

108TH CONGRESS  
1ST SESSION

# H. R. 1583

To amend the Occupational Safety and Health Act of 1970 to provide for adjudicative improvement, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2003

Mr. NORWOOD (for himself, Mr. BOEHNER, Mrs. BIGGERT, Mr. BALLENGER, Mr. HOEKSTRA, Mr. KELLER, Mr. KLINE, Mrs. BLACKBURN, and Mr. ISAKSON) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend the Occupational Safety and Health Act of 1970 to provide for adjudicative improvement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Occupational Safety  
5 and Health Fairness Act of 2003”.

6 **SEC. 2. CONTESTING CITATIONS UNDER THE OCCUPA-**  
7 **TIONAL SAFETY AND HEALTH ACT.**

8 (a) CITATION.—The second sentence of section 10(a)  
9 of the Occupational Safety and Health Act of 1970 (29

1 U.S.C. 659(a)) is amended by inserting “(unless such fail-  
2 ure results from mistake, inadvertence, surprise, or excus-  
3 able neglect)” after “assessment of penalty”.

4 (b) FAILURE TO CORRECT.—The second sentence of  
5 section 10(b) of the Occupational Safety and Health Act  
6 of 1970 (29 U.S.C. 659(b)) is amended by inserting “(un-  
7 less such failure results from mistake, inadvertence, sur-  
8 prise, or excusable neglect)” after “assessment of pen-  
9 alty”.

### 10 **SEC. 3. WILLFUL VIOLATIONS.**

11 Section 17(a) of the Occupational Safety and Health  
12 Act of 1970 (29 U.S.C. 666(a)) is amended by inserting  
13 at the end, “A violation is willful only if the employer (1)  
14 knew that the alleged condition violated a standard, rule,  
15 order or regulation and, without a good faith belief in the  
16 legality in its conduct, knowingly disregarded the require-  
17 ment of the standard, rule, order, or regulation, or (2)  
18 knew that employees were, or that it was reasonably pre-  
19 dictable that employees would be, exposed to a hazard  
20 causing or likely to cause death or serious physical injury  
21 and recklessly disregarded the exposure of employees to  
22 that hazard.”.

### 23 **SEC. 4. FAIRNESS OF PENALTY ASSESSMENT**

24 Section 17(j) of the Occupational Safety and Health  
25 Act of 1970 (29 U.S.C. 666(j)) is amended—

1           (1) by inserting the words, “and de novo” after  
2           the word “due”; and

3           (2) striking all after the word “consideration”  
4           and inserting in lieu thereof: “to the evidence of the  
5           appropriateness of the penalty with respect to at  
6           least the following factors:

7           “(1) the size and financial condition of the busi-  
8           ness of the employer;

9           “(2) the gravity of the violation, considering the  
10          probability of harm, the nature and extent of the  
11          harm, the number of affected employees, and other  
12          relevant factors;

13          “(3) the good faith of the employer, including  
14          the employer’s good faith efforts to comply or abate;

15          “(4) the history and recentness of substantially  
16          similar previous violations of the cited employer at  
17          the same nonconstruction worksite and at construc-  
18          tion worksites within the same State; and

19          “(5) the degree of responsibility or culpability  
20          for the violation of the employer, the employees, and/  
21          or other persons.”.

1 **SEC. 5. OCCUPATIONAL SAFETY AND HEALTH REVIEW**  
2 **COMMISSION.**

3 (a) AMENDMENTS.—Section 12 of the Occupational  
4 Safety and Health Act of 1970 (29 U.S.C. 661) is amend-  
5 ed as follows:

6 (1) In subsection (a), by striking the word  
7 “three” and inserting in lieu thereof, the word  
8 “five;” and inserting before the word “training” the  
9 word “legal”.

