

# [DISCUSSION DRAFT]

[AS OF MARCH 9, 2010]

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[Modifications to HR 2067, Protecting America's Workers Act]

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111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R.

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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.

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## IN THE HOUSE OF REPRESENTATIVES

Ms. WOOLSEY introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protecting America’s  
3 Workers Act”.

4 **SEC. 2. REFERENCES.**

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

11 **TITLE I—COVERAGE OF PUBLIC**  
12 **EMPLOYEES AND APPLICA-**  
13 **TION OF ACT**

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

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

20 (b) CONSTRUCTION.—Nothing in this Act shall be  
21 construed to affect the application of section 18 of the Oc-  
22 cupational Safety and Health Act of 1970 (29 U.S.C.  
23 667).

24 **SEC. 102. APPLICATION OF ACT.**

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

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

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

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

1           “(2) The Secretary shall, by regulation, establish pro-  
2 cedures by which any person who may be adversely af-  
3 fected by a decision of the Secretary certifying that the  
4 Secretary has ceded jurisdiction to another Federal agency  
5 pursuant to paragraph (1) may petition the Secretary to  
6 rescind a certification notice under paragraph (1). Upon  
7 receipt of such a petition, the Secretary shall investigate  
8 the matter involved and shall, within 90 days after receipt  
9 of the petition, publish a decision with respect to the peti-  
10 tion in the Federal Register.

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

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

15           “(B) a decision of the Secretary denying a peti-  
16 tion to rescind such a certification notice under  
17 paragraph (1),

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

1 trary, capricious, an abuse of discretion, or otherwise not  
2 in accordance with law.

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

6 **TITLE II—INCREASING PROTEC-**  
7 **TIONS FOR WHISTLE-**  
8 **BLOWERS**

9 **SEC. 201. EMPLOYEE ACTIONS.**

10 Section 11(c)(1) (29 U.S.C. 660(c)(1)) is amended  
11 by inserting before the period at the end the following:  
12 “, including the reporting of any injury, illness, or unsafe  
13 condition to the employer, agent of the employer, safety  
14 and health committee involved, or employee safety and  
15 health representative involved”.

16 **SEC. 202. PROHIBITION OF DISCRIMINATION.**

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

19 “(2) No person shall discharge or in any man-  
20 ner discriminate against an employee for refusing to  
21 perform the employee’s duties if the employee has a  
22 reasonable apprehension that performing such duties  
23 would result in serious injury to, or serious impair-  
24 ment of the health of, the employee or other employ-  
25 ees. The circumstances causing the employee’s ap-

1       prehension of serious injury or serious impairment  
2       of health shall be of such a nature that a reasonable  
3       person, under the circumstances confronting the em-  
4       ployee, would conclude that there is a bona fide dan-  
5       ger of a serious injury, or serious impairment of  
6       health, resulting from the circumstances. In order to  
7       qualify for protection under this paragraph, the em-  
8       ployee, when practicable, shall have sought from the  
9       employee’s employer, and have been unable to ob-  
10      tain, a correction of the circumstances causing the  
11      refusal to perform the employee’s duties.”.

12 **SEC. 203. PROCEDURE.**

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

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

21           “(4) STATUTE OF LIMITATIONS.—

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

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

3 “(ii) the date on which the employee  
4 knows or should reasonably have known  
5 that such alleged violation occurred.

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

11 “(5) INVESTIGATION.—

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

19 “(i) shall include—

20 “(I) interviewing the complain-  
21 ant;

22 “(II) providing the respondent an  
23 opportunity to—

1                   “(aa) submit to the Sec-  
2                   retary a written response to the  
3                   complaint; and

4                   “(bb) meet with the Sec-  
5                   retary to present statements from  
6                   witnesses or provide evidence;  
7                   and

8                   “(III) providing the complainant  
9                   an opportunity to—

10                   “(aa) receive any statements  
11                   or evidence provided to the Sec-  
12                   retary;

13                   “(bb) meet with the Sec-  
14                   retary; and

15                   “(cc) rebut any statements  
16                   or evidence; and

17                   “(ii) may include issuing subpoenas  
18                   for the purposes of such investigation.

