

113TH CONGRESS
1ST SESSION

S. 665

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 SENATE OF THE UNITED STATES

MARCH 22, 2013

Mrs. MURRAY (for herself, Mr. BROWN, Mr. FRANKEN, Mr. HARKIN, Mr. LAUTENBERG, Mr. ROCKEFELLER, Mrs. SHAHEEN, Mr. WHITEHOUSE, Mr. CASEY, Ms. WARREN, and Mr. CARDIN) 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 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,*

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

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

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. References.

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. Employer duties.

Sec. 302. Recording and reporting of occupational injuries and illnesses.

Sec. 303. Posting of employee rights.

Sec. 304. Employer reporting of work-related deaths and hospitalizations and
prohibition on discouraging employee reports of injury or ill-
ness.

Sec. 305. No loss of employee pay for inspections.

Sec. 306. Investigations of fatalities and significant incidents.

Sec. 307. Prohibition on unclassified citations.

Sec. 308. Victims’ rights.

Sec. 309. Right to contest citations and penalties.

Sec. 310. Correction of serious, willful, or repeated violations pending contest
and procedures for a stay.

Sec. 311. Conforming amendments.

Sec. 312. Civil penalties.

Sec. 313. Criminal penalties.

Sec. 314. Prejudgment interest.

TITLE IV—STATE PLANS

Sec. 401. Concurrent enforcement authority and review of State occupational
safety and health 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 **SEC. 2. REFERENCES.**

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

8 **TITLE I—COVERAGE OF PUBLIC**
9 **EMPLOYEES AND APPLICA-**
10 **TION OF ACT**

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

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

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

21 **SEC. 102. APPLICATION OF ACT.**

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

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

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

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

23 “(2) The Secretary shall, by regulation, establish pro-
24 cedures by which any person who may be adversely af-
25 fected by a decision of the Secretary certifying that the

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

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

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

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

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

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

4 **TITLE II—INCREASING** 5 **WHISTLEBLOWER PROTECTIONS**

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

7 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) (29
8 U.S.C. 660(e)(1)) is amended—

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

14 “(A) such”;

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

17 “(B) such employee has”;

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

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

24 “(D) of the exercise”; and

1 (4) by inserting before the period at the end the
2 following: “, including the reporting of any injury,
3 illness, or unsafe condition to the employer, agent of
4 the employer, safety and health committee involved,
5 or employee safety and health representative in-
6 volved”.

7 (b) PROHIBITION OF RETALIATION.—Section 11(c)
8 (29 U.S.C. 660(c)) is amended by striking paragraph (2)
9 and inserting the following:

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

18 “(B) For purposes of subparagraph (A), the cir-
19 cumstances causing the employee’s good-faith belief that
20 performing such duties would pose a safety or health haz-
21 ard shall be of such a nature that a reasonable person,
22 under the circumstances confronting the employee, would
23 conclude that there is such a hazard. In order to qualify
24 for protection under this paragraph, the employee, when
25 practicable, shall have communicated or attempted to com-

1 municate the safety or health concern to the employer and
2 have not received from the employer a response reasonably
3 calculated to allay such concern.”.

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

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

13 “(4) STATUTE OF LIMITATIONS.—

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

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

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

22 “(B) REPEAT VIOLATION.—Except in
23 cases when the employee has been discharged,
24 a violation of paragraph (1) or (2) shall be con-

1 sidered to have occurred on the last date an al-
2 leged repeat violation occurred.

3 “(5) INVESTIGATION.—

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

11 “(i) shall include—

12 “(I) interviewing the complain-
13 ant;

14 “(II) providing the respondent an
15 opportunity to—

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

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

23 “(III) providing the complainant
24 an opportunity to—

1 “(aa) receive any statements
2 or evidence provided to the Sec-
3 retary;

4 “(bb) meet with the Sec-
5 retary; and

6 “(cc) rebut any statements
7 or evidence; and

8 “(ii) may include issuing subpoenas
9 for the purposes of such investigation.

10 “(B) DECISION.—Not later than 90 days
11 after the filing of the complaint, the Secretary
12 shall—

13 “(i) determine whether reasonable
14 cause exists to believe that a violation of
15 paragraph (1) or (2) has occurred; and

16 “(ii) issue a decision granting or de-
17 nying relief.

