

118TH CONGRESS
2D SESSION

S. _____

To establish protections for warehouse workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish protections for warehouse workers, 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 “Warehouse Worker
5 Protection Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—WAREHOUSE WORKER PROTECTIONS

- Sec. 101. Warehouse worker protections.
- Sec. 102. Referral of complaints.
- Sec. 103. Enforcement by the FTC.

TITLE II—NATIONAL LABOR RELATIONS ACT

- Sec. 201. Amendments to National Labor Relations Act.
 Sec. 202. National Labor Relations Board report.

TITLE III—OSHA STANDARDS

- Sec. 301. Standard protecting covered employees from occupational risk factors causing musculoskeletal disorders.
 Sec. 302. Standard for protecting covered employees from delays in medical treatment referrals following injuries or illnesses.
 Sec. 303. Correction of serious, willful, or repeated violations pending contest and procedures for a stay.
 Sec. 304. Definitions.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Severability.
 Sec. 402. Preemption.
 Sec. 403. Authorization of appropriations.

1 **TITLE I—WAREHOUSE WORKER**
 2 **PROTECTIONS**

3 **SEC. 101. WAREHOUSE WORKER PROTECTIONS.**

4 The Fair Labor Standards Act of 1938 is amended—

5 (1) by inserting after section 4 (29 U.S.C. 204)

6 the following:

7 **“SEC. 5. ESTABLISHMENT OF FAIRNESS AND TRANS-**
 8 **PARENCY OFFICE.**

9 “(a) IN GENERAL.—There is established in the Wage
 10 and Hour Division of the Department of Labor the Fair-
 11 ness and Transparency Office.

12 “(b) DIRECTOR OF THE FAIRNESS AND TRANS-
 13 PARENCY OFFICE.—The President shall appoint a Direc-
 14 tor of the Fairness and Transparency Office to head the
 15 Fairness and Transparency Office.

1 “(c) EMPLOYEES AND ADVISORY BOARDS OF THE
2 OFFICE.—

3 “(1) IN GENERAL.—The Director—

4 “(A) may select, appoint, and employ,
5 without regard to the provisions of sections
6 3309 through 3318 of title 5, United States
7 Code, individuals directly to positions in the
8 competitive service, as defined in section 2102
9 of such title, to carry out the duties of the Di-
10 rector under this Act; and

11 “(B) may fix the compensation of the indi-
12 viduals described in subparagraph (A) without
13 regard to chapter 51 and subchapter III of
14 chapter 53 of title 5, United States Code, relat-
15 ing to classification of positions and General
16 Schedule pay rates, except that the rate of pay
17 for such individuals may not exceed the rate
18 payable for level V of the Executive Schedule
19 under section 5316 of that title.

20 “(2) FAIRNESS AND TRANSPARENCY ADVISORY
21 BOARD.—

22 “(A) IN GENERAL.—The Director shall es-
23 tablish a Fairness and Transparency Advisory
24 Board to advise and consult on the exercise of
25 the functions of the Director under this Act.

1 “(B) COMPOSITION.—The Fairness and
2 Transparency Advisory Board established under
3 subparagraph (A) shall be composed of—

4 “(i) as the Director determines appro-
5 priate, covered employers and covered em-
6 ployees or representatives of covered em-
7 ployers and covered employees; and

8 “(ii) at least one of each of the fol-
9 lowing:

10 “(I) Worker protection experts.

11 “(II) Civil rights experts.

12 “(III) Health and safety experts.

13 “(IV) Workplace technology ex-
14 perts.

15 “(V) Disability law experts.

16 “(VI) Representatives of labor
17 organizations.

18 “(VII) Representatives of worker
19 advocacy organizations.

20 “(C) APPOINTMENTS.—The Director
21 shall—

22 “(i) appoint members to the advisory
23 board established under subparagraph (A);
24 and

1 “(ii) ensure a partisan balance in the
2 membership of the advisory board.

3 “(D) MEETINGS.—The advisory board es-
4 tablished under subparagraph (A) shall meet—

5 “(i) at the call of the Director; and

6 “(ii) not less than 2 times annually.

7 “(E) COMPENSATION AND TRAVEL EX-
8 PENSES.—A member of the Fairness and
9 Transparency Advisory Board established under
10 subparagraph (A) who is not an officer or em-
11 ployee of the Federal Government shall—

12 “(i) be entitled to receive compensa-
13 tion at a rate fixed by the Director while
14 attending meetings of the advisory board,
15 including travel time; and

16 “(ii) receive travel expenses, including
17 per diem in lieu of subsistence, in accord-
18 ance with applicable provisions under sub-
19 chapter I of chapter 57 of title 5, United
20 States Code.

21 “(F) EXEMPTION FROM THE FEDERAL AD-
22 VISORY COMMITTEE ACT.—The Fairness and
23 Transparency Advisory Board established under
24 subparagraph (A) shall be exempt from chapter
25 10 of title 5, United States Code (commonly

1 known as the ‘Federal Advisory Committee
2 Act’).

3 “(3) USE OF VOLUNTARY SERVICES.—The Di-
4 rector may, as may from time to time be needed, use
5 any voluntary or uncompensated services.

6 “(4) ATTORNEYS.—Attorneys appointed under
7 this subsection or the Solicitor of Labor may appear
8 for and represent the Director in any litigation.

9 “(d) RULEMAKING.—

10 “(1) IN GENERAL.—The Secretary, acting
11 through the Director and the Administrator of the
12 Wage and Hour Office, may issue orders and guid-
13 ance or promulgate regulations as may be necessary
14 or appropriate to enable the Secretary to carry out
15 the purposes and objectives of this section, and to
16 prevent evasions thereof.