19                   “(B) DECISION.—Not later than 90 days  
20                   after the filing of the complaint, the Secretary  
21                   shall—

22                   “(i) issue a decision on whether to  
23                   order relief; and



1                   “(ii) notify, in writing, the complain-  
2                   ant and the respondent named in the com-  
3                   plaint of such decision.

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

16                  “(7) HEARING.—

17                         “(A) REQUEST FOR HEARING.—

18                                 “(i) IN GENERAL.—A de novo hearing  
19                                 on the record before an administrative law  
20                                 judge may be requested—

21   “(I) by the complainant or re-  
22   spondent within 30 days after receiv-  
23   ing notification of a decision or pre-  
24   liminary order for relief issued under  
25   paragraph (5)(B) or (6), respectively;

1                   “(II) by the complainant within  
2                   30 days after the date the complaint  
3                   is dismissed without investigation by  
4                   the Secretary under paragraph (5)(A);  
5                   or

6                   “(III) by the complainant within  
7                   120 days after the date of filing the  
8                   complaint, if the Secretary has not  
9                   issued a decision under paragraph  
10                  (5)(B).

11                  “(ii) REINSTATEMENT ORDER.—The  
12                  request for a hearing shall not operate to  
13                  stay any preliminary reinstatement order  
14                  issued under paragraph (6).

15                  “(B) PROCEDURES.—

16                  “(i) IN GENERAL.—A hearing re-  
17                  quested under this paragraph shall be con-  
18                  ducted expeditiously and in accordance  
19                  with rules established by the Secretary for  
20                  hearings conducted by administrative law  
21                  judges.

22                  “(ii) SUBPOENAS; PRODUCTION OF  
23                  EVIDENCE.—In conducting any such hear-  
24                  ing, the administrative law judge may issue  
25                  subpoenas. The respondent or complainant

1           may request the issuance of subpoenas  
2           that require the deposition of, or the at-  
3           tendance and testimony of, witnesses and  
4           the production of any evidence (including  
5           any books, papers, documents, or record-  
6           ings) relating to the matter under consid-  
7           eration.

8           “(iii) DECISION.—The administrative  
9           law judge shall issue a decision not later  
10          than 90 days after the date on which a  
11          hearing was requested under this para-  
12          graph and promptly notify, in writing, the  
13          parties and the Secretary of such decision,  
14          including the findings of fact and conclu-  
15          sions of law. If the administrative law  
16          judge finds that a violation of paragraph  
17          (1) or (2) has occurred, the judge shall  
18          issue an order for relief under paragraph  
19          (14). If review under paragraph (8) or  
20          (11) is not timely requested, such order  
21          shall be deemed a final order of the Sec-  
22          retary that is not subject to judicial review.

23          “(8) ADMINISTRATIVE APPEAL.—

24                 “(A) IN GENERAL.—Not later than 30  
25          days after the date of notification of a decision

1 and order issued by an administrative law judge  
2 under paragraph (7), the complainant or re-  
3 spondent may file, with objections, an adminis-  
4 trative appeal with the Secretary (or an admin-  
5 istrative review body designated by the Sec-  
6 retary).

7 “(B) STANDARD OF REVIEW.—In review-  
8 ing the decision and order of the administrative  
9 law judge, the Secretary (or designated admin-  
10 istrative review body) shall affirm the decision  
11 and order if it is determined that the factual  
12 findings set forth therein are supported by sub-  
13 stantial evidence and the decision and order are  
14 made in accordance with applicable law.

15 “(C) DECISION.—If the Secretary grants  
16 the administrative appeal and finds that a viola-  
17 tion of paragraph (1) or (2) has occurred, the  
18 Secretary shall issue, within 60 days of receipt  
19 of the administrative appeal, a final decision  
20 and order providing relief authorized under  
21 paragraph (14), and such decision and order  
22 shall constitute a final agency action.

23 “(9) SETTLEMENT IN THE ADMINISTRATIVE  
24 PROCESS.—

1           “(A) IN GENERAL.—At any time before  
2           issuance of a final order, an investigation or  
3           proceeding under this subsection may be termi-  
4           nated on the basis of a settlement agreement  
5           entered into by—

6                   “(i) the Secretary or an administra-  
7                   tive law judge conducting a hearing under  
8                   this subsection;

9                   “(ii) the complainant; and

10                   “(iii) the respondent.

