

112TH
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SESSION

H. R. _____

To improve compliance with occupational safety and health laws and better encourage employer responsibility for occupational safety and health.

IN THE HOUSE OF REPRESENTATIVES
_____, 2011

_____ introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To improve compliance with occupational safety and health laws and better encourage employer responsibility for worker safety and health.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Enhancing Occupational Safety and Health Protections in the 100th Year Act of 2011”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. References.

Title I – Enhancing the Effectiveness of the Occupational Safety and Health Act.

- Sec. 101. Coverage of public sector employees.
- Sec. 102. Updating permissible exposure limits.
- Sec. 103. Advancing risk-based a regulatory approach.
- Sec. 104. Encouraging collaborative rulemaking.
- Sec. 105. Enhanced definition of competent person.
- Sec. 106. Encouraging OSHA consideration of voluntary consensus standards.

- Sec. 107. Enabling OSHA to update standards with voluntary consensus standards.
 Sec. 108. Relocation of NIOSH within the Department of Health and Human Services.

Title II – Encouraging Employer Responsibility for Workplace Safety.

- Sec. 201. Increased criminal penalties for those responsible for safety culture in an organization.
 Sec. 202. Encouraging employer risk assessment through third part consultations.
 Sec. 203. Encouraging risk assessment through safety and health audit privilege.
 Sec. 204. Codification of the Voluntary Protection Program.
 Sec. 205. Expanded access to Voluntary Protection Program for small businesses.
 Sec. 206. Authorization of Appropriations.
 Sec. 207. Effective Date.

SEC. 2. REFERENCES.

Whenever in this Act an amendment is expressed as an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

Title I – Enhancing the Effectiveness of the Occupational Safety and Health Act

SEC. 101. COVERAGE OF PUBLIC SECTOR EMPLOYEES.

(a) In General- Section 3(5) (29 U.S.C. 652(5)) is amended by striking 'but does not include' and all that follows and inserting 'including the United States, a State, or a political subdivision of a State.'

(b) Construction- Nothing in this Act shall be construed to affect the application of section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667).

SEC. 102. UPDATING PERMISSIBLE EXPOSURE LIMITS.

Not later than 30 days following the enactment of this Act, the National Institute for Occupational Safety and Health (NIOSH) shall forward to the Secretary of Labor its Recommended Exposure Limits (RELs) for chemical and other hazards to workers, along with the research data and other necessary information. Within 30 days of receipt of this information, the Secretary of Labor shall require the Occupational Safety and Health Administration (OSHA) to adopt such recommended exposure limits as the Permissible Exposure Limits (PELs) for application in all OSHA-regulated workplaces. The Secretary of Labor shall be obligated to adopt such exposure limits as PELs for application within 180 days

of receipt of such information. Nothing in this subsection shall limit OSHA from establishing requirements for other chemicals and substances than those established pursuant to this subsection and in accordance with the other requirements of this section.

SEC. 103. ADVANCING RISK-BASED REGULATIONS.

(a) STANDARDS- Section 6(b)(5) (29 U.S.C. 655(b)(5)) is amended by inserting a new Subsection (5), with subsequent subsections renumbered, to read as follows:

(5) The development of standards under this section shall require employers to establish and implement processes to identify and take appropriate steps to prevent or otherwise control and reduce potential hazards.

SEC. 104. ENCOURAGING COLLABORATIVE RULEMAKING.

Not later than 180 days after the date of the enactment of this Act, the General Accounting Office shall provide to Congress a study of the effectiveness of negotiated rulemaking and an analysis of possible ways the negotiated rulemaking could be improved to make it a more effective means of reaching consensus among stakeholders in rulemaking conducted under the Act.

SEC. 105. ENHANCED DEFINITION OF COMPETENT PERSON.

Section 3 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652) is amended by adding at the end of Section 3:

“(15) The term “competent person” as used in standards promulgated under this Act means an appropriately competent person who, through experience and training, is able to identify actual and potential hazards, understand safe work practices, design and implement control strategies, have demonstrated expertise in establishing and managing a safety and health program, and is authorized to initiate appropriate corrective actions to address identified hazards.”