17 “(2) CONSULTATION.—In issuing orders and
18 guidance or promulgating regulations under this
19 subsection, the Secretary, acting through the Direc-
20 tor and the Administrator of the Wage and Hour
21 Office, may consult with the Occupational Safety
22 and Health Administration and Federal agencies
23 that have jurisdiction over labor and employment
24 issues, including the Equal Employment Oppor-
25 tunity Commission, the National Labor Relations

1 Board, the National Mediation Board, and the Merit
2 Systems Protection Board.”;

3 (2) by inserting after section 7 (29 U.S.C. 207)
4 the following:

5 **“SEC. 8. WAREHOUSE WORKER PROTECTIONS.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) ADVERSE EMPLOYMENT ACTION.—The
8 term ‘adverse employment action’, with respect to a
9 covered employee, means a change by the covered
10 employer of the covered employee in the compensa-
11 tion, terms, conditions, or privileges of the job of the
12 covered employee that, from the perspective of a rea-
13 sonable person, puts the covered employee in a ma-
14 terially adverse position than prior to the change, in-
15 cluding termination, a reduction in benefits, discipli-
16 nary action, demotion, promotion, transfer, imposi-
17 tion of a work schedule more burdensome to the cov-
18 ered employee, reduction of scheduled hours, adjust-
19 ment in ability for promotion, or other modifications
20 to compensation, terms, conditions, or privileges of
21 employment.

22 “(2) AGGREGATED WORK SPEED DATA.—The
23 term ‘aggregated work speed data’ means employee
24 work speed data that a covered employer has com-
25 bined, or collected together, in a summary or other

1 form so that the employee work speed data cannot,
2 at any point, be identified or linked with any specific
3 covered employee.

4 “(3) COVERED FACILITY.—The term ‘covered
5 facility’ means any warehouse distribution center de-
6 scribed in the North American Industry Classifica-
7 tion System code—

8 “(A) 493, for warehousing and storage;

9 “(B) 423, for merchant wholesalers, dura-
10 ble goods;

11 “(C) 424, for merchant wholesalers, non-
12 durable goods;

13 “(D) 454110, for electronic shopping and
14 mail-order houses; or

15 “(E) 492110, for couriers and express de-
16 livery services.

17 “(4) COVERED EMPLOYEE.—The term ‘covered
18 employee’ means an employee who—

19 “(A) is employed by an employer for the
20 performance of work at a covered facility; and

21 “(B) is subject to a quota while performing
22 work at such covered facility.

23 “(5) COVERED EMPLOYER.—

24 “(A) IN GENERAL.—The term ‘covered em-
25 ployer’ means an employer that—

1 “(i) is engaged in commerce, in the
2 production of goods for commerce, or in an
3 enterprise engaged in commerce or in the
4 production of goods for commerce, includ-
5 ing such an employer that is a contractor,
6 subcontractor, temporary service firm,
7 staffing agency, independent contractor,
8 employee leasing entity, or similar entity;

9 “(ii) employs a covered employee for
10 the performance of work at a covered facil-
11 ity; and

12 “(iii) employs more than a total of
13 200 employees (including on a full- or
14 part-time basis) for the performance of
15 work at all covered facilities owned or op-
16 erated by the employer.

17 “(B) RULE OF CONSTRUCTION.—For pur-
18 poses of determining the number of employees
19 under subparagraph (A)(iii), the total number
20 of employees employed for the performance of
21 work as described in such subparagraph shall
22 include all employees of any affiliate of the em-
23 ployer (as determined in accordance with sec-
24 tion 121.103 of title 13, Code of Federal Regu-

1 lations, as in effect on the date of enactment of
2 the Warehouse Worker Protection Act).

3 “(6) DEFINED TIME PERIOD.—The term ‘de-
4 fined time period’ means any unit of time measure-
5 ment equal to or less than one day, including hours,
6 minutes, and seconds and any fraction thereof.

7 “(7) DESIGNATED EMPLOYEE REPRESENTA-
8 TIVE.—The term ‘designated employee representa-
9 tive’ means any representative designated by a cov-
10 ered employee, including an employee representative
11 that has a collective bargaining relationship with the
12 covered employer of the covered employee.

13 “(8) DIRECTOR.—The term ‘Director’ means
14 the Director of the Fairness and Transparency Of-
15 fice established by section 5.

16 “(9) EGREGIOUS MISCONDUCT.—The term
17 ‘egregious misconduct’, with respect to a covered
18 employee, means deliberate or grossly negligent con-
19 duct that endangers the safety or well-being of the
20 covered employee, co-workers of the covered em-
21 ployer, customers, or other persons, including dis-
22 crimination against or harassment of co-workers,
23 customers, or other persons.

24 “(10) EMPLOYEE WORK SPEED DATA.—The
25 term ‘employee work speed data’ means information

1 a covered employer collects, stores, analyzes, or in-
2 terprets relating to the performance of work by a
3 covered employee of the covered employer for a
4 quota, including information with respect to the—

5 “(A) quantities of tasks performed by the
6 covered employee;

7 “(B) quantities of items or materials han-
8 dled or produced by the covered employee;

9 “(C) rates or speeds of tasks performed by
10 the covered employee;

11 “(D) measurements or metrics of covered
12 employee performance in relation to a quota; or

13 “(E) time categorized with respect to the
14 covered employee as performing tasks or not
15 performing tasks.