18 “(6) PRELIMINARY ORDER FOLLOWING INVES-
19 TIGATION.—If, after completion of an investigation
20 under paragraph (5)(A), the Secretary finds reason-
21 able cause to believe that a violation of paragraph
22 (1) or (2) has occurred, the Secretary shall issue a
23 preliminary order providing relief authorized under
24 paragraph (14) at the same time the Secretary
25 issues a decision under paragraph (5)(B). If a de

1 novo hearing is not requested within the time period
2 required under paragraph (7)(A)(i), such prelimi-
3 nary order shall be deemed a final order of the Sec-
4 retary and is not subject to judicial review.

5 “(7) HEARING.—

6 “(A) REQUEST FOR HEARING.—

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

10 “(I) by the complainant or re-
11 spondent within 30 days after receiv-
12 ing notification of a decision granting
13 or denying relief issued under para-
14 graph (5)(B) or paragraph (6) respec-
15 tively;

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

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

1 “(ii) REINSTATEMENT ORDER.—The
2 request for a hearing shall not operate to
3 stay any preliminary reinstatement order
4 issued under paragraph (6).

5 “(B) PROCEDURES.—

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

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

23 “(iii) DECISION.—The administrative
24 law judge shall issue a decision not later
25 than 90 days after the date on which a

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

13 “(8) ADMINISTRATIVE APPEAL.—

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

22 “(B) STANDARD OF REVIEW.—In review-
23 ing the decision and order of the administrative
24 law judge, the review board shall affirm the de-
25 cision and order if it is determined that the fac-

1 tual findings set forth therein are supported by
2 substantial evidence and the decision and order
3 are made in accordance with applicable law.

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

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

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

23 “(B) PUBLIC POLICY CONSIDERATIONS.—
24 Neither the Secretary, an administrative law
25 judge, nor the review board conducting a hear-

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

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

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

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

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

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

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

8 “(11) JUDICIAL REVIEW.—

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

1 “(B) LIMITATION ON COLLATERAL AT-
2 TACK.—An order and decision with respect to
3 which review may be obtained under subpara-
4 graph (A) shall not be subject to judicial review
5 in any criminal or other civil proceeding.

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

17 “(13) BURDENS OF PROOF.—

18 “(A) CRITERIA FOR DETERMINATION.—In
19 making a determination or adjudicating a com-
20 plaint pursuant to this subsection, the Sec-
21 retary or an administrative law judge, review
22 board, or court may determine that a violation
23 of paragraph (1) or (2) has occurred only if the
24 complainant demonstrates that any conduct de-
25 scribed in paragraph (1) or (2) with respect to

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

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

11 “(14) RELIEF.—

12 “(A) ORDER FOR RELIEF.—If the Sec-
13 retary or an administrative law judge, review
14 board, or court determines that a violation of
15 paragraph (1) or (2) has occurred, the Sec-
16 retary, administrative law judge, review board,
17 or court, respectively, shall have jurisdiction to
18 order all appropriate relief, including injunctive
19 relief, 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, administrative law judge, review
23 board, or court grants an order for relief under
24 subparagraph (A), the Secretary, administrative
25 law judge, review board, or court, respectively,

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

3 “(i) reasonable attorneys’ fees; and

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

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

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

20 “(17) ELECTION OF VENUE.—

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

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

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

5 “(B) REFERRALS.—If—

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

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

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

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

22 **SEC. 301. EMPLOYER DUTIES.**

23 Section 5(a)(1) (29 U.S.C. 654(a)(1)) is amended to
24 read as follows:

1 “(1) shall furnish employment and a place of
2 employment which are free from recognized hazards
3 that are causing or are likely to cause death or seri-
4 ous physical harm to each employee of the employer
5 or any other individual performing work at the place
6 of employment; and”.

7 **SEC. 302. RECORDING AND REPORTING OF OCCUPATIONAL**
8 **INJURIES AND ILLNESSES.**

9 Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended—

10 (1) by striking “The Secretary,” and inserting

11 “(A) The Secretary,”; and

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

13 “(B) Not later than 180 days after the date of enact-
14 ment of the Protecting America’s Workers Act, the Sec-
15 retary shall revise the regulations in part 1904 of title 29,
16 Code of Federal Regulations, concerning the recording
17 and reporting of occupational injuries and illnesses under
18 this Act, to require site-controlling employers to keep a
19 site log for all recordable injuries and illnesses occurring
20 among all employees on the particular site, including em-
21 ployees of the site-controlling employer or others who are
22 performing work at the particular site (including inde-
23 pendent contractors).

