

111TH CONGRESS
1ST SESSION

S. 1580

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 certain violators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2009

Mr. REID (for Mr. KENNEDY (for himself, Mrs. MURRAY, Mr. DODD, Mr. HARKIN, Mr. BINGAMAN, Mr. SANDERS, Mr. BROWN, Mr. CASEY, Mr. MERKLEY, Mr. FRANKEN, Mr. LEAHY, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. DURBIN, Mr. SCHUMER, Ms. STABENOW, Mr. LAUTENBERG, Mr. MENENDEZ, and Mr. WHITEHOUSE)) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 certain violators, 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.**

4 This Act may be cited as the “Protecting America’s
5 Workers Act”.

1 **SEC. 2. REFERENCES.**

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

8 **TITLE I—COVERAGE AND**
9 **APPLICATION OF ACT**

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

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

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

20 **SEC. 102. APPLICATION OF ACT.**

21 Section 4(b) (29 U.S.C. 653(b)(1)) is amended—

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

24 (2) by striking paragraph (1) and inserting the
25 following:

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

21 “(2) The Secretary shall, by regulation, establish pro-
22 cedures by which any person who may be adversely af-
23 fected by a decision of the Secretary certifying that the
24 Secretary has ceded jurisdiction to another Federal agency
25 pursuant to paragraph (1) may petition the Secretary to

1 rescind a certification notice under paragraph (1). Upon
2 receipt of such a petition, the Secretary shall investigate
3 the matter involved and shall, within 90 days after receipt
4 of the petition, publish a decision with respect to the peti-
5 tion in the Federal Register.

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

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

10 “(B) a decision of the Secretary denying a peti-
11 tion to rescind such a certification notice under
12 paragraph (1),

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

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

1 **TITLE II—INCREASING PROTEC-**
2 **TIONS FOR WHISTLE BLOW-**
3 **ERS**

4 **SEC. 201. EMPLOYEE ACTIONS.**

5 Section 11(c)(1) (29 U.S.C. 660(c)(1)) is amended
6 by inserting before the period at the end the following:
7 “, including reporting any injury, illness, or unsafe condi-
8 tion to the employer, agent of the employer, safety and
9 health committee involved, or employee safety and health
10 representative involved”.

11 **SEC. 202. PROHIBITION OF DISCRIMINATION.**

12 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-
13 ing paragraph (2) and inserting the following:

14 “(2) No person shall discharge or in any manner dis-
15 criminate against an employee for refusing to perform the
16 employee’s duties if the employee has a reasonable appre-
17 hension that performing such duties would result in seri-
18 ous injury to, or serious impairment of the health of, the
19 employee or other employees. The circumstances causing
20 the employee’s apprehension of serious injury or serious
21 impairment of health shall be of such a nature that a rea-
22 sonable person, under the circumstances confronting the
23 employee, would conclude that there is a bona fide danger
24 of a serious injury, or serious impairment of health, result-
25 ing from the circumstances. In order to qualify for protec-

1 tion under this paragraph, the employee, when practicable,
2 shall have sought from the employee's employer, and have
3 been unable to obtain, a correction of the circumstances
4 causing the refusal to perform the employee's duties.".

5 **SEC. 203. PROCEDURE.**

6 Section 11(c) (29 U.S.C. 660(c)) is amended by strik-
7 ing paragraph (3) and inserting the following:

8 "(3) Any employee who believes that the employee
9 has been discharged, disciplined, or otherwise discrimi-
10 nated against by any person in violation of paragraph (1)
11 or (2) may, within 180 days after such alleged violation
12 occurs, file (or have filed by any person on the employee's
13 behalf) a complaint with the Secretary alleging that such
14 discharge or discrimination violates paragraph (1) or (2).
15 Upon receipt of such a complaint, the Secretary shall no-
16 tify the person named in the complaint (referred to in this
17 subsection as the 'respondent') of the filing of the com-
18 plaint.

19 "(4)(A)(i) Not later than 60 days after the receipt
20 of a complaint filed under paragraph (3), the Secretary
21 shall conduct an investigation and determine whether
22 there is reasonable cause to believe that the complaint has
23 merit. During the investigation, the Secretary shall notify
24 the respondent of the charges made in the complaint, and
25 shall provide such person with an opportunity to meet with

1 the inspector conducting the investigation, to submit a re-
2 sponse to such charges, and to present witnesses to rebut
3 such charges. The Secretary shall also consider the result
4 of any grievance proceeding provided for in a collective
5 bargaining agreement, that may have been held with re-
6 spect to such charges. Upon completion of the investiga-
7 tion, the Secretary shall issue findings and notify the com-
8 plainant and the respondent of the Secretary's findings.
9 If the Secretary has concluded that there is reasonable
10 cause to believe that a violation has occurred, the Sec-
11 retary's findings shall be accompanied by a preliminary
12 order providing the relief prescribed by subparagraph (B).