16 “(11) QUOTA.—The term ‘quota’ means an ex-
17 press or implied performance standard or perform-
18 ance target, including such a standard or target
19 used to rank or compare an employee in relation to
20 the performance of another employee or in relation
21 to the past performance of the employee, under
22 which—

23 “(A)(i) an employee is actually or effec-
24 tively assigned, required, or expected within a
25 defined time period (with or without any rea-

1 sonable accommodation provided under Federal,
2 State, or local law) to—

3 “(I) perform—

4 “(aa) a quantified number
5 of tasks; or

6 “(bb) at a specified produc-
7 tivity speed; or

8 “(II) handle or produce a quan-
9 tified amount of material without a
10 certain number of errors or defects;
11 and

12 “(ii) such assignment, requirement, or ex-
13 pectation is measured at the individual or group
14 level for such defined time period;

15 “(B) actions by an employee are cat-
16 egorized and measured between time per-
17 forming tasks and not performing tasks within
18 a defined time period; or

19 “(C) increments of time of a defined time
20 period during which an employee is or is not
21 doing a particular activity are measured, re-
22 corded, or tallied.

23 “(12) SIMILARLY SITUATED COVERED EM-
24 PLOYEE.—The term ‘similarly situated covered em-
25 ployee’, with respect to a covered employee, means

1 another covered employee who holds the same job or
2 responsibilities as the covered employee.

3 “(13) TRIBAL GOVERNMENT.—The term ‘Tribal
4 government’ means the recognized governing body of
5 an Indian Tribe.

6 “(14) WORKPLACE SURVEILLANCE.—The term
7 ‘workplace surveillance’ means any employer surveil-
8 lance (on- or off-duty) with respect to an employee,
9 including the detection, monitoring, interception, col-
10 lection, exploitation, preservation, protection, trans-
11 mission, or retention of data concerning activities or
12 communications with respect to the employee, in-
13 cluding through the use of a product or service mar-
14 keted, or that can be used, for such purposes, such
15 as a computer, telephone, wire, radio, camera, sen-
16 sor, electromagnetic, photoelectronic, handheld or
17 wearable device, or photo-optical system.

18 “(15) WORK STATION.—The term ‘work sta-
19 tion’ means the area of a covered facility within
20 which a covered employee is assigned to perform
21 tasks for the longest duration of time during a day.

22 “(b) COMMUNICATION WITH COVERED EMPLOYEES
23 REGARDING QUOTAS AND WORKPLACE SURVEILLANCE.—

24 “(1) IN GENERAL.—On the later of the date a
25 covered employee is hired by a covered employer or

1 180 days after the date of enactment of this section,
2 each covered employer shall provide to each covered
3 employee of the covered employer—

4 “(A) a written description of each quota to
5 which the covered employee is subject, includ-
6 ing—

7 “(i) as applicable, the quantified num-
8 ber of tasks to be performed or of mate-
9 rials to be produced or handled, or other
10 performance measure, within the defined
11 time period, for the quota;

12 “(ii) any potential discipline or ad-
13 verse employment action that could result
14 from failure to meet the quota;

15 “(iii) how performance targets or per-
16 formance standards for the quota are cal-
17 culated;

18 “(iv) whether there is any incentive or
19 bonus program associated with meeting or
20 exceeding the quota and, if applicable, how
21 the incentive or bonus program operates;
22 and

23 “(v) how the quota is monitored, in-
24 cluding a description of—

1 “(I) what employee work speed
2 data are being collected;

3 “(II) how the employee work
4 speed data are being collected, includ-
5 ing a description of any workplace
6 surveillance technology used on the
7 covered employee by the covered em-
8 ployer;

9 “(III) where and when the em-
10 ployee work speed data are being col-
11 lected;

12 “(IV) the frequency of the collec-
13 tion;

14 “(V) where the storage of the
15 employee work speed data is located;

16 “(VI) the business purposes for
17 which the employee work speed data
18 are being used; and

19 “(VII) as applicable, the identity
20 of any third party—

21 “(aa) used for such work-
22 place surveillance;

23 “(bb) to which data from
24 such workplace surveillance is
25 transferred; and

1 “(cc) from which data of the
2 covered individual is or may be
3 purchased or acquired; and

4 “(B) a written description of and training
5 with respect to how the covered employee may
6 file a complaint regarding a violation of this
7 section or a standard promulgated under title
8 III of the Warehouse Worker Protection Act.

9 “(2) CHANGES TO QUOTA OR WORKPLACE SUR-
10 VEILLANCE.—Each covered employer shall provide
11 to any applicable covered employee an updated writ-
12 ten description of any information provided under
13 paragraph (1) not less than 2 business days before
14 any changes with respect to such information are
15 made.

16 “(3) REQUIREMENTS FOR TAKING AN ADVERSE
17 EMPLOYMENT ACTION ON QUOTA COMPLIANCE.—

18 “(A) IN GENERAL.—A covered employer
19 that takes an adverse employment action
20 against a covered employee for work perform-
21 ance that does not meet requirements with re-
22 spect to a quota shall provide—

23 “(i) a written explanation to the cov-
24 ered employee regarding the manner in
25 which the covered employee failed to per-

1 form, including a description of the appli-
2 cable quota and a comparison of such work
3 performance to such quota; and

4 “(ii) if the adverse employment action
5 was based on employee work speed data, a
6 copy of the employee work speed data in a
7 human-readable format that a reasonable
8 individual can understand.

9 “(B) NOTICE FOR ACTIONS UNRELATED
10 TO QUOTA.—A covered employer that, with re-
11 spect to any covered employee who is subject to
12 a quota, takes an adverse employment action
13 against such covered employee for any reason
14 that is unrelated to compliance with the quota
15 shall provide to such covered employee a written
16 confirmation that such action was unrelated to
17 compliance with the quota.

18 “(4) TERMINATION.—

19 “(A) IN GENERAL.—Except as provided in
20 clause (ii), a covered employer that seeks to ter-
21minate a covered employee shall, regardless of
22 whether the termination relates to work per-
23formance with respect to a quota, provide to the
24 covered employee a written notice of the intent
25 to terminate the covered employee.

1 “(B) EGREGIOUS MISCONDUCT.—Notwith-
2 standing subparagraph (A), a covered employer
3 may terminate a covered employee without pro-
4 viding such written notice if the covered em-
5 ployee engaged in egregious misconduct.