SEC. 106. ENCOURAGING OSHA CONSIDERATION OF VOLUNTARY CONSENSUS STANDARDS.

Whenever a rule promulgated by the Secretary of Labor addresses the same occupational safety or health hazards as an existing national consensus standard adopted through ANSI or other similarly recognized and accredited standards organization, the Secretary shall adopt such standard as a binding rule through rulemaking in accordance with Title 5 USC Ch. 5; however, if the Secretary determines after considering the rulemaking record that such adoption is not

appropriate and determines that different requirements are warranted, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

SEC. 107. ENABLING OSHA TO UPDATE STANDARDS WITH VOLUNTARY CONSENSUS STANDARDS.

Not later than 60 days after the date of the enactment of this Act, The Secretary of Labor shall issue an interim final regulation establishing a performance-oriented approach to updating its standards that can serve to replace references to specific voluntary consensus standards with a general requirement coupled with listing of voluntary consensus standards adopted through ANSI and other similarly recognized and accredited standards organizations in a non-mandatory appendix, as proposed in the Notice of Proposed Rulemaking *Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment* (OSHA-2007-0044).

SEC. 108. RELOCATION OF NIOSH WITHIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Section 22 of the Occupational Safety and Health Act of 1970 (22 U.S.C. 671) is amended in subsection (b) to read as follows:

‘There is hereby established in the Department of Health and Human Services a National Institute for Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the Secretary of Health and Human Services, who shall report directly to the Secretary of Health and Human Services, and who shall serve for a term of six years unless previously removed by the Secretary of Health and Human Services.’

Title II – Encouraging Employer Responsibility for Workplace Safety

SEC. 201. INCREASED CRIMINAL PENALTIES FOR THOSE WHO DETERMINE THE OVERALL SAFETY CULTURE OF AN ORGANIZATION.

(a) In General- Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) is amended—

(1) by amending subsection (e) to read as follows:

‘(e)(1) Any employer who knowingly violates any standard, rule, or order promulgated under section 6 of this Act, or of any regulation prescribed under this

Act, and that violation caused or significantly contributed to the death of any employee, shall, upon conviction, be punished by a fine in accordance with title 18, United States Code, or by imprisonment for not more than 10 years, or both, except that if the conviction is for a violation committed after a first conviction of such person under this subsection or subsection (i), punishment shall be by a fine in accordance title 18, United States Code, or by imprisonment for not more than 20 years, or by both.'

`(2) For the purpose of this subsection, the term `employer' means, in addition to the definition contained in section 3 of this Act, any responsible officer or director.';

(2) by amending subsection (f) to read as follows:

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

(3) in subsection (g), by striking `fine of not more than \$10,000, or by imprisonment for not more than six months,' and inserting `fine in accordance with title 18, United States Code, or by imprisonment for not more than 5 years,';

(4) by inserting as subsection (h) the following:

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

`(2) For the purpose of this subsection, the term `employer' means, in addition to the definition contained in section 3 of this Act, any responsible officer or director.

`(3) For purposes of this subsection, the term `serious bodily harm' means bodily injury or illness that involves—

- `(A) a substantial risk of death;
- `(B) protracted unconsciousness;
- `(C) protracted and obvious physical disfigurement; or

`(D) protracted loss or significant impairment, either temporary or permanent, of the function of a bodily member, organ, or mental faculty.'

(b) Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 652) is amended by adding at the end of Section 3:

‘(15) The term “knowingly” means the employer knew or should have known of the violative condition or practice but displayed conduct which exhibited the absence of the slightest degree of care, and there are no mitigating circumstances.’

(c) Jurisdiction for Prosecution Under State and Local Criminal Laws- Such section is further amended by adding at the end the following:

`(o) Nothing in this Act shall preclude a State or local law enforcement agency from conducting criminal prosecutions in accordance with the laws of such State or locality.'

SEC. 202. ENCOURAGING EMPLOYER RISK ASSESSMENT THROUGH THIRD PARTY CONSULTATIONS.