24 “(C) As used in this paragraph, the term ‘site-con-
25 trolling employer’ means the employer that has primary

1 control over a worksite at which employees of more than
2 one employer work, such as by hiring or coordinating the
3 work of other employers working at the site.”.

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

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

10 **SEC. 304. EMPLOYER REPORTING OF WORK-RELATED**
11 **DEATHS AND HOSPITALIZATIONS AND PROHI-**
12 **BITION ON DISCOURAGING EMPLOYEE RE-**
13 **PORTS OF INJURY OR ILLNESS.**

14 Section 8(c)(2) (29 U.S.C. 657(c)(2)) is amended by
15 adding at the end the following new sentences: “Such reg-
16 ulations shall require employers to promptly notify the
17 Secretary of any work-related death or work-related injury
18 or illness that results in the in-patient hospitalization of
19 an employee for medical treatment. Such regulations shall
20 also prohibit the employer from adopting or implementing
21 policies or practices by the employer that have the effect
22 of discouraging accurate recordkeeping and the reporting
23 of work-related injuries or illnesses by any employee or
24 in any manner discriminates or provides for adverse action

1 against any employee for reporting a work-related injury
2 or illness.”.

3 **SEC. 305. 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. 306. 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) APPROPRIATE MEASURES.—If a significant inci-
21 dent 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. If an employer takes
6 such action, the employer shall notify the Secretary of the
7 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. 307. 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.”.

23 **SEC. 308. VICTIMS’ RIGHTS.**

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

1 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

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

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

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

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

23 “(b) RIGHTS BEFORE THE COMMISSION.—Upon re-
24 quest, a victim or representative of a victim shall be af-
25 farded the right with respect to a work-related bodily in-
26 jury or death to—

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

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

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

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 under section 8, the Secretary shall notify a victim or rep-
12 resentative of a victim and provide the victim or represent-
13 ative of a victim with an opportunity to appear and make
14 a statement before the parties conducting settlement nego-
15 tiations. In lieu of an appearance, the victim or represent-
16 ative of the victim may elect to submit a letter to the Sec-
17 retary and the parties.

18 “(d) SECRETARY PROCEDURES.—The Secretary shall
19 establish procedures—

20 “(1) to inform victims of their rights under this
21 section; and

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

24 “(e) COMMISSION PROCEDURES AND CONSIDER-
25 ATIONS.—The Commission shall—

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

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

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

11 “(1) keep victims informed of the status of in-
12 vestigations, enforcement actions, and settlement ne-
13 gotiations; and

14 “(2) assist victims in asserting their rights
15 under this section.

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

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

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

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

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

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

10 Section 10(c) (29 U.S.C. 659(c)) is amended—

11 (1) in the first sentence—

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

16 (B) by inserting after “the issuance of a
17 citation under section 9(a)” the following: “(in-
18 cluding a modification of a citation issued
19 under this section)”;

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

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

6 (3) by amending the last sentence—

7 (A) by inserting “employers and” after
 8 “Commission shall provide”; and

9 (B) by inserting before the period at the
 10 end “, and notification of any modification of a
 11 citation”.

12 **SEC. 310. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
 13 **PEATED VIOLATIONS PENDING CONTEST AND**
 14 **PROCEDURES FOR A STAY.**

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

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

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

22 For each violation which the Secretary designates as
 23 serious, willful, or repeated, the period permitted for
 24 the correction of the violation shall begin to run
 25 upon receipt of the citation.

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

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

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

9 “(3) CRITERIA AND RULES OF PROCEDURE FOR
10 STAYS.—

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

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

1 “(i) a substantial likelihood of success
2 on the areas contested under subparagraph
3 (A); and

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

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

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

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

22 “(iii) That if a party is aggrieved by
23 a decision issued by an administrative law
24 judge regarding the stay, such party has
25 the right to file an objection with the Com-

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

22 “(iv) For notification to employees or
23 representatives of affected employees of re-
24 quests for such hearings and shall provide
25 affected employees or representatives of af-

1 fected employees an opportunity to partici-
2 pate as parties to such hearings.”.