6 “(5) DESCRIPTIONS.—Each covered employer
7 shall—

8 “(A) provide any written description, no-
9 tice, explanation, or confirmation described in
10 paragraph (1), (2), (3), or (4) to a covered em-
11 ployee—

12 “(i) through a human representative
13 of the covered employer at the work station
14 of the covered employee; and

15 “(ii) in a manner required by the Di-
16 rector that—

17 “(I) is accessible;

18 “(II) allows the covered employee
19 to transport the data in the descrip-
20 tion, notice, explanation, or confirma-
21 tion without hindrance;

22 “(III) is in plain language; and

23 “(IV) is in the primary language
24 of the covered employee; and

1 “(B) make such description, notice, expla-
2 nation, or confirmation available to the covered
3 employee electronically.

4 “(c) PROTECTION FROM QUOTAS.—

5 “(1) PROHIBITED QUOTAS.—A covered em-
6 ployer may not require any quota for a covered em-
7 ployee that would—

8 “(A) prevent—

9 “(i) compliance with any required
10 meal or rest period or any other break re-
11 quired by Federal, State, or local law;

12 “(ii) compliance with health and safe-
13 ty provisions required by Federal, State, or
14 local law;

15 “(iii) the use by the covered employee
16 of bathroom facilities, including reasonable
17 travel time to and from bathroom facilities
18 that takes into account the architecture of
19 the covered facility; or

20 “(iv) compliance with a covered em-
21 ployee’s right to reasonable accommoda-
22 tions or nondiscrimination as required by
23 Federal, State, or local law;

24 “(B) set a performance target or perform-
25 ance standard that measures total output for

1 the covered employee over an increment of time
2 that is shorter than one day;

3 “(C) measure and evaluate the output or
4 performance of a covered employee during any
5 paid or unpaid break to which the covered em-
6 ployee is entitled under applicable law, contract,
7 or industry standard, including breaks to use
8 bathroom facilities and reasonable travel time
9 to and from bathroom facilities;

10 “(D) prevent or discourage the covered
11 employee from exercising any right under the
12 National Labor Relations Act (29 U.S.C. 151
13 et seq.) or any other Federal law;

14 “(E) prevent or discourage the covered em-
15 ployee from exercising any right guaranteed in
16 an applicable collective bargaining agreement;
17 or

18 “(F) violate the generally accepted prin-
19 ciples of work measurement as set forth in the
20 Code of Work Measurement Ethics of the
21 American Institute of Industrial Engineers and
22 recognized by the Secretary.

23 “(2) ADVERSE EMPLOYMENT ACTION.—A cov-
24 ered employer may not take adverse employment ac-

1 tion against a covered employee for failure to meet
2 a quota that—

3 “(A) violates paragraph (1);

4 “(B) was not described to the covered em-
5 ployee in accordance with subsection (b);

6 “(C) is based solely on ranking the per-
7 formance of the covered employee in relation to
8 the performance of another covered employee or
9 in relation to the past performance of that cov-
10 ered employee; or

11 “(D) is based on continuously measuring,
12 recording, or tallying increments of time within
13 a defined time period during which a covered
14 employee is or is not doing a particular activity.

15 “(d) MINIMIZATION.—

16 “(1) COLLECTION.—In establishing, maintain-
17 ing, or using employee work speed data with respect
18 to a quota for a covered employee, a covered em-
19 ployer may not collect, use, maintain, or transfer
20 data on or of the covered employee except as strictly
21 necessary to monitor the compliance of the covered
22 employee with the quota.

23 “(2) EMPLOYEE ACCESS.—In establishing,
24 maintaining, or using employee work speed data
25 with respect to a quota for a covered employee, a

1 covered employer may not disclose any information
2 collected on a covered employee with respect to the
3 quota to any other covered employee of the covered
4 employer except as strictly necessary to fulfill a spe-
5 cific and reasonable business rationale of the covered
6 employer.

7 “(e) RECORDKEEPING.—

8 “(1) IN GENERAL.—Each covered employer
9 shall—

10 “(A) maintain contemporaneous records,
11 with respect to each covered employee of the
12 covered employer, of—

13 “(i) the employee work speed data of
14 each such covered employee;

15 “(ii) the aggregated work speed data
16 for similarly situated covered employees at
17 the same place where each such covered
18 employee performs work for the covered
19 employer; and

20 “(iii) the written descriptions of the
21 quota of each such covered employee pro-
22 vided under subsection (b)(1);

23 “(B) maintain such records for the dura-
24 tion of the employment of each relevant covered
25 employee; and

1 “(C) make such records available to the
2 Secretary upon request.

3 “(2) SUPPLEMENTATION AND DISPUTE OF
4 RECORDS.—

5 “(A) SUPPLEMENTATION OF RECORDS.—

6 Each covered employer shall enable a covered
7 employee, upon request of the covered employee
8 at or after the time of any employee work speed
9 data collection with respect to the covered em-
10 ployee, to supplement the employee work speed
11 data by recording any reason the covered em-
12 ployee provides for any defined time period dur-
13 ing which the covered employee was not per-
14 forming work-related tasks, including because
15 the covered employee was taking a paid or un-
16 paid break, using a bathroom facility (including
17 reasonable travel to and from the facility), re-
18 porting an injury or receiving attention due to
19 an injury, exercising a right guaranteed under
20 the National Labor Relations Act (29 U.S.C.
21 151 et seq.) or another Federal law, or exer-
22 cising a right guaranteed under an applicable
23 covered bargaining agreement.

24 “(B) DISPUTE PROCESS.—

1 solely, based on the inaccurate
2 data and notify the covered em-
3 ployee of the adjustment.