(a) Program - The Act (29 U.S.C. 651 et seq.) is amended by inserting after section 8 the following:

`SEC. 8A. THIRD PARTY CONSULTATION SERVICES PROGRAM.

`(a) Purpose - It is the purpose of this section to encourage employers to conduct voluntary safety and health audits using the expertise of qualified safety and health consultants and to proactively seek individualized solutions to workplace safety and health concerns.

`(b) Establishment of Program –

`(1) In General - Not later than 18 months after the date of enactment of this section, the Secretary shall establish and implement, by regulation, a program that qualifies individuals to provide consultation services to employers to assist employers in the identification and correction of safety and health hazards in the workplaces of employers.

`(2) Eligibility - The following individuals shall be eligible to be qualified under this program as certified safety and health consultants:

`(A) An individual who is a Certified Safety Professional, as awarded by the Board of Certified Safety Professionals, or a Certified Industrial Hygienist, as awarded by the American Board of Industrial Hygiene, or is licensed by a State as a professional engineer.

`(B) An individual who has been employed as an inspector for a State plan State or as a Federal occupational safety and health inspector for not less than a 10-year period.

`(C) An individual who works under the direction of a Certified Safety Professional or Certified Industrial Hygienist and who is certified in an occupational safety or health field by an organization whose certification program has been accredited by the National Commission of Certifying Agencies (NCCA) or the Council of Engineering and Scientific Specialty Boards (CESB).

`(3) Geographical Scope of Consultation Services - A consultant qualified under this program may provide consultation services in any State.

`(4) Limitation Based on Experience - A consultant qualified under this program may only provide consultation services to an employer with respect to a worksite if the work performed at that worksite coincides with the particular expertise of the individual.

`(c) Safety and Health Registry - The Secretary shall develop and maintain a registry that includes all consultants that are qualified under the program under subsection (b)(1) to provide the consultation services described in subsection (b) and shall publish and make such registry readily available to the general public.

`(d) Disciplinary Actions - The Secretary may revoke the status of a consultant, or the participation of an employer in the third party consultation program, if the Secretary determines that the consultant or employer--

`(1) has failed to meet the requirements of the program; or

`(2) has committed malfeasance, gross negligence, collusion or fraud in connection with any consultation services provided by the qualified consultant.

`(e) Program Requirements -

`(1) General Requirements - The consultation services described in subsection (b), and provided by a consultant qualified under this program shall, at a minimum, consist of the following elements:

`(A) A comprehensive, on-site, survey and audit of the participating employer's workplace and operations by the consultant.

`(B) The preparation of a consultation report by the consultant.

The Secretary may, by regulation, prescribe additional requirements for qualifying services.

`(2) Consultation Report –

`(A) In General - Following the consultant's physical survey of the employer's workplace and operations, the consultant shall prepare and deliver to the employer a written report summarizing the consultant's health and safety findings and recommendations. Such consultation report shall, at a minimum, contain the following elements:

`(i) The findings of the consultant's health and safety audit, and, where applicable, appropriate remedial recommendations.

`(ii) A recommended health and safety program and an action plan as described in this paragraph.

The Secretary may, by regulation, prescribe additional required elements for qualifying reports.

`(B) Audit and Recommendations - The consultant's audit report shall include an evaluation of the workplace of the participating employer to determine if the employer is in compliance with the requirements of this Act, including any regulations promulgated pursuant to this Act. The report shall identify any practice or condition the consultant believes to be a violation of this Act, and will set out any appropriate corrective measures to address such identified practice or condition.

`(C) Safety and Health Program - The consultation report shall contain a recommended safety and health program designed to reduce injuries, illness, and fatalities and to otherwise manage workplace health and safety. Such safety and health program shall--

`(i) be appropriate to the conditions of the workplace involved;

`(ii) be in writing, and contain policies, procedures, and practices designed to recognize and protect employees from occupational safety and health hazards, such procedures to include provisions for the identification, evaluation, and prevention or control of workplace hazards;

`(iii) be based upon the professional judgment of the consultant and include such elements as are necessary to the specific worksite involved as determined by the consultant and employer;

`(iv) contain provisions for the periodic review and modification of the program as circumstances warrant;

`(v) be developed and implemented with the participation of affected employees;

`(vi) make provision for the effective safety and health training of all personnel, and the dissemination of appropriate health and safety information to all personnel; and

`(vii) contain appropriate procedures for the reporting of potential hazards, accidents and near accidents.