13 “(ii)(I) Not later than 30 days after the Secretary
14 has issued findings under clause (i), either the respondent
15 or the complainant may file objections to the findings or
16 preliminary order, and request a hearing on the record,
17 except that the filing of such objections shall not operate
18 to stay any reinstatement remedy contained in the prelimi-
19 nary order.

20 “(II) If a hearing described in subclause (I) is not
21 requested in the 30-day period described in such subclause
22 with respect to a preliminary order, the order shall be
23 deemed to be a final order and not subject to judicial re-
24 view.

1 “(iii) If the Secretary does not issue findings under
2 clause (i) with respect to a complaint within 90 days after
3 the receipt of the complaint, the complainant may request
4 a hearing on the record on the complaint.

5 “(iv) The Secretary shall expeditiously conduct a
6 hearing requested under clause (ii) or (iii). Upon the con-
7 clusion of such hearing, the Secretary shall issue a final
8 order within 120 days. Until the issuance of a final order,
9 such hearing may be terminated at any time on the basis
10 of a settlement agreement entered into by the Secretary,
11 the complainant, and the respondent.

12 “(B)(i) If, in response to a complaint filed under
13 paragraph (3), the Secretary determines that a violation
14 of paragraph (1) or (2) has occurred, in issuing an order
15 under subparagraph (A)(iv), the Secretary shall require—

16 “(I) the respondent who committed such viola-
17 tion to correct the violation;

18 “(II) such respondent to reinstate the complain-
19 ant to the complainant’s former position together
20 with the compensation (including backpay), terms,
21 conditions, and privileges of the complainant’s em-
22 ployment; and

23 “(III) such respondent to pay compensatory
24 damages.

1 “(ii) On issuing an order requiring a remedy de-
2 scribed in clause (i), the Secretary, at the request of the
3 complainant, may assess against the respondent against
4 whom the order is issued a sum equal to the aggregate
5 amount of all costs and expenses (including attorney’s
6 fees) reasonably incurred, as determined by the Secretary,
7 by the complainant for, or in connection with a complaint
8 upon which the order was issued.

9 “(5)(A) Any person adversely affected or aggrieved
10 by an order issued after a hearing conducted under para-
11 graph (4)(A) may obtain review of the order in the United
12 States court of appeals for the circuit in which the viola-
13 tion, with respect to which the order was issued, allegedly
14 occurred, or the circuit in which such person resided on
15 the date of such violation. The petition for review shall
16 be filed within 60 days after the issuance of the Sec-
17 retary’s order. Such review shall be conducted in accord-
18 ance with the provisions of chapter 7 of title 5, United
19 States Code. The court shall conduct the review and issue
20 a decision expeditiously.

21 “(B) If a respondent fails to comply with an order
22 issued under paragraph (4)(A), the Secretary shall file a
23 civil action in the United States district court for the dis-
24 trict in which the violation was found to occur in order
25 to enforce such order. In actions brought under this sub-

1 paragraph, the district court shall have jurisdiction to
 2 grant all appropriate relief, including injunctive relief, re-
 3 instatement, and compensatory damages.

4 “(6) The legal burdens of proof set forth in section
 5 1221(e) of title 5, United States Code, shall govern adju-
 6 dication of violations under this subsection.”.

7 **SEC. 204. RELATION TO ENFORCEMENT.**

8 Section 17(j) (29 U.S.C. 666(j)) is amended by in-
 9 serting before the period the following: “, including the
 10 history of violations, under section 11(c)”.

11 **TITLE III—INCREASING**
 12 **PENALTIES FOR VIOLATORS**

13 **SEC. 301. POSTING OF EMPLOYEE RIGHTS.**

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

19 **SEC. 302. PROHIBITION ON DISCOURAGING EMPLOYEE RE-**
 20 **PORTS OF INJURY OR ILLNESS.**

21 Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended by
 22 adding at the end the following new sentence: “Such regu-
 23 lations shall prohibit the adoption or implementation of
 24 policies or practices by the employer that discourage the
 25 reporting of work-related injuries or illnesses by any em-

1 ployee or in any manner discriminate or provide for ad-
2 verse action against any employee for reporting a work-
3 related injury or illness.”.