3 **SEC. 311. CONFORMING AMENDMENTS.**

4 (a) VIOLATIONS DESIGNATED AS SERIOUS, WILL-
5 FUL, OR REPEATED.—The first sentence of section 10(b)
6 of the Act (29 U.S.C. 659(b)) is amended by inserting
7 “, with the exception of violations designated as serious,
8 willful, or repeated,” after “(which period shall not begin
9 to run”.

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

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

16 (2) by striking “subsection (c)” and inserting
17 “subsection (c) or (d)”; and

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

21 (c) FAILURE TO CORRECT VIOLATIONS.—Section
22 17(d) (29 U.S.C. 666(d)) is amended to read as follows:

23 “(d) Any employer who fails to correct a violation
24 designated by the Secretary as serious, willful, or repeated
25 and for which a citation has been issued under section 9(a)

1 within the period permitted for its correction (and a stay
2 has not been issued by the Commission under section
3 10(d)) may be assessed a civil penalty of not more than
4 \$7,000 for each day during which such failure or violation
5 continues. Any employer who fails to correct any other vio-
6 lation for which a citation has been issued under section
7 9(a) within the period permitted for its correction (which
8 period shall not begin to run until the date of the final
9 order of the Commission in the case of any review pro-
10 ceeding under section 10 initiated by the employer in good
11 faith and not solely for delay of avoidance of penalties)
12 may be assessed a civil penalty of not more than \$7,000
13 for each day during which such failure or violation con-
14 tinues.”.

15 **SEC. 312. CIVIL PENALTIES.**

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

18 (1) in subsection (a)—

19 (A) by striking “\$70,000” and inserting
20 “\$120,000”;

21 (B) by striking “\$5,000” and inserting
22 “\$8,000”; and

23 (C) by adding at the end the following: “In
24 determining whether a violation is repeated, the
25 Secretary or the Commission shall consider the

1 employer's history of violations under this Act
2 and under State occupational safety and health
3 plans established under section 18. If such a
4 willful or repeated violation caused or contrib-
5 uted to the death of an employee, such civil
6 penalty amounts shall be increased to not more
7 than \$250,000 for each such violation, but not
8 less than \$50,000 for each such violation, ex-
9 cept that for an employer with 25 or fewer em-
10 ployees such penalty shall not be less than
11 \$25,000 for each such violation.”;

12 (2) in subsection (b)—

13 (A) by striking “\$7,000” and inserting
14 “\$12,000”; and

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

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

1 (4) in subsection (d), as amended by section
2 311(c), by striking “\$7,000” each place it occurs
3 and inserting “\$12,000”;

4 (5) by redesignating subsections (e) through (i)
5 and (j) through (l), as subsections (f) through (j)
6 and (l) through (n), respectively; and

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

9 (b) INFLATION ADJUSTMENT.—Section 17 (29
10 U.S.C. 666) is further amended by inserting after sub-
11 section (d) the following:

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

18 **SEC. 313. CRIMINAL PENALTIES.**

19 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) (as
20 amended by section 312) is further amended—

21 (1) by amending subsection (f) (as redesignated
22 by section 312) to read as follows:

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

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

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

13 (2) by amending subsection (g) (as redesignated
14 by section 312) to read as follows:

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

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

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

3 (4) by inserting after subsection (j) (as redesignated by section 312) the following:

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

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

21 “(3) For purposes of this subsection, the term ‘serious bodily harm’ means bodily injury or illness that involves—

24 “(A) a substantial risk of death;

25 “(B) protracted unconsciousness;

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

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

6 (b) JURISDICTION FOR PROSECUTION UNDER STATE
7 AND LOCAL CRIMINAL LAWS.—Section 17 is further
8 amended by adding at the end the following:

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

13 **SEC. 314. PREJUDGMENT INTEREST.**

14 Section 17(n) (29 U.S.C. 666(n)) (as redesignated by
15 section 312) is amended by adding at the end the fol-
16 lowing: “Pre-final order interest on such penalties shall
17 begin to accrue on the date the party contests a citation
18 issued under this Act, and shall end upon the issuance
19 of the final order. Such pre-final order interest shall be
20 calculated at the current underpayment rate determined
21 by the Secretary of the Treasury pursuant to section 6621
22 of the Internal Revenue Code of 1986, and shall be com-
23 pounded daily. Post-final order interest shall begin to ac-
24 crue 30 days after the date a final order of the Commis-

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

3 **TITLE IV—STATE PLANS**

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

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

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

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

1 the opportunity to remedy the deficiencies, and provide no-
2 tice of the Secretary's findings and initial determination.

