authority to as-  
16 sess all civil penalties provided in this section, giving due  
17 consideration to the appropriateness of the penalty with  
18 respect to—

19               “(1) the size of the employer,

20               “(2) the number of employees exposed to the  
21 violation,

22               “(3) the likely severity of any injuries directly  
23 resulting from such violation,

24               “(4) the probability that the violation could re-  
25 sult in injury or illness,

1           “(5) the employer’s good faith in correcting the  
2 violation after it has been identified,

3           “(6) the extent to which employee misconduct  
4 was responsible for the violation, and

5           “(7) the effect of the penalty on the employer’s  
6 ability to stay in business.”.

7           (b) SPECIAL ASSESSMENTS.—Section 17 (29 U.S.C.  
8 666), as amended by subsection (a), is amended by adding  
9 at the end the following:

10          “(i) The Secretary shall, by regulation, prescribe pro-  
11 cedures for determining that conditions surrounding a vio-  
12 lation warrant a special assessment. Such regulation shall  
13 provide that all findings shall be in narrative form and  
14 provide for individual review of violations for special as-  
15 sessment in the following circumstances:

16           “(1) Violations causing fatalities.

17           “(2) An excessive history of serious injuries to  
18 employees or a pattern of violations of this Act  
19 which cause or are likely to cause death or serious  
20 physical injury to employees.

21 When the Secretary determines that a special assessment  
22 is appropriate, the Secretary may apply an appropriate  
23 multiplier, based on the factors listed in subsection (a),  
24 of not greater than 10 to the penalty determined under  
25 subsection (a). In addition to any fines assessed with re-

1 spect to the violations described in paragraphs (1) and (2),  
2 the Secretary may require the employer involved to estab-  
3 lish a comprehensive safety and health program for the  
4 worksite at which the violations occurred and provide reg-  
5 ular certification to the Secretary that such employer is  
6 in compliance with such program.”.

7 (c) PENALTIES.—

8 (1) CITATIONS.—Section 17 (29 U.S.C. 666),  
9 as amended by subsection (b), is amended by adding  
10 at the end the following:

11 “(j) Nothing in this Act shall be construed as requir-  
12 ing the Secretary to issue a citation for violations of this  
13 Act if the Secretary believes that the public interest will  
14 be adequately served by a suitable written notice or warn-  
15 ing.”.

16 (2) KNOWING VIOLATION.—Subsection (c) of  
17 section 17 (29 U.S.C. 666), as amended by sub-  
18 section (a), is amended to read as follows:

19 “(c) If any employer who knowingly violates any  
20 standard, rule, or order promulgated pursuant to section  
21 6 or any regulation prescribed pursuant to this Act and  
22 if such violation caused death to any employee, such em-  
23 ployer, if such employer knew such violation would place  
24 an employee in imminent danger of death and the employ-  
25 er’s conduct in the circumstances manifests an extreme

1 indifference or reckless disregard of human life, shall upon  
2 conviction be punished by a fine in accordance with section  
3 3571 of title 18, United States Code, or by imprisonment  
4 of not more than 3 years, or both. If the conviction is  
5 for a violation committed after a first conviction under  
6 this subsection of such person, imprisonment shall be for  
7 not more than 6 years.”.

8 (d) VICTIM’S RIGHTS.—Section 10 (29 U.S.C. 659)  
9 is amended by adding at the end the following:

10 “(d)(1) The Secretary shall provide any individual  
11 who is a victim of a violation of this Act with—

12 “(A) access to information respecting any inves-  
13 tigation of the Secretary or hearing by the Commis-  
14 sion of such violation, to citations issued for such  
15 violation, to penalties imposed under this section for  
16 such violation, and to settlements made respecting  
17 such violation, and

18 “(B) an opportunity to meet with the Secretary  
19 or a representative of the Secretary respecting such  
20 violation.

21 “(2) For purposes of paragraph (1), the term ‘victim’  
22 means—

23 “(A) an employee who has sustained a work-re-  
24 lated injury or illness which is the subject of an in-

1       specification or investigation conducted under section 8,  
2       or

3               “(B) a family member of an employee described  
4       in subparagraph (A) who is killed as a result of such  
5       injury or illness.”.