4 “(3) RETENTION OF RECORDS.—

5 “(A) IN GENERAL.—After the termination
6 of employment of a covered employee of a cov-
7 ered employer, the covered employer shall—

8 “(i) for not less than 3 years after the
9 date of such termination, retain the
10 records described in paragraph (1) with re-
11 spect to the 6-month period prior to such
12 date; and

13 “(ii) make such records available to
14 the Secretary upon request.

15 “(4) RULE OF CONSTRUCTION.—Nothing in
16 this subsection shall require a covered employer to
17 keep records described in paragraph (1) with respect
18 to employee work speed data if such covered em-
19 ployer does not otherwise monitor employee work
20 speed data.

21 “(f) RIGHT TO REQUEST.—

22 “(1) IN GENERAL.—A covered employer shall,
23 upon receiving a request under paragraph (2) or (3),
24 provide the relevant copies described in such para-
25 graphs to, as the case may be, the covered employee,

1 designated employee representative, or individual
2 who was a covered employee—

3 “(A) except as provided in subparagraph
4 (B)(ii), at no cost to the covered employee, des-
5 ignated employee representative, or individual
6 who was a covered employee;

7 “(B) with respect to—

8 “(i) a covered employee, by a human
9 representative of the covered employer; or

10 “(ii) a designated employee represent-
11 ative or an individual who was a covered
12 employee, by a human representative of
13 the covered employer or through the mail
14 (at the cost of the designated employee
15 representative or individual, respectively);
16 and

17 “(C) as soon as practicable but not later
18 than—

19 “(i) 7 business days after receipt of a
20 request for such copies with respect to em-
21 ployee work speed data or aggregate work
22 speed data; or

23 “(ii) 2 business days after receipt of a
24 request for any other copy.

1 “(2) REQUESTS DURING EMPLOYMENT.—A cov-
2 ered employee, or a designated employee representa-
3 tive of such covered employee at the request of the
4 covered employee, may request from the covered em-
5 ployer of the covered employee a copy of the written
6 description described under subsection (b), a copy of
7 the employee work speed data (in a human-readable
8 format that a reasonable individual can understand)
9 of the covered employee for the preceding 6-month
10 period, and a copy of the aggregated work speed
11 data (in a human-readable format that a reasonable
12 individual can understand) for similarly situated cov-
13 ered employees at the same place where the covered
14 employee performs work for the covered employer
15 for the preceding 6-month period.

16 “(3) REQUESTS AFTER EMPLOYMENT TERMI-
17 NATION.—An individual who was a covered employee
18 with respect to a covered employer, or a designated
19 employee representative with respect to such an indi-
20 vidual, may, not later than 3 years after the date of
21 termination of employment of the covered employee
22 with the covered employer, request from the covered
23 employer a copy of—

1 “(A) the written description described
2 under subsection (b) effective on the date of
3 termination of the covered employee;

4 “(B) the employee work speed data (in a
5 human-readable format that a reasonable indi-
6 vidual can understand) of the covered employee
7 for the 6-month period prior to such date of
8 termination; and

9 “(C) the aggregated work speed data (in a
10 human-readable format that a reasonable indi-
11 vidual can understand) for similarly situated
12 covered employees at the same place where the
13 covered employee performs work for the covered
14 employer for such 6-month period.

15 “(4) RULE OF CONSTRUCTION.—Nothing in
16 this subsection shall require a covered employer to—

17 “(A) monitor employee work speed data; or

18 “(B) provide information related to em-
19 ployee work speed data if the covered employer
20 does not otherwise monitor such employee work
21 speed data.

22 “(g) POSTING OF NOTICES.—

23 “(1) IN GENERAL.—Each covered employer
24 shall post, in a conspicuous and accessible location,
25 a notice in the covered facility of the covered em-

1 ployer regarding the rights of covered employees
2 under this section, including what constitutes a per-
3 missible quota, the right to request quota descrip-
4 tions and employee speed data information, and the
5 right to make a complaint to Federal authorities re-
6 garding a violation of any right under this section.

7 “(2) REQUIREMENTS FOR NOTICES.—Each no-
8 tice described in paragraph (1) shall be in a manner
9 required by the Director that—

10 “(A) is in plain language; and

11 “(B) is in English, Spanish, and any other
12 language that constitutes the primary language
13 of any covered employee at the covered facility.

14 “(h) BREAKS FOR COVERED EMPLOYEES.—

15 “(1) IN GENERAL.—Each covered employer
16 shall—

17 “(A) with respect to each covered employee
18 of such covered employer—

19 “(i) provide, for every 4 hours of work
20 by such a covered employee, to the covered
21 employee not less than one 15-minute rest
22 break paid at the regular rate at which the
23 covered employee is employed; and

24 “(ii) provide, at the time the covered
25 employer hires such a covered employee,

1 notice to the covered employee, in plain
2 language and the primary language of the
3 covered employee, that—

4 “(I) the covered employee is enti-
5 tled to the paid rest breaks described
6 in clause (i);

7 “(II) retaliation by the covered
8 employer against the covered employee
9 for requesting or taking such paid
10 rest breaks is prohibited; and

11 “(III) the covered employee, or a
12 designated employee representative of
13 the covered employee, has a right to
14 file a complaint with the Secretary for
15 any violation by the covered employer
16 of this subsection; and

17 “(B) display, in a conspicuous and acces-
18 sible location, a sign at each covered facility of
19 the covered employer that includes, in English,
20 Spanish, and any other language that con-
21 stitutes the primary language of any covered
22 employee at the covered facility, the information
23 in the notice described in subparagraph (A)(ii).

24 “(2) NOTICE.—Not later than 180 days after
25 the date of enactment of this section, the Secretary

1 shall issue regulations with respect to the design and
2 content of the sign described in paragraph (1)(B),
3 including a sample design.