The Secretary may, by regulation, prescribe additional specific elements that may be required for any qualifying program.

`(D) Action Plan - The consultation report shall also contain a written action plan that shall--

- `(i) outline the specific steps that must be accomplished by the employer prior to receiving a certificate of compliance;
- `(ii) be established in consultation with the employer; and
- `(iii) address in detail--
 - `(I) the employer's correction of all identified safety and health conditions or practices that are in violation of this Act, with applicable timeframes; and
 - `(II) the steps necessary for the employer to implement an effective safety and health program, with applicable timeframes.

`(3) Certificate of Compliance - Upon completion of the steps described in the Action Plan the qualified consultant shall issue to the employer a Certificate of Compliance in a form prescribed by the Secretary.

`(f) Exemption from Civil Penalties for Compliance –

`(1) In General - If an employer receives a certificate of compliance, the employer shall be exempt from the assessment of any civil penalty under section 17 for a period of 2 years after the date on which the employer receives such certificate.

`(2) Exceptions - An employer shall not be exempt under paragraph (1)--

- `(A) if the employer has not made a good faith effort to remain in compliance as required under the certificate of compliance;
- `(B) if there has been a fundamental change in the hazards of the workplace after the issuance of the certificate; or
- ‘(C) if any violations are found during the course of an investigation by the Secretary, that caused or significantly contributed to the death or serious bodily injury of an employee.

`(g) Right to Inspect - Nothing in this section shall be construed to affect the rights of the Secretary to inspect and investigate worksites covered by a certificate of compliance.

`(h) Renewal Requirements - An employer that is granted a certificate of compliance under this section may receive a 2 year renewal of the certificate if a qualified consultant conducts a complete onsite safety and health survey to ensure that the safety and health program has been effectively maintained or improved, workplace hazards are under control, and elements of the safety and health program are operating effectively.

`(i) Non-Fixed Worksites - With respect to employer worksites that do not have a fixed location, a certificate of compliance shall only apply to that worksite which satisfies the criteria under this section and such certificate shall not be portable to any other worksite. This section shall not apply to employers that perform essentially the same work, utilizing the same equipment, at each non-fixed worksite.

(j) Access to Records - Any records relating to consultation services provided by an individual qualified under this program, or records, reports, or other information prepared in connection with safety and health inspections, audits, or reviews conducted by or for an employer and not required under this Act, shall not be admissible in a court of law or administrative proceeding or enforcement proceeding against the employer except that such records may be used as evidence for purposes of a disciplinary action under subsection (d).'

SEC. 203. ENCOURAGING EMPLOYERS TO ADDRESS RISKS THROUGH SAFETY AUDIT PRIVILEGE.

Except as set forth in Section 202 of this Act, any records, reports, or other information prepared in connection with safety and health inspections, audits, or reviews conducted by or for an employer and not required by this Act shall not be disclosed in any inspection, investigation, or enforcement proceeding pursuant to this Act.

SEC. 204. CODIFICATION OF THE VOLUNTARY PROTECTION PROGRAM.

(a) Cooperative Agreements- The Secretary of Labor shall establish a program of entering into cooperative agreements with employers to encourage the establishment of comprehensive safety and health management systems that include--

- (1) requirements for systematic assessment of hazards;
- (2) comprehensive hazard prevention, mitigation, and control programs;
- (3) active and meaningful management and employee participation in the voluntary program described in subsection (b); and
- (4) employee safety and health training.

(b) Voluntary Protection Program-

(1) In General - The Secretary of Labor shall establish and carry out a voluntary protection program (consistent with subsection (a)) to encourage excellence and recognize the achievement of excellence in both the technical and managerial protection of employees from occupational hazards.