11           “(B) PUBLIC POLICY CONSIDERATIONS.—  
12           The Secretary or an administrative law judge  
13           conducting a hearing under this subsection may  
14           not accept a settlement that contains conditions  
15           conflicting with the rights protected under this  
16           Act or that are contrary to public policy, includ-  
17           ing a restriction on a complainant’s right to fu-  
18           ture employment with employers other than the  
19           specific employers named in a complaint.

20           “(10) INACTION BY THE SECRETARY OR ADMIN-  
21           ISTRATIVE LAW JUDGE.—

22                   “(A) IN GENERAL.—The complainant may  
23                   bring a de novo action described in subpara-  
24                   graph (B) if—

1 “(i) an administrative law judge has  
2 not issued a decision and order within the  
3 90-day time period required under para-  
4 graph (7)(B)(iii); or

5 “(ii) the Secretary has not issued a  
6 decision and order within the 60-day time  
7 period required under paragraph (8)(C).

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

20 “(11) JUDICIAL REVIEW.—

21 “(A) TIMELY APPEAL TO THE COURT OF  
22 APPEALS.—Any party adversely affected or ag-  
23 grieved by a final decision and order issued  
24 under this subsection may obtain review of such  
25 decision and order in the United States Court

1 of Appeals for the circuit where the violation,  
2 with respect to which such final decision and  
3 order was issued, allegedly occurred or where  
4 the complainant resided on the date of such al-  
5 leged violation. To obtain such review, a party  
6 shall file a petition for review not later than 60  
7 days after the final decision and order was  
8 issued. Such review shall conform to chapter 7  
9 of title 5, United States Code. The commence-  
10 ment of proceedings under this subparagraph  
11 shall not, unless ordered by the court, operate  
12 as a stay of the final decision and order.

13 “(B) LIMITATION ON COLLATERAL AT-  
14 TACK.— An order and decision with respect to  
15 which review may be obtained under subpara-  
16 graph (A) shall not be subject to judicial review  
17 in any criminal or other civil proceeding.

18 “(12) ENFORCEMENT OF ORDER.—If a re-  
19 spondent fails to comply with an order issued under  
20 this subsection, the Secretary or the complainant on  
21 whose behalf the order was issued may file a civil ac-  
22 tion for enforcement in the United States district  
23 court for the district in which the violation was  
24 found to occur to enforce such order. If both the  
25 Secretary and the complainant file such action, the

1 action of the Secretary shall take precedence. The  
2 district court shall have jurisdiction to grant all ap-  
3 propriate relief including, injunctive relief, compen-  
4 satory or exemplary damages, and reasonable attor-  
5 neys' fees and costs.

6 “(13) BURDENS OF PROOF.—

7 “(A) CRITERIA FOR DETERMINATION.—In  
8 adjudicating a complaint pursuant to this sub-  
9 section, the Secretary or a court may determine  
10 that a violation of paragraph (1) or (2) has oc-  
11 curred only if the complainant demonstrates  
12 that any conduct described in paragraph (1) or  
13 (2) with respect to the complainant was a con-  
14 tributing factor in the adverse action alleged in  
15 the complaint.

16 “(B) PROHIBITION.—Notwithstanding sub-  
17 paragraph (A), a decision or order that is favor-  
18 able to the complainant shall not be issued in  
19 any administrative or judicial action pursuant  
20 to this subsection if the respondent dem-  
21 onstrates by clear and convincing evidence that  
22 the respondent would have taken the same ad-  
23 verse action in the absence of such conduct.