3 “(2) If the Secretary makes an initial determination
4 to reassert and exercise concurrent enforcement authority
5 while the State is given an opportunity to remedy the defi-
6 ciencies, the Secretary shall afford the State an oppor-
7 tunity for a public hearing within 15 days of such request,
8 provided that such request is made not later than 10 days
9 after Secretary's notice to the State. The Secretary shall
10 review and consider the testimony, evidence, or written
11 comments, and not later than 30 days following such hear-
12 ing, make a determination to affirm, reverse, or modify
13 the Secretary's initial determination to reassert and exer-
14 cise concurrent enforcement authority under sections 8, 9,
15 10, 13, and 17 with respect to standards promulgated
16 under section 6 and obligations under section 5(a). Fol-
17 lowing such a determination by the Secretary, or in the
18 event that the State does not request a hearing within the
19 time frame set forth in this paragraph, the Secretary may
20 reassert and exercise such concurrent enforcement author-
21 ity, while a final determination is pending under para-
22 graph (3) or until the Secretary has determined that the
23 State has remedied the deficiencies as provided under
24 paragraph (4). Such determination shall be published in
25 the Federal Register. The procedures set forth in sub-

1 section (g) shall not apply to a determination by the Sec-
2 retary to reassert and exercise such concurrent enforce-
3 ment authority.

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

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

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

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

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

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

24 “(2) whether the Secretary’s investigations in
25 response to Complaints About State Plan Adminis-

1 tration (CASPA) are adequate, whether significant
2 policy issues have been identified by headquarters
3 and corrective actions are fully implemented by each
4 State;

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

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

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

22 “(B) inspections, the number of pro-
23 grammed health and safety inspections at pri-
24 vate and public sector establishments, and
25 whether the State targets the highest hazard

1 private sector worksites and facilities in that
2 State;

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

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

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

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

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

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

18 **TITLE V—NATIONAL INSTITUTE**
 19 **FOR OCCUPATIONAL SAFETY**
 20 **AND HEALTH**

21 **SEC. 501. HEALTH HAZARD EVALUATIONS BY THE NA-**
 22 **TIONAL INSTITUTE FOR OCCUPATIONAL**
 23 **SAFETY AND HEALTH.**

24 Section 20(a)(6) (29 U.S.C. 669(a)(6)) is amended
 25 by striking the second sentence and inserting the fol-

1 lowing: “The Secretary shall determine following a written
 2 request by any employer, authorized representative of cur-
 3 rent or former employees, physician, other Federal agency,
 4 or State or local health department, specifying with rea-
 5 sonable particularity the grounds on which the request is
 6 made, whether any substance normally found in the place
 7 of employment has potentially toxic effects in such con-
 8 centrations as used or found or whether any physical
 9 agents, equipment, or working condition found or used has
 10 potentially hazardous effects; and shall submit such deter-
 11 mination both to employers and affected employees as
 12 soon as possible.”.

13 **TITLE VI—EFFECTIVE DATE**

14 **SEC. 601. EFFECTIVE DATE.**

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

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

22 (1) A State that has a State plan approved
 23 under section 18 of the Occupational Safety and
 24 Health Act of 1970 (29 U.S.C. 667) shall amend its
 25 State plan to conform with the requirements of this

1 Act and the amendments made by this Act not later
2 than 12 months after the date of the enactment of
3 this Act. The Secretary of Labor may extend the pe-
4 riod for a State to make such amendments to its
5 State plan by not more than 12 months, if the
6 State's legislature is not in session during the 12-
7 month period beginning with the date of the enact-
8 ment of this Act. Such amendments to the State
9 plan shall take effect not later than 90 days after
10 the adoption of such amendments by such State.

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

○