4 “(3) INTERACTION WITH OTHER LAWS.—Noth-
5 ing in this subsection shall be construed to super-
6 sede or preempt any Federal, State, or local law or
7 collective bargaining agreement requiring longer
8 paid rest breaks than those required under para-
9 graph (1)(A)(i).

10 “(i) UNLAWFUL RETALIATION.—

11 “(1) IN GENERAL.—A person, including a cov-
12 ered employer, an agent of a covered employer, or
13 person acting as or on behalf of a covered employer
14 conducting hiring or any related activity, or an offi-
15 cer or agent of any entity, business, corporation,
16 partnership, or limited liability company, may not—

17 “(A) discharge or in any way retaliate, dis-
18 criminate, or take any adverse employment ac-
19 tion against any individual for exercising any
20 right conferred under this section, or for being
21 perceived as exercising such a right, including
22 for—

23 “(i) requesting copies under sub-
24 section (f);

1 “(ii) filing a complaint under subpara-
2 graph (A) of section 16(f) regarding a vio-
3 lation of this section or designating a rep-
4 resentative in accordance with subpara-
5 graph (B) of such section to file such a
6 complaint; or

7 “(iii) commencing a proceeding under
8 section 16(b) for a violation of this section;
9 or

10 “(B) otherwise prevent an individual for
11 exercising such a right or take any action
12 against an individual that might deter a reason-
13 able employee from asserting a right conferred
14 under this section.

15 “(2) PROTECTIONS FOR GOOD FAITH ALLEGA-
16 TIONS.—The protections under paragraph (1) shall
17 apply to any individual who mistakenly, but in good
18 faith, alleges a violation of a requirement of this sec-
19 tion.

20 “(3) EXPLICIT REFERENCE NOT REQUIRED.—A
21 complaint or other communication by an individual,
22 including a covered employee, may be the exercise of
23 a right for purposes of paragraph (1) regardless of
24 whether the complaint or communication is in writ-
25 ing or makes explicit reference to this Act.

1 “(4) REBUTTABLE PRESUMPTION.—If a person
2 takes adverse action against a covered employee
3 within 90 days of the covered employee engaging, or
4 attempting to engage in, activities protected by para-
5 graph (1), such conduct shall establish a rebuttable
6 presumption that the adverse action is an adverse
7 action in violation of such paragraph. Such pre-
8 sumption may be rebutted by clear and convincing
9 evidence that—

10 “(A) the action was taken for other per-
11 missible reasons; and

12 “(B) the engaging or attempting to engage
13 in activities protected by paragraph (1) was not
14 a motivating factor in the adverse action.

15 “(j) QUOTA TASK FORCE.—Not later than 90 days
16 after the date of the enactment of this section, the Direc-
17 tor shall convene a task force with labor organizations,
18 worker advocacy organizations, and covered employees to
19 develop strategies for labor organizations and worker ad-
20 vocacy organizations to—

21 “(1) assist in the enforcement of this section;

22 “(2) train covered employees with respect to
23 new rights provided through this section; and

1 “(3) provide the Director with recommendations
2 on the implementation of regulations related to this
3 section.”;

4 (3) in section 9 (29 U.S.C. 208), by striking
5 “and investigation” and inserting “, investigation, or
6 inspection”;

7 (4) by repealing section 10 (29 U.S.C. 210);

8 (5) in section 11 (29 U.S.C. 211), by adding at
9 the end the following:

10 “(e)(1) The Secretary, acting through the Director
11 of the Fairness and Transparency Division, shall, as pro-
12 vided in subsection (a) and paragraph (2), investigate vio-
13 lations of section 8, including any violations of any regula-
14 tion or order issued with respect to that section.

15 “(2) In addition to powers otherwise provided to the
16 Secretary under subsection (a), the Secretary, in inves-
17 tigating violations of section 8, may upon presenting ap-
18 propriate credentials to the owner, operator, or agent in
19 charge—

20 “(A) enter without delay and at reasonable
21 times any covered facility of a covered employer; and

22 “(B) inspect and investigate during regular
23 working hours and at other reasonable times, and
24 within reasonable limits and in a reasonable manner,
25 any such covered facility and all pertinent condi-

1 tions, structures, machines, apparatus, devices,
2 equipment, and materials therein, and to question
3 privately any such covered employer, owner, oper-
4 ator, agent, or covered employee.

5 “(3)(A) In conducting an inspection during an inves-
6 tigation into a violation of section 8, the Secretary shall
7 permit, at the request of a covered employee, a representa-
8 tive of a labor organization or a worker advocacy organiza-
9 tion, or another designee of the covered employee, to ac-
10 company any inspectors during such inspection.

11 “(B) A covered employee may, regardless of the rela-
12 tionship between the covered employee and the labor orga-
13 nization, worker advocacy organization, or other designee,
14 anonymously request to the Secretary that the Secretary
15 permit a representative of such labor organization, worker
16 advocacy organization, or other designee accompany in-
17 spectors during an inspection in accordance with para-
18 graph (1).

19 “(f)(1) Not later than 30 days after an event de-
20 scribed in paragraph (2), the Secretary shall open an in-
21 vestigation under this section (that includes an on-site in-
22 spection) into any covered employer to determine if such
23 covered employer is violating section 8.

24 “(2) An event described in this paragraph is, with
25 respect to a covered employer, either of the following:

1 “(A) The Secretary determines that the covered
2 employer—

3 “(i) has an annual total of employee work
4 hours that is not less than 40,000 hours; and

5 “(ii) has an annual employee injury rate,
6 overall or at a worksite, that is not less than
7 1.5 times the warehousing industry’s average
8 annual injury rate, as determined by the Bu-
9 reau of Labor Statistics in the most recent (as
10 of such determination) publication regarding
11 fatal and nonfatal occupational injuries and ill-
12 nesses data.