4 **SEC. 303. NO LOSS OF EMPLOYEE PAY FOR INSPECTIONS.**

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

12 **SEC. 304. INVESTIGATIONS OF FATALITIES AND SERIOUS**
13 **INCIDENTS.**

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

16 “(i)(1) The Secretary shall investigate any incident
17 resulting in death or serious incident, that occurs in a
18 place of employment covered by this Act.

19 “(2) If an incident resulting in death or serious inci-
20 dent occurs in a place of employment covered by this Act,
21 the employer shall notify the Secretary of the incident in-
22 volved and shall take appropriate measures to prevent the
23 destruction or alteration of any evidence that would assist
24 in investigating the incident. The appropriate measures re-
25 quired by this paragraph do not prevent an employer from

1 taking action on a worksite to prevent injury to employees
2 or substantial damage to property. If an employer takes
3 such action, the employer shall notify the Secretary of the
4 action in a timely fashion.

5 “(3) In this subsection:

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

9 “(B) SERIOUS INCIDENT.—The term ‘serious
10 incident’ means an incident that results in the hos-
11 pitalization of 2 or more employees.”.

12 **SEC. 305. PROHIBITION ON UNCLASSIFIED CITATIONS.**

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

15 “(d) The Secretary may not designate a citation
16 issued under this section as an unclassified citation.”.

17 **SEC. 306. VICTIMS’ RIGHTS.**

18 The Act is amended by inserting after section 9 (29
19 U.S.C. 658) the following:

20 **“SEC. 9A. VICTIM’S RIGHTS.**

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

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

1 specification or investigation conducted under section 8,
2 or

3 “(2) a family member of an employee, if—

4 “(A) the employee is killed as a result of
5 a work-related injury or illness that is the sub-
6 ject of an inspection or investigation conducted
7 under section 8; or

8 “(B) the employee sustains a work-related
9 injury or illness that is the subject of an inspec-
10 tion or investigation conducted under section 8,
11 and the employee cannot reasonably exercise
12 the employee’s rights under this section.

13 “(b) RIGHTS.—On request, a victim or the represent-
14 ative of a victim, shall be afforded the right, with respect
15 to a work-related injury or illness (including a death re-
16 sulting from a work-related injury or illness) involving an
17 employee, to—

18 “(1) meet with the Secretary, or an authorized
19 representative of the Secretary, regarding the in-
20 spection or investigation conducted under section 8
21 concerning the employee’s injury or illness before the
22 Secretary’s decision to issue a citation or take no ac-
23 tion; and

24 “(2)(A) receive, at no cost, a copy of any cita-
25 tion or report, issued as a result of such inspection

1 or investigation, on the later of the date the citation
2 or report is issued and the date of the request;

3 “(B) be informed of any notice of contest filed
4 under section 10; and

5 “(C) be provided an explanation of the rights of
6 employee and employee representatives to participate
7 in proceedings conducted under section 10.

8 “(c) MODIFICATION OF CITATION.—Before entering
9 into an agreement to withdraw or modify a citation issued
10 as a result of an inspection or investigation of an incident
11 resulting in death or serious incident under section 8, the
12 Secretary, on request, shall provide an opportunity to the
13 victim or the representative of a victim to appear and
14 make a statement before the parties conducting settlement
15 negotiations.

16 “(d) NOTIFICATION AND REVIEW.—The Secretary
17 shall establish procedures—

18 “(1) to inform victims of their rights under this
19 section; and

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

22 **SEC. 307. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

23 The first sentence of section 10(c) (29 U.S.C. 659(c))
24 is amended—

1 (1) by inserting after “the issuance of a cita-
2 tion” the following: “(including a modification of a
3 citation issued)”; and

4 (2) by inserting after “files a notice with the
5 Secretary alleging” the following: “that the citation
6 fails properly to designate the violation as serious,
7 willful, or repeated, that the proposed penalty is not
8 adequate, or”.

9 **SEC. 308. ABATEMENT OF SERIOUS HAZARDS DURING EM-**
10 **PLOYER CONTESTS TO A CITATION.**

11 (a) CITATIONS AND ENFORCEMENT.—Section 10(b)
12 (29 U.S.C. 659(b)) is amended—

13 (1) by inserting after “which period” the fol-
14 lowing: “for other than serious violations”; and

15 (2) by adding at the end the following: “In lieu
16 of providing the notification required by this sub-
17 section, where a notice of contest to a citation is
18 pending before the Commission, the Secretary may
19 by appropriate motion in that proceeding assert that
20 the employer has failed to abate the violation within
21 the time period fixed in the citation.”.