24 “(14) RELIEF.—



1           “(A) ORDER FOR RELIEF.—If the Sec-  
2           retary or a court determines that a violation of  
3           paragraph (1) or (2) has occurred, the Sec-  
4           retary or court, respectively, shall have jurisdic-  
5           tion to order all appropriate relief, including in-  
6           junctive relief, compensatory and exemplary  
7           damages, including—

8                   “(i) affirmative action to abate the  
9                   violation;

10                   “(ii) reinstatement without loss of po-  
11                   sition or seniority, and restoration of the  
12                   terms, rights, conditions, and privileges as-  
13                   sociated with the complainant’s employ-  
14                   ment, including opportunities for pro-  
15                   motions to positions with equivalent or bet-  
16                   ter compensation for which the complain-  
17                   ant is qualified;

18                   “(iii) compensatory and consequential  
19                   damages sufficient to make the complain-  
20                   ant whole, (including back pay, prejudg-  
21                   ment interest, and other damages); and

22                   “(iv) expungement of all warnings,  
23                   reprimands, or derogatory references that  
24                   have been placed in paper or electronic  
25                   records or databases of any type relating

1 to the actions by the complainant that  
2 gave rise to the unfavorable personnel ac-  
3 tion, and, at the complainant's direction,  
4 transmission of a copy of the decision on  
5 the complaint to any person whom the  
6 complainant reasonably believes may have  
7 received such unfavorable information.

8 “(B) ATTORNEYS’ FEES AND COSTS.—If  
9 the Secretary or a court grants an order for re-  
10 lief under subparagraph (A), the Secretary or  
11 court, respectively, shall assess, at the request  
12 of the employee against the employer—

13 “(i) reasonable attorneys’ fees; and

14 “(ii) costs (including expert witness  
15 fees)) reasonably incurred, as determined  
16 by the Secretary or court respectively, in  
17 connection with bringing the complaint  
18 upon which the order was issued.

19 “(15) PROCEDURAL RIGHTS.—The rights and  
20 remedies provided for in this subsection may not be  
21 waived by any agreement, policy, form, or condition  
22 of employment, including by any pre-dispute arbitra-  
23 tion agreement or collective bargaining agreement.

24 “(16) SAVINGS.—Nothing in this section shall  
25 be construed to diminish the rights, privileges, or

1 remedies of any employee who exercises rights under  
2 any Federal or State law or common law, or under  
3 any collective bargaining agreement.

4 “(17) ELECTION OF VENUE.—

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

10 “(i) the Secretary under paragraph  
11 (5); or

12 “(ii) a State plan administrator in  
13 such State.

14 “(B) REFERRALS.—If—

15 “(i) the Secretary receives a complaint  
16 pursuant to subparagraph (A)(i), the Sec-  
17 retary shall not refer such complaint to a  
18 State plan administrator for resolution; or

19 “(ii) a State plan administrator re-  
20 ceives a complaint pursuant to subpara-  
21 graph (A)(ii), the State plan administrator  
22 shall not refer such complaint to the Sec-  
23 retary for resolution.”.

1 **SEC. 204. RELATION TO ENFORCEMENT.**

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

5 **TITLE III—INCREASING**  
6 **PENALTIES FOR VIOLATORS**

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

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

13 **SEC. 302. EMPLOYER REPORTING OF WORK-RELATED**  
14 **DEATHS AND HOSPITALIZATIONS AND PROHI-**  
15 **BITION ON DISCOURAGING EMPLOYEE RE-**  
16 **PORTS OF INJURY OR ILLNESS.**

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

1 in any manner discriminates or provides for adverse action  
2 against any employee for reporting a work-related injury  
3 or illness.”

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

5 Section 8(e) (29 U.S.C. 657(e)) is amended by insert-  
6 ing after the first sentence the following: “Time spent by  
7 an 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 SIGNIFI-**  
13 **CANT INCIDENTS.**

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

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

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

21 “(2) APPROPRIATE MEASURES.—If a significant inci-  
22 dent or an incident resulting in death occurs in a place  
23 of employment, the employer shall promptly notify the  
24 Secretary of the incident involved and shall take appro-  
25 priate measures to prevent the destruction or alteration

1 of any evidence that would assist in investigating the inci-  
2 dent. The appropriate measures required by this para-  
3 graph do not prevent an employer from taking action on  
4 a worksite to prevent injury to employees or substantial  
5 damage to property or to avoid disruption of essential  
6 services necessary to public safety. If an employer takes  
7 such action, the employer shall notify the Secretary of the  
8 action in a timely fashion.