13 “(B) The Secretary receives, during any one-
14 year period, not less than—

15 “(i) 5 credible complaints from covered
16 employees of the covered employer, individuals
17 who were covered employees of the covered em-
18 ployer, or designated representatives of such
19 covered employees or individuals, about viola-
20 tions under section 8 at a worksite; or

21 “(ii) 10 credible complaints from covered
22 employees of the covered employer, individuals
23 who were covered employees of the covered em-
24 ployer, or designated representatives of such
25 covered employees or individuals, about such

1 violations at multiple worksites operated by the
2 covered employer.

3 “(3) In conducting an investigation under paragraph
4 (1), the Secretary shall select representatives of a labor
5 organization or a worker advocacy organization who have
6 specific knowledge of the relevant industry to conduct out-
7 reach to workers with respect to such investigation and
8 aid and accompany investigators in such investigation.

9 “(g) For purposes of subsections (e) and (f), the
10 terms ‘covered employee’, ‘covered employer’, and ‘covered
11 facility’ have the meanings given such terms in section
12 8(a).”;

13 (6) in section 15(a) (29 U.S.C. 215(a))—

14 (A) in paragraph (5), by striking “; and”
15 and inserting a semicolon;

16 (B) in paragraph (6), by striking the pe-
17 riod at the end and inserting “; and”; and

18 (C) by adding at the end the following:

19 “(7) to violate any of the provisions of section
20 8.”; and

21 (7) in section 16 (29 U.S.C. 216)—

22 (A) in subsection (b)—

23 (i) by striking “15(a)(3)” each place
24 it appears and inserting “8, 15(a)(3),”;

1 (ii) in the second sentence, by insert-
2 ing “and, in the case of a violation of sec-
3 tion 8, of an amount for the direct or fore-
4 seeable pecuniary harms resulting from the
5 violation and an amount equal to \$10,000
6 per violation of subsection (b), (d), (e), (f),
7 or (g) of such section or an amount equal
8 to \$25,000 per violation of subsection (c),
9 (h), or (i) of such section” before the pe-
10 riod at the end of the sentence; and

11 (iii) in the fifth sentence, by striking
12 “No” and inserting “Except with respect
13 to an action brought regarding a violation
14 of section 8, no”; and

15 (B) in subsection (e)—

16 (i) by redesignating paragraphs (3),
17 (4), and (5) as paragraphs (4), (5), and
18 (6), respectively; and

19 (ii) by inserting after paragraph (2),
20 the following:

21 “(3) Any person who violates section 8 shall be
22 subject to a civil penalty—

23 “(A) in an amount not more than \$76,987
24 per violation; or

1 “(B) for repeat or willful violations, in an
2 amount not more than \$769,870 per viola-
3 tion.”; and

4 (iii) in paragraph (4)(C), as so reded-
5 icated, by striking “section 15(a)(4)” and
6 inserting “paragraph (4) or (7) of section
7 15(a)”;

8 (C) by adding at the end the following:

9 “(f) ADMINISTRATIVE COMPLAINTS REGARDING
10 WAREHOUSE WORKER PROTECTIONS.—

11 “(1) IN GENERAL.—A covered employee or an
12 individual who was a covered employee may—

13 “(A) file a complaint of a violation of sec-
14 tion 8 with the Secretary; and

15 “(B) designate a representative of a labor
16 organization or worker advocacy organization,
17 regardless of the relationship between the cov-
18 ered employee or individual and the labor orga-
19 nization or worker advocacy organization, to—

20 “(i) file the complaint on behalf of the
21 covered employee or individual; or

22 “(ii) represent the covered employee
23 or individual for purposes of engagement
24 with the Secretary regarding such com-
25 plaint, including being present at employee

1 interviews and participating in workplace
2 inspections, conferences, and settlement
3 negotiations.

4 “(2) DEFINITION OF COVERED EMPLOYEE.—
5 For purposes of paragraph (1), the term ‘covered
6 employee’ has the meaning given such term in sec-
7 tion 8(a).

8 “(g) EXEMPTION FROM THE FEDERAL ARBITRATION
9 ACT REGARDING WAREHOUSE WORKER PROTECTIONS.—

10 “(1) IN GENERAL.—Notwithstanding chapter 1
11 of title 9, United States Code (commonly known as
12 the ‘Federal Arbitration Act’), no predispute arbitra-
13 tion agreement or predispute joint-action waiver (as
14 those terms are defined in section 401 of title 9,
15 United States Code) shall be valid or enforceable
16 with respect to claims arising under this Act for vio-
17 lations of section 8.

18 “(2) ARBITRATION PURSUANT TO A COLLEC-
19 TIVE BARGAINING AGREEMENT.—Nothing in this
20 subsection shall limit the enforceability of any arbi-
21 tration provision in a collective bargaining agree-
22 ment between a covered employer (as defined in sec-
23 tion 8(a)) and a labor organization.

24 “(h) EXCEPTION FROM CLASS ACTION PRE-
25 REQUISITES FOR ACTIONS REGARDING WAREHOUSE

1 WORKER PROTECTIONS.—An employee who brings an ac-
2 tion for a violation of section 8 on behalf of employees
3 similarly situated shall be considered to have satisfied
4 paragraphs (1) through (4) of rule 23(a) of the Federal
5 Rules of Civil Procedure for purposes of such an action.”.