22 (b) EMPLOYER CONTEST.—Section 10(c) (29 U.S.C.
23 659) is amended by inserting after the first sentence the
24 following: “The pendency of a contest before the Commis-
25 sion shall not bar the Secretary from inspecting a place

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

3 **SEC. 309. OBJECTIONS TO MODIFICATION OF CITATIONS.**

4 Section 10 (29 U.S.C. 659) is amended by adding
5 at the end the following new subsection:

6 “(d)(1) If the Secretary intends to withdraw or to
7 modify a citation issued under section 9(a) as a result of
8 any agreement with the cited employer, the Secretary shall
9 provide (in accordance with rules of procedure prescribed
10 by the Commission) prompt notice to affected employees
11 or representatives of affected employees, and that notice
12 shall include the terms of the proposed agreement.

13 “(2) Not later than 15 working days after the receipt
14 of a notice provided in accordance with paragraph (1), any
15 employee or representative of employees, regardless of
16 whether such employee or representative has previously
17 elected to participate in the proceedings involved, shall
18 have the right to file a notice with the Secretary alleging
19 that the proposed agreement fails to effectuate the pur-
20 poses of this Act and stating the respects in which the
21 agreement fails to effectuate the purposes.

22 “(3) Upon receipt of a notice filed under paragraph
23 (2), the Secretary shall consider the statements presented
24 in the notice, and if the Secretary determines to proceed
25 with the proposed agreement, the Secretary shall respond

1 with particularity to the statements presented in the no-
2 tice.

3 “(4) Not later than 15 working days following the
4 Secretary’s response provided pursuant to paragraph (3),
5 the employee or representative of employees shall, on mak-
6 ing a request to the Commission, be entitled to a hearing
7 before the Commission as to whether adoption of the pro-
8 posed agreement would effectuate the purposes of this Act,
9 including a determination as to whether the proposed
10 agreement would adequately abate the alleged violations
11 alleged in the citation.

12 “(5) If the Commission determines that the proposed
13 agreement fails to effectuate the purposes of this Act, the
14 proposed agreement shall not be entered as an order of
15 the Commission and the citation shall not be withdrawn
16 or modified in accordance with the proposed agreement.”.

17 **SEC. 310. CIVIL PENALTIES.**

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

20 (1) in subsection (a)—

21 (A) by striking “\$70,000” and inserting
22 “\$120,000”;

23 (B) by striking “\$5,000” and inserting
24 “\$8,000”; and

1 (C) by adding at the end the following: “If
2 such a violation causes the death of an em-
3 ployee, such civil penalty amounts shall be in-
4 creased to not more than \$250,000 for such
5 violation, but not less than \$50,000 for such
6 violation, except that for an employer with 25
7 or fewer employees such penalty shall not be
8 less than \$25,000 for such violation.”;

9 (2) in subsection (b)—

10 (A) by striking “\$7,000” and inserting
11 “\$12,000”; and

12 (B) by adding at the end the following: “If
13 such a violation causes the death of an em-
14 ployee, such civil penalty amounts shall be in-
15 creased to not more than \$50,000 for such vio-
16 lation, but not less than \$20,000 for such viola-
17 tion, except that for an employer with 25 or
18 fewer employees such penalty shall not be less
19 than \$10,000 for such violation.”;

20 (3) in subsection (c)—

21 (A) by striking “\$7,000” and inserting
22 “\$12,000”; and

23 (B) by adding at the end the following: “If
24 such a violation causes the death of an em-
25 ployee, such civil penalty amounts shall be in-

1 creased to not more than \$50,000 for such vio-
2 lation, but not less than \$20,000 for such viola-
3 tion, except that for an employer with 25 or
4 fewer employees such penalty shall not be less
5 than \$10,000 for such violation.”;

6 (4) in subsection (d)—

7 (A) by striking “\$7,000” and inserting
8 “\$12,000”; and

9 (B) by adding at the end the following: “If
10 such a violation causes the death of an em-
11 ployee, such civil penalty amounts shall be in-
12 creased to not more than \$50,000 for such vio-
13 lation, but not less than \$20,000 for such viola-
14 tion, except that for an employer with 25 or
15 fewer employees such penalty shall not be less
16 than \$10,000 for such violation.”;

17 (5) by redesignating subsections (e) through (l)
18 as subsections (f) through (m), respectively; and

19 (6) in subsection (j) (as redesignated in para-
20 graph (5)), by striking “\$7,000” and inserting
21 “\$12,000;”.