10 (2) In subsection (b) by striking all after the  
11 words “except that” and inserting in lieu thereof,  
12 “the President may extend the term of a member to  
13 allow a continuation in service at the pleasure of the  
14 President after the expiration of that member’s term  
15 until a successor nominated by the President has  
16 been confirmed to serve. Any vacancy caused by the  
17 death, resignation, or removal of a member before  
18 the expiration of a term, for which he or she was ap-  
19 pointed shall be filled only for the remainder of such  
20 expired term. A member of the Commission may be  
21 removed by the President for inefficiency, neglect of  
22 duty, or malfeasance in office.

23 (3) Subsection (f) is amended to read as fol-  
24 lows:

25 “(f) The Chairman of the Commission is authorized  
26 to delegate to any panel of three or more members any

1 or all of the powers of the Commission. For the purpose  
2 of carrying out its functions under this chapter, 3 mem-  
3 bers of the Commission shall constitute a quorum, except  
4 that 2 members shall constitute a quorum for any sub-  
5 panel designated by the Chairman under this subsection.”.

6 (b) NEW POSITIONS.—Of the two vacancies for mem-  
7 bership on the Commission created by this section, one  
8 shall be filled by the President for a term expiring on April  
9 27, 2006, and the other shall be filled by the President  
10 for a term expiring on April 27, 2008.

11 **SEC. 6. AWARD OF ATTORNEY’S FEES AND COSTS.**

12 The Occupational Safety and Health Act of 1970 (29  
13 U.S.C. 651 and following) is amended by redesignating  
14 section 32 through 34 as 33 through 35 and inserting the  
15 following new section after section 31:

16 **“SEC. 32. AWARD OF ATTORNEYS’ FEES AND COSTS.**

17 “(a) ADMINISTRATIVE PROCEEDINGS.—An employer  
18 who—

19 “(1) is the prevailing party in any adversary  
20 adjudication instituted under this Act, and

21 “(2) had not more than 100 employees and a  
22 net worth of not more than \$1,500,000 at the time  
23 of the adversary adjudication was initiated,

24 shall be awarded fees and other expenses as a prevailing  
25 party under section 504 of title 5, United States Code,

1 in accordance with the provisions of that section, but with-  
2 out regard to whether the position of the Secretary was  
3 substantially justified or special circumstances make an  
4 award unjust. For purposes of this section the term ‘ad-  
5 versary adjudication’ has the meaning given that term in  
6 section 504(b)(1)(C) of title 5, United States Code.

7 “(b) PROCEEDINGS.— An employer who—

8 “(1) is the prevailing party in any proceeding  
9 for judicial review of any action instituted under this  
10 Act, and

11 “(2) had not more than 100 employees and a  
12 net worth of not more than \$1,500,000 at the time  
13 the action addressed under subsection (1) was filed,  
14 shall be awarded fees and other expenses as a prevailing  
15 party under section 2412(d) of title 28, United States  
16 Code, in accordance with the provisions of that section,  
17 but without regard to whether the position of the United  
18 States was substantially justified or special circumstances  
19 make an award unjust. Any appeal of a determination of  
20 fees pursuant to subsection (a) of this subsection shall be  
21 determined without regard to whether the position of the  
22 United States was substantially justified or special cir-  
23 cumstances make an award unjust.

24 “(c) APPLICABILITY.—

1           “(1) COMMISSION PROCEEDINGS.—Subsection  
2           (a) of this section applies to proceedings commenced  
3           on or after the date of enactment of this Act.

4           “(2) COURT PROCEEDINGS.—Subsection (b) of  
5           this section applies to proceedings for judicial review  
6           commenced on or after the date of enactment of this  
7           Act.”.

8   **SEC. 7. INDEPENDENT REVIEW.**

9           Section 11(a) of the Occupational Safety and Health  
10          Act of 1970 (29 U.S.C. 660) is amended by adding the  
11          following at the end thereof: “The conclusions of the Com-  
12          mission with respect to all questions of law shall be given  
13          deference if reasonable.”.

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