

# **S.1244**

## **Protecting America's Workers Act (Introduced in Senate)**

S 1244 IS

110th CONGRESS  
1st Session  
**S. 1244**

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

### **IN THE SENATE OF THE UNITED STATES**

**April 26, 2007**

Mr. KENNEDY (for himself, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. BINGAMAN, Mrs. MURRAY, Mrs. CLINTON, Mr. OBAMA, Mr. SANDERS, Mr. BROWN, Mr. INOUE, Mr. BIDEN, Mr. ROCKEFELLER, Mrs. BOXER, Mr. FEINGOLD, Mr. DURBIN, Mr. SCHUMER, Mr. LAUTENBERG, Mr. MENENDEZ, Mr. CASEY, and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

### **A BILL**

To amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

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

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Protecting America's Workers Act'.

### **SEC. 2. REFERENCES.**

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, 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--COVERAGE AND APPLICATION OF ACT**

### **SEC. 101. COVERAGE OF PUBLIC 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. APPLICATION OF ACT.**

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

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (5), (6), and (7), respectively; and  
(2) by striking paragraph (1) and inserting the following:

(1) If a Federal agency has promulgated and is enforcing a standard or regulation affecting occupational safety or health of some or all of the employees within that agency's regulatory jurisdiction, and the Secretary determines that such a standard or regulation as promulgated and the manner in which the standard or regulation is being enforced provides protection to those employees that is at least as effective as the protection provided to those employees by this Act and the Secretary's enforcement of this Act, the Secretary may publish a certification notice in the Federal Register. The notice shall set forth that determination and the reasons for the determination and certify that the Secretary has ceded jurisdiction to that Federal agency with respect to the specified standard or regulation affecting occupational safety or health. In determining whether to cede jurisdiction to a Federal agency, the Secretary shall seek to avoid duplication of, and conflicts between, health and safety requirements. Such certification shall remain in effect unless and until rescinded by the Secretary.

(2) The Secretary shall, by regulation, establish procedures by which any person who may be adversely affected by a decision of the Secretary certifying that the Secretary has ceded jurisdiction

to another Federal agency pursuant to paragraph (1) may petition the Secretary to rescind a certification notice under paragraph (1). Upon receipt of such a petition, the Secretary shall investigate the matter involved and shall, within 90 days after receipt of the petition, publish a decision with respect to the petition in the Federal Register.

^ (3) Any person who may be adversely affected by--

^ (A) a decision of the Secretary certifying that the Secretary has ceded jurisdiction to another Federal agency pursuant to paragraph (1); or

^ (B) a decision of the Secretary denying a petition to rescind such a certification notice under paragraph (1),

may, not later than 60 days after such decision is published in the Federal Register, file a petition challenging such decision with the United States court of appeals for the circuit in which such person resides or such person has a principal place of business, for judicial review of such decision. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary's decision shall be set aside if found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

^ (4) Nothing in this Act shall apply to working conditions covered by the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).'

## **TITLE II--INCREASING PROTECTIONS FOR WHISTLEBLOWERS**

### **SEC. 201. EMPLOYEE ACTIONS.**

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

### **SEC. 202. PROHIBITION OF DISCRIMINATION.**

Section 11(c) (29 U.S.C. 660(c)) is amended by striking paragraph (2) and inserting the following:

^ (2) No person shall discharge or in any manner discriminate against an employee for refusing to perform the employee's duties if the employee has a reasonable apprehension that performing such duties would result in serious injury to, or serious impairment of the health of, the employee or other employees. The circumstances causing the employee's apprehension of serious

injury or serious impairment of health shall be of such a nature that a reasonable person, under the circumstances confronting the employee, would conclude that there is a bona fide danger of a serious injury, or serious impairment of health, resulting from the circumstances. In order to qualify for protection under this paragraph, the employee, when practicable, shall have sought from the employee's employer, and have been unable to obtain, a correction of the circumstances causing the refusal to perform the employee's duties.'

## **SEC. 203. PROCEDURE.**

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

` (3) Any employee who believes that the employee has been discharged, disciplined, or otherwise discriminated against by any person in violation of paragraph (1) or (2) may, within 180 days after such alleged violation occurs, file (or have filed by any person on the employee's behalf) a complaint with the Secretary alleging that such discharge or discrimination violates paragraph (1) or (2). Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint (referred to in this subsection as the `respondent') of the filing of the complaint.