6       **SEC. 13. STATE PROGRAMS.**

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

8               (1) in paragraph (2), by striking out “and  
9       which” and inserting in lieu thereof “which” and by  
10       inserting after the comma at the end the following:  
11       “and which standards when applicable to the label-  
12       ing, content, and hazard information for such prod-  
13       ucts are identical to any requirement under a stand-  
14       ard promulgated under section 6,”,

15               (2) in paragraph (4), by inserting before the  
16       comma the following: “at least as effective as en-  
17       forcement by the Secretary”, and

18               (3) by adding after and below paragraph (8)  
19       the following: “The Secretary may waive any of the  
20       requirements of this subsection (other than the re-  
21       quirements of paragraphs (2) and (6)) upon a re-  
22       quest of a State seeking approval of a plan or an  
23       amendment to an approved plan. Such a waiver shall  
24       not extend for more than 3 years but may be re-  
25       newed if the Secretary determines that the rate of

1 occupational fatalities, injuries, and illnesses has  
2 declined in such State during the period of the  
3 waiver.”.

4 **SEC. 14. NIOSH.**

5 The Occupational Safety and Health Act (as amend-  
6 ed by section 2) is amended by repealing section 23 (29  
7 U.S.C. 671) and the functions and authorities provided  
8 to the National Institute of Occupational Safety and  
9 Health under section 22 are transferred to the Secretary  
10 of Labor. The responsibilities and authorities of the Sec-  
11 retary of Health and Human Services under sections 21,  
12 22, and 23 are transferred to the Secretary of Labor. The  
13 Secretary of Labor shall take such actions as are nec-  
14 essary to avoid duplication of programs and to maximize  
15 training, education, and research under the Occupational  
16 Safety and Health Act of 1970.

17 **SEC. 15. PREVENTION OF ALCOHOL AND SUBSTANCE**  
18 **ABUSE.**

19 The Occupational Safety and Health Act of 1970 (as  
20 amended by section 2) is amended by repealing sections  
21 29 through 32, by redesignating sections 33, 34, and 35  
22 as sections 30, 31, and 32, respectively, and by inserting  
23 after section 28 (29 U.S.C. 676) the following:

24 “ALCOHOL AND SUBSTANCE ABUSE TESTING

25 “SEC. 29. (a) Whenever there exists the reasonable  
26 probability that the safety or health of any employee could

1 be endangered because of the use of alcohol or a controlled  
2 substance in the workplace, the employer of such employee  
3 may establish and implement an alcohol and substance  
4 abuse testing program in accordance with subsection (b).

5 “(b) The Secretary shall establish standards under  
6 section 6 for substance abuse and alcohol testing programs  
7 established under subsection (a) as follows:

8 “(1) The substance abuse testing program shall  
9 conform, to the maximum extent practicable, to sub-  
10 part B of the mandatory guidelines for Federal  
11 workplace drug testing programs published on April  
12 11, 1988, by the Secretary of Health and Human  
13 Services at 53 Federal Register 11979 and any  
14 amendments adopted to such guidelines.

15 “(2) The alcohol testing program shall take the  
16 form of alcohol breath analysis and shall conform, to  
17 the maximum extent practicable, to any guidelines  
18 developed by the Secretary of Transportation for al-  
19 cohol testing of mass transit employees under the  
20 Department of Transportation and Related Agencies  
21 Appropriations Act, 1992.

22 “(c) This section shall not be construed to prohibit  
23 an employer from requiring an employee to submit to and  
24 pass an alcohol or substance abuse test before employment  
25 by the employer or—

1           “(1) on a for cause basis or where the employer  
2           has reasonable suspicion to believe that such em-  
3           ployee is using or is under the influence of alcohol  
4           or a controlled substance,

5           “(2) where such test is administered as part of  
6           a scheduled medical examination,

7           “(3) in the case of an accident or incident in-  
8           volving the actual or potential loss of human life,  
9           bodily injury, or property damage,

10           “(4) during and for a reasonable period of time  
11           (not to exceed 5 years) after the conclusion of an al-  
12           cohol or substance abuse treatment program, or

13           “(5) on a random selection basis in work units,  
14           locations, or facilities where alcohol and substance  
15           abuse has been identified as a problem or as part of  
16           a universal testing program.”.

17 **SEC. 16. COST EFFECTIVENESS STUDIES.**

18           (a) STUDIES.—The Secretary of Labor shall contract  
19           with a qualified organization or agency to conduct studies  
20           of the effect of standards promulgated under section 6.  
21           Each study shall assess the costs of implementation of the  
22           standard, both in the first year and on an annual basis,  
23           on employers and the effectiveness of the standard in re-  
24           ducing injuries and illnesses. Standards shall be

1 prioritized for study according to their estimated cost of  
2 compliance at the time of promulgation.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated \$2,000,000 for each of  
5 the fiscal years 1995, 1996, 1997, 1998, and 1999 for  
6 carrying out the studies described in subsection (a).

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