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

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

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

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

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

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

1 **SEC. 306. VICTIMS' RIGHTS.**

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

4 **“SEC. 9A. VICTIM'S RIGHTS.**

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

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

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

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

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

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

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

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

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

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

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

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



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

3           “(e) COMMISSION PROCEDURES.—The Commission  
4           shall establish procedures relating to the rights of victims  
5           to be heard in proceedings before the Commission.

6           “(f) DEFINITION.—In this section, the term ‘victim’  
7           means—

8           “(1) an employee, including a former employee,  
9           who has sustained a work-related injury or illness  
10          that is the subject of an inspection or investigation  
11          conducted under section 8, or

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

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

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

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

24           Section 10 (20 U.S.C. 659) is amended—

25           (1) in the first sentence of subsection (b)—

1 (A) by inserting “, with the exception of  
2 violations designated as serious, willful, or re-  
3 peated,” after “(which period shall not begin to  
4 run”;

5 (2) in subsection (c)—

6 (A) in the first sentence—

7 (i) by inserting after “that he intends  
8 to contest a citation issued under section  
9 (9)” the following: “(or a modification of a  
10 citation issued under this section)”;

11 (ii) by inserting after “the issuance of  
12 a citation under section 9” the following:  
13 “(including a modification of a citation  
14 issued under such section)”;

15 (iii) by inserting after “files a notice  
16 with the Secretary alleging” the following:  
17 “that the citation fails properly to des-  
18 ignate the violation as serious, willful, or  
19 repeated, that the proposed penalty is not  
20 adequate, or”;

21 (B) by inserting after the first sentence,  
22 the following: “The pendency of a contest be-  
23 fore the Commission shall not bar the Secretary  
24 from inspecting a place of employment or from  
25 issuing a citation under section 9.”; and

1 (C) by amending the last sentence—

2 (i) by inserting “employers and” after

3 “Commission shall provide”; and

4 (ii) by inserting before the period at  
5 the end “, and notification of any modi-  
6 fication of a citation”.

7 (3) by adding at the end the following:

8 “(d) CORRECTION OF SERIOUS, WILLFUL, OR RE-  
9 PEATED VIOLATIONS; ABATEMENT PENDING CONTEST  
10 AND PROCEDURES FOR A STAY.—

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

13 For each violation which the Secretary designates as  
14 serious, willful, or repeated, the period permitted for  
15 the correction of the violation shall begin to run  
16 upon receipt of the citation.

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

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

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

1           “(3) CRITERIA AND RULES OF PROCEDURE FOR  
2 STAYS.—

3           “(A) MOTION FOR A STAY.—An employer  
4 may file with the Commission a motion to stay  
5 a period for the correction of a violation des-  
6 ignated as serious, willful, or repeated.

7           “(B) CRITERIA.—In determining whether  
8 a stay should be issued on the basis of a motion  
9 filed under subparagraph (A), the Commission  
10 shall consider whether—

11           “(i) the employer has demonstrated a  
12 substantial likelihood of success on its con-  
13 test to the citation;

14           “(ii) the employer will suffer irrep-  
15 arable harm absent a stay; and

16           “(iii) a stay will adversely affect the  
17 health and safety of workers.

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

23           “(i) That a hearing before an admin-  
24 istrative law judge shall occur not later  
25 than 15 days following the filing of the

1 motion for a stay (unless extended at the  
2 request of the employer), and shall provide  
3 for a decision on the motion not later than  
4 15 days following the hearing (unless ex-  
5 tended at the request of the employer).

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

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

1 Commission. If the Commission grants re-  
2 view of the objection, the Commission shall  
3 issue a decision regarding the stay not  
4 later than 30 days after receipt of the ob-  
5 jection. If the Commission fails to issue  
6 such decision within 30 days, the decision  
7 of the administrative law judge shall be-  
8 come a final order of the Commission.

9 “(iv) For notification to employees or  
10 representatives of affected employees of re-  
11 quests for such hearings and shall provide  
12 affected employees or representatives of af-  
13 fected employees an opportunity to partici-  
14 pate as parties to such hearings.”