` (4)(A)(i) Not later than 60 days after the receipt of a complaint filed under paragraph (3), the Secretary shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit. During the investigation, the Secretary shall notify the respondent of the charges made in the complaint, and shall provide such person with an opportunity to meet with the inspector conducting the investigation, to submit a response to such charges, and to present witnesses to rebut such charges. The Secretary shall also consider the result of any grievance proceeding provided for in a collective bargaining agreement, that may have been held with respect to such charges. Upon completion of the investigation, the Secretary shall issue findings and notify the complainant and the respondent of the Secretary's findings. If the Secretary has concluded that there is reasonable cause to believe that a violation has occurred, the Secretary's findings shall be accompanied by a preliminary order providing the relief prescribed by subparagraph (B).

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

^ (II) If a hearing described in subclause (I) is not requested in the 30-day period described in such subclause with respect to a preliminary order, the order shall be deemed to be a final order and not subject to judicial review.

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

^ (iv) The Secretary shall expeditiously conduct a hearing requested under clause (ii) or (iii). Upon the conclusion of such hearing, the Secretary shall issue a final order within 120 days. Until the issuance of a final order, such hearing may be terminated at any time on the basis of a settlement agreement entered into by the Secretary, the complainant, and the respondent.

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

^ (I) the person who committed such violation to correct the violation;

^ (II) such person to reinstate the complainant to the complainant's former position together with the compensation (including backpay), terms, conditions, and privileges of the complainant's employment; and

^ (III) such person to pay compensatory damages.

^ (ii) On issuing an order requiring a remedy described in clause (i), the Secretary, at the request of the complainant, may assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with a complaint upon which the order was issued.

^ (5)(A) Any person adversely affected or aggrieved by an order issued after a hearing conducted under paragraph (4)(A) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred, or the circuit in which such person resided on the date of such violation. The petition for review shall be filed within 60 days after the issuance of the Secretary's order. Such review shall be conducted in accordance with the provisions of chapter 7 of title 5, United States Code. The court shall conduct the review and issue a decision expeditiously.

^ (B) If a person fails to comply with an order issued under paragraph (4)(A), the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur in order to enforce such order. In actions brought under this subparagraph,

the district court shall have jurisdiction to grant all appropriate relief, including injunctive relief, reinstatement, and compensatory damages.

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

## **SEC. 204. RELATION TO ENFORCEMENT.**

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

## **TITLE III--INCREASING PENALTIES FOR VIOLATORS**

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

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

### **SEC. 302. INVESTIGATIONS OF FATALITIES AND SERIOUS INCIDENTS.**

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

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

“(2) If an incident resulting in death or serious incident occurs in a place of employment covered by this Act, the employer shall notify the Secretary of the incident involved and shall take appropriate measures to prevent the destruction or alteration of any evidence that would assist in investigating the incident. The appropriate measures required by this paragraph do not prevent an employer from taking action on a worksite to prevent injury to employees or substantial damage to property. If an employer takes such action, the employer shall notify the Secretary of the action in a timely fashion.

“(3) In this subsection:

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

` (B) SERIOUS INCIDENT- The term `serious incident' means an incident that results in the hospitalization of 2 or more employees.'

### **SEC. 303. PROHIBITION ON UNCLASSIFIED CITATIONS.**

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

` (d) The Secretary may not designate a citation issued under this section as an unclassified citation.'

### **SEC. 304. VICTIMS' RIGHTS.**

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

#### **` SEC. 9A. VICTIM'S RIGHTS.**

` (a) DEFINITION- In this section, the term `victim' means--

` (1) an employee who has sustained a work-related injury or illness that is the subject of an inspection or investigation conducted under section 8, or

` (2) a family member of an employee, if--

` (A) the employee is killed as a result of a work-related injury or illness that is the subject of an inspection or investigation conducted under section 8; or

` (B) the employee sustains a work-related injury or illness that is the subject of an inspection or investigation conducted under section 8, and the employee cannot reasonably exercise the employee's rights under this section.