(2) Program Requirements - The voluntary protection program shall include the following:

(A) Application - Employers who volunteer under the program shall be required to submit an application to the Secretary of Labor demonstrating that the worksite with respect to which the application is made meets such requirements as the Secretary of Labor may require for participation in the program.

(B) Onsite Evaluations - There shall be onsite evaluations by representatives of the Secretary of Labor to ensure a high level of protection of employees. The onsite visits shall not result in enforcement of citations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(C) Information - Employers who are approved by the Secretary of Labor for participation in the program shall assure the Secretary of Labor that information about the safety and health program shall be made readily available to the Secretary of Labor to share with employees.

(D) Reevaluations - Periodic reevaluations by the Secretary of Labor of the employers shall be required for continued participation in the program.

(3) Monitoring - To ensure proper controls and measurement of program performance for the voluntary protection program under this section, the Secretary of Labor shall direct the Assistant Secretary of Labor for Occupational Safety and Health to take the following actions:

(A) Develop a documentation policy regarding information on follow-up actions taken by the regional offices of the Occupational Safety and Health Administration in response to fatalities and serious injuries at worksites participating in the voluntary protection program.

(B) Establish internal controls that ensure consistent compliance by the regional offices of the Occupational Safety and Health Administration with the voluntary protection program policies of the Occupational Safety and Health Administration for conducting onsite reviews and monitoring injury and illness rates, to ensure that only qualified worksites participate in the program.

(C) Establish a system for monitoring the performance of the voluntary protection program by developing specific performance goals and measures for the program.

(4) Exemptions - A site with respect to which a voluntary protection program has been approved shall, during participation in the program, be exempt from inspections or investigations and certain paperwork requirements to be determined by the Secretary of Labor, except that this paragraph shall not apply to inspections or investigations arising from employee complaints, fatalities, catastrophes, or significant toxic releases.

(5) No Payments Required - The Secretary of Labor shall not require any form of payment for an employer to qualify or participate in the voluntary protection program.

(c) Transition- The Secretary of Labor shall take such steps as may be necessary for the orderly transition from the cooperative agreements and voluntary protection programs carried out by the Occupational Safety and Health Administration as of the day before the date of enactment of this Act, to the cooperative agreements and voluntary protection program authorized under this section. In making such transition, the Secretary shall ensure that—

(1) the voluntary protection program authorized under this section is based upon and consistent with the voluntary protection programs carried out on the day before the date of enactment of this Act; and

(2) each employer that, as of the day before the date of enactment of this Act, had an active cooperative agreement under the voluntary protection programs carried out by the Occupational Safety and Health Administration and was in good standing with respect to the duties and responsibilities under such agreement, shall have the option to continue participating in the voluntary protection program authorized under this section.

SEC. 205. EXPANDED ACCESS TO VOLUNTARY PROTECTION PROGRAM FOR SMALL BUSINESS.

The Secretary of Labor shall establish and implement, by regulation, a program to increase participation by small businesses (as the term is defined by the Administrator of the Small Business Administration) in the voluntary protection program established under section 204 through outreach and assistance initiatives and the development of program requirements that address the needs of small businesses.

SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2011 and each succeeding fiscal year.

SEC. 207. EFFECTIVE DATE.

(a) **GENERAL RULE.**—Except as provided for in subsection (b), this Act and the amendments made by this Act shall take effect not later than 90 days after the date of the enactment of this Act.

(b) **EXCEPTION FOR STATES AND POLITICAL SUBDIVISIONS.**—A State that has a State plan approved under section 18 (29 U.S.C. 667) shall amend its State plan to conform with the requirements of this Act and the amendments made by this Act not later than 12 months after the date of the enactment of this Act. The Secretary of Labor may extend the period for a State to make such amendments to its State plan by not more than 12 months, if the State's legislature is not in session during the 12-month period beginning with the date of the enactment of this Act. Such amendments to the State plan shall take effect not later than 90 days after the adoption of such amendments by such State.