15 **SEC. 308. CONFORMING AMENDMENTS.**

16 (a) SECTION 17.—Section 17(d) (29 U.S.C. 666(d))  
17 is amended to read as follows:

18 “(d) Any employer who fails to correct a violation  
19 designated by the Secretary as serious, willful or repeated  
20 and for which a citation has been issued under section 9(a)  
21 within the period permitted for its correction (and a stay  
22 has not been issued by the Commission under section  
23 10(d)) may be assessed a civil penalty of not more than  
24 \$7,000 for each day during which such failure or violation  
25 continues. Any employer who fails to correct any other vio-

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

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

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” ;

16 (2) by striking “subsection (c)” and inserting  
17 “subsections (c) and (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 **SEC. 309. CIVIL PENALTIES.**

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

24 (1) in subsection (a)—

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

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

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

14 (2) in subsection (b)—

15 (A) by striking “\$7,000” and inserting  
16 “\$12,000”; and

17 (B) by adding at the end the following: “If  
18 such a violation causes the death of an em-  
19 ployee, such civil penalty amounts shall be in-  
20 creased to not more than \$50,000 for each such  
21 violation, but not less than \$20,000 for each  
22 such violation, except that for an employer with  
23 25 or fewer employees such penalty shall not be  
24 less than \$10,000 for each such violation.”;



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

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

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

7 (6) in subsection (j) (as redesignated by para-  
8 graph (5)), by striking “\$7,000” and inserting  
9 “\$12,000;”.

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

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

18 **SEC. 310. OSHA CRIMINAL PENALTIES.**

19 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) (as  
20 amended by section 309) is further amended—

21 (1) by amending subsection (f) to read as fol-  
22 lows:

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 contributed to death to any  
2 employee, shall, upon conviction, be punished by a fine in  
3 accordance with section 3571 of title 18, United States  
4 Code, or by imprisonment for not more than 10 years, or  
5 both, except that if the conviction is for a violation com-  
6 mitted after a first conviction of such person under this  
7 subsection or subsection (i), punishment shall be by a fine  
8 in accordance with section 3571 of title 18, United States  
9 Code, or by imprisonment for not more than 20 years, or  
10 by both.

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

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

19 (3) in subsection (h), by striking “fine of not  
20 more than \$10,000, or by imprisonment for not  
21 more than six months,” and inserting “fine in ac-  
22 cordance with section 3571 of title 18, United States  
23 Code, or by imprisonment for not more than 5  
24 years,”;

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

3 (5) by inserting after subsection (i) the fol-  
4 lowing:

5 “(j)(1) Any employer who knowingly violates any  
6 standard, rule, or order promulgated under section 6, or  
7 any regulation prescribed under this Act, and that viola-  
8 tion causes or contributes to serious bodily harm to any  
9 employee but does not cause death to any employee, shall,  
10 upon conviction, be punished by a fine in accordance with  
11 section 3571 of title 18, United States Code, or by impris-  
12 onment for not more than 5 years, or by both, except that  
13 if the conviction is for a violation committed after a first  
14 conviction of such person under this subsection or sub-  
15 section (e), punishment shall be by a fine in accordance  
16 with section 3571 of title 18, United States Code, or by  
17 imprisonment for not more than 10 years, or by both.

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

21 “(3) For purposes of this subsection, the term ‘seri-  
22 ous bodily harm’ means any circumstance, deficiency, or  
23 shortfall that could result in an injury or illness including,  
24 risk of death, unconsciousness, physical disfigurement, or  
25 loss or impairment (whether permanent or temporary) of

1 the function of a bodily member, organ, or mental facil-  
2 ity.”.

3 (b) JURISDICTION FOR PROSECUTION UNDER STATE  
4 AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C.  
5 666) (as amended by subsection (a)) is further amended  
6 by adding at the end the following:

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

## 11 **TITLE IV—EFFECTIVE DATE**

### 12 **SEC. 401. EFFECTIVE DATE.**

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

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

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

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

8               (2) This Act and the amendments made by this  
9       Act shall take effect not later than 36 months after  
10      the date of the enactment of this Act in a State, or  
11      a political subdivision of a State, that does not have  
12      a State plan approved under section 18 (29 U.S.C.  
13      667).