` (b) RIGHTS- On request, a victim shall be afforded the right, with respect to a work-related injury or illness (including a death resulting from a work-related injury or illness) involving an employee, to--

` (1) meet with the Secretary, or an authorized representative of the Secretary, regarding the inspection or investigation conducted under section 8 concerning the employee's injury or illness before the Secretary's decision to issue a citation or take no action; and

` (2)(A) receive, at no cost, a copy of any citation or report, issued as a result of such inspection or investigation, on the later of the date the citation or report is issued and the date of the request;

` (B) be informed of any notice of contest filed under section 10; and  
` (C) be provided an explanation of the rights of employee and employee representatives to participate in proceedings conducted under section 10.

` (c) MODIFICATION OF CITATION- Before entering into an agreement to withdraw or modify a citation issued as a result of an inspection or investigation of an incident resulting in death or serious incident under section 8, the Secretary, on request, shall provide an opportunity to the victim to appear and make a statement before the parties conducting settlement negotiations.  
` (d) NOTIFICATION AND REVIEW- The Secretary shall establish procedures--

` (1) to inform victims of their rights under this section; and  
` (2) for the informal review of any claim of a denial of such a right.'

### **SEC. 305. RIGHT TO CONTEST CITATIONS AND PENALTIES.**

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

(1) by inserting after ` the issuance of a citation' the following: ` (including a modification of a citation issued)';  
and  
(2) by inserting after ` files a notice with the Secretary alleging' the following: ` that the citation fails properly to designate the violation as serious, willful, or repeated, that the proposed penalty is not adequate, or'.

### **SEC. 306. OBJECTIONS TO MODIFICATION OF CITATIONS.**

Section 10 (29 U.S.C. 659) is amended by adding at the end the following new subsection:  
` (d)(1) If the Secretary intends to withdraw or to modify a citation issued under section 9(a) as a result of any agreement with the cited employer, the Secretary shall provide (in accordance with rules of procedure prescribed by the Commission) prompt notice to affected employees or representatives of affected employees, and that notice shall include the terms of the proposed agreement.  
` (2) Not later than 15 working days after the receipt of a notice provided in accordance with paragraph (1), any

employee or representative of employees, regardless of whether such employee or representative has previously elected to participate in the

proceedings involved, shall have the right to file a notice with the Secretary alleging that the proposed agreement fails to effectuate the purposes of this Act and stating the respects in which the agreement fails to effectuate the purposes.

` (3) Upon receipt of a notice filed under paragraph (2), the Secretary shall consider the statements presented in the notice, and if the Secretary determines to proceed with the proposed agreement, the Secretary shall respond with particularity to the statements presented in the notice.

` (4) Not later than 15 working days following the Secretary's response provided pursuant to paragraph (3), the employee or representative of employees shall, on making a request to the Commission, be entitled to a hearing before the Commission as to whether adoption of the proposed agreement would effectuate the purposes of this Act, including a determination as to whether the proposed agreement would adequately abate the alleged violations alleged in the citation.

` (5) If the Commission determines that the proposed agreement fails to effectuate the purposes of this Act, the proposed agreement shall not be entered as an order of the Commission and the citation shall not be withdrawn or modified in accordance with the proposed agreement.'

## **SEC. 307. CIVIL PENALTIES.**

Section 17 (29 U.S.C. 666) is amended--

(1) in subsection (a)--

(A) by striking ` \$70,000' and inserting ` \$100,000';  
(B) by striking ` \$5,000' and inserting ` \$7,000'; and  
(C) by adding at the end the following: ` If such a violation causes the death of an employee, such civil penalty amounts shall be increased to not more than \$250,000 for such violation, but not less than \$50,000 for such violation.'

(2) in subsection (b)--

(A) by striking ` \$7,000' and inserting ` \$10,000'; and  
(B) by adding at the end the following: ` If such a violation causes the death of an employee, such civil penalty amounts shall be increased to not more than \$50,000 for such violation, but not less than \$20,000 for such violation.'

(3) in subsection (c)--

(A) by striking ` \$7,000' and inserting ` \$10,000'; and  
(B) by adding at the end the following: ` If such a violation causes the death of an employee, such civil penalty amounts shall be increased to not more than

\$50,000 for such violation, but not less than \$20,000 for such violation.';

(4) in subsection (d)--

(A) by striking ` \$7,000' and inserting ` \$10,000'; and  
(B) by adding at the end the following: ` If such a violation causes the death of an employee, such civil penalty amounts shall be increased to not more than \$50,000 for such violation, but not less than \$20,000 for such violation.'; and

(5) in subsection (i), by striking ` \$7,000' and inserting ` \$10,000'.