22 (b) INFLATION ADJUSTMENT.—Section 17 (29
23 U.S.C. 666) (as amended by subsection (a)) is further
24 amended by inserting after subsection (d) the following:

1 “(e) Amounts provided under this section for civil
2 penalties shall be adjusted by the Secretary at least once
3 during each 4-year period to account for the percentage
4 increase or decrease in the Consumer Price Index for all
5 urban consumers during such period.”.

6 **SEC. 311. OSHA CRIMINAL PENALTIES.**

7 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) (as
8 amended by section 310) is further amended—

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

11 “(f)(1) Any employer who willfully violates any stand-
12 ard, rule, or order promulgated pursuant to section 6 of
13 this Act, or of any regulations prescribed pursuant to this
14 Act, and that violation caused death to any employee,
15 shall, upon conviction, be punished by a fine in accordance
16 with section 3571 of title 18, United States Code, or by
17 imprisonment for not more than 10 years, or both; except
18 that if the conviction is for a violation committed after
19 a first conviction of such person under this subsection or
20 subsection (i), punishment shall be by a fine in accordance
21 with section 3571 of title 18, United States Code, or by
22 imprisonment for not more than 20 years, or by both.

23 “(2) For the purpose of this subsection, the term ‘em-
24 ployer’ means, in addition to the definition contained in
25 section 3 of this Act, any responsible corporate officer.”;

1 (2) in subsection (g), by striking “fine of not
2 more than \$1,000 or by imprisonment for not more
3 than six months,” and inserting “fine in accordance
4 with section 3571 of title 18, United States Code, or
5 by imprisonment for not more than 2 years,”;

6 (3) in subsection (h), by striking “fine of not
7 more than \$10,000, or by imprisonment for not
8 more than six months,” and inserting “fine in ac-
9 cordance with section 3571 of title 18, United States
10 Code, or by imprisonment for not more than 5
11 years,”;

12 (4) by redesignating subsections (j) through
13 (m) as subsections (k) through (n), respectively; and

14 (5) by inserting after subsection (i) the fol-
15 lowing:

16 “(j)(1) Any employer who willfully violates any stand-
17 ard, rule, or order promulgated pursuant to section 6, or
18 any regulation prescribed pursuant to this Act, and that
19 violation causes serious bodily injury to any employee but
20 does not cause death to any employee, shall, upon convic-
21 tion, be punished by a fine in accordance with section
22 3571 of title 18, United States Code, or by imprisonment
23 for not more than 5 years, or by both, except that if the
24 conviction is for a violation committed after a first convic-
25 tion of such person under this subsection or subsection

1 (e), punishment shall be by a fine in accordance with sec-
 2 tion 3571 of title 18, United States Code, or by imprison-
 3 ment for not more than 10 years, or by both.

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

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

9 “(15) The term ‘serious bodily injury’ means
 10 bodily injury that involves—

11 “(A) a substantial risk of death;

12 “(B) protracted unconsciousness;

13 “(C) protracted and obvious physical dis-
 14 figurement; or

15 “(D) protracted loss or impairment, of the
 16 function of a bodily member, organ, or mental
 17 faculty.”.

18 (c) JURISDICTION FOR PROSECUTION UNDER STATE
 19 AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C.
 20 666) (as amended by subsection (a)) is further amended
 21 by adding at the end the following:

22 “(o) Nothing in this Act shall preclude a State or
 23 local law enforcement agency from conducting criminal
 24 prosecutions in accordance with the laws of such State or
 25 locality.”.

1 **TITLE IV—EFFECTIVE DATE**

2 **SEC. 401. EFFECTIVE DATE.**

3 (a) GENERAL RULE.—Except as provided for in sub-
4 section (b), this Act and the amendments made by this
5 Act shall take effect 90 days after the date of enactment
6 of this Act.

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

10 (1) A State that has a State plan approved
11 under section 18 (29 U.S.C. 667) shall amend its
12 State plan to conform with the requirements of this
13 Act and the amendments made by this Act not later
14 than 12 months after the date of enactment of this
15 Act. Such amendments to the State plan shall take
16 effect not later than 90 days after the adoption of
17 such amendments by such State.

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

○