6 **SEC. 102. REFERRAL OF COMPLAINTS.**

7 (a) MEMORANDUM OF UNDERSTANDING.—The Di-
8 rector of the Fairness and Transparency Office estab-
9 lished by section 5 of the Fair Labor Standards Act of
10 1938 (as added by section 101) and the Administrator of
11 the Wage and Hour Office of the Department of Labor
12 shall jointly enter into a memorandum of understanding
13 with the Assistant Secretary of Labor for Occupational
14 Safety and Health to encourage efficient enforcement of
15 relevant labor laws, including through information shar-
16 ing, referral of complaints, and cross-training of inspec-
17 tors and investigators. The memorandum of under-
18 standing shall encourage coordination of enforcement ac-
19 tivity in States enforcing relevant labor law under a State
20 plan that has been approved by the Secretary under sec-
21 tion 18 of the Occupational Safety and Health Act of 1970
22 (29 U.S.C. 667).

23 (b) REFERRAL OF COMPLAINTS AND CROSS-TRAIN-
24 ING.—The Director of the Fairness and Transparency Of-
25 fice shall, to the greatest extent possible—

1 (1) encourage the referral of relevant com-
2 plaints from and to the Equal Employment Oppor-
3 tunity Commission, the National Institute for Occu-
4 pational Safety and Health, the Environmental Pro-
5 tection Agency, the National Labor Relations Board,
6 and other Federal and State agencies that may con-
7 duct inspections related to occupational health and
8 safety in covered facilities (as defined in section 8(a)
9 of the Fair Labor Standards Act of 1938); and

10 (2) promote cross-training of inspectors and in-
11 vestigators in the Equal Employment Opportunity
12 Commission, National Institute for Occupational
13 Safety and Health, Environmental Protection Agen-
14 cy, and such other Federal and State agencies for
15 inspections related to working conditions in such
16 covered facilities.

17 **SEC. 103. ENFORCEMENT BY THE FTC.**

18 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
19 A violation of section 8 of the Fair Labor Standards Act
20 (as added by section 101) shall be treated as a violation
21 of a rule defining an unfair or deceptive act or practice
22 under section 18(a)(1)(B) of the Federal Trade Commis-
23 sion Act (15 U.S.C. 57a(a)(1)(B)).

24 (b) POWERS OF THE FTC.—

1 (1) IN GENERAL.—The Federal Trade Commis-
2 sion (in this section referred to as the Commission)
3 shall enforce section 8 and the regulations promul-
4 gated under this Act in the same manner, by the
5 same means, and with the same jurisdiction, powers,
6 and duties as though all applicable terms and provi-
7 sions of the Federal Trade Commission Act (15
8 U.S.C. 41 et seq.) were incorporated into and made
9 a part of this Act.

10 (2) PRIVILEGES AND IMMUNITIES.—Any person
11 who violates section 8 of the Fair Labor Standards
12 Act shall be subject to the penalties and entitled to
13 the privileges and immunities provided in the Fed-
14 eral Trade Commission Act (15 U.S.C. 41 et seq.).

15 (3) AUTHORITY PRESERVED.—Nothing in this
16 Act shall be construed to limit the authority of the
17 Commission under any other provision of law.

18 (4) RULEMAKING.—The Commission may pro-
19 mulgate in accordance with section 553 of title 5,
20 United States Code, such rules as may be necessary
21 to carry out this section.

1 **TITLE II—NATIONAL LABOR**
2 **RELATIONS ACT**

3 **SEC. 201. AMENDMENTS TO NATIONAL LABOR RELATIONS**
4 **ACT.**

5 (a) IN GENERAL.—Section 8(a) of the National
6 Labor Relations Act (29 U.S.C. 158) is amended—

7 (1) in paragraph (5) by striking the period at
8 the end and inserting “; and”; and

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

10 “(6) to impose on an employee a quota that sig-
11 nificantly discourages or prevents, or is intended to
12 significantly discourage or prevent, an employee
13 from exercising the rights guaranteed in section 7.”.

14 (b) PRESUMPTION OF RETALIATION.—Section 8 of
15 the such Act (29 U.S.C. 158) is amended by adding at
16 the end the following:

17 “(h) PRESUMPTION OF RETALIATION RELATED TO
18 A QUOTA.—Any action to impose a quota on an employee
19 that is taken against the employee within 90 days of an
20 employee exercising the rights guaranteed in section 7
21 shall establish a rebuttable presumption that the action
22 is discrimination against the employee in violation of sub-
23 section (a)(6).”.

24 (c) DEFINITIONS.—Section 2 such Act (29 U.S.C.
25 152) is amended by adding at the end the following:

1 “(15) QUOTA.—

2 “(A) IN GENERAL.—The term ‘quota’
3 means a performance standard or performance
4 target, including such a standard or target used
5 to rank an employee in relation to the perform-
6 ance of another employee or in relation to the
7 past performance of the employee, under
8 which—

9 “(i)(I) an employee is actually or ef-
10 fectively assigned, required, or expected
11 within a defined time period (with or with-
12 out any reasonable accommodation pro-
13 vided under Federal, State, or local law)
14 to—

15 “(aa) perform—

16 “(AA) a quantified
17 number of tasks; or

18 “(BB) at a specified
19 productivity speed; or

20 “(bb) handle or produce a
21 quantified amount of material
22 without a certain number of er-
23 rors or defects; and

24 “(II) such assignment, requirement,
25 or expectation is measured at the indi-

1 vidual or group level for such defined time
2 period;

3 “(ii) actions by an employee are cat-
4 egorized and measured between time per-
5 forming tasks and not performing tasks
6 within a defined time period; or

7 “(iii) increments of time of a defined
8 time period during which an employee is or
9 is not doing a particular activity are meas-
10 ured, recorded, or tallied.

11 “(B) DEFINED TIME PERIOD.—For pur-
12 poses of subparagraph (A), the term ‘defined
13 time period’ means any unit of time measure-
14 ment equal to or less than one day, including
15 hours, minutes, and seconds and any fraction
16 thereof.”.

17 **SEC. 202. NATIONAL LABOR RELATIONS BOARD REPORT.**

18 The National Labor Relations Board shall—

19 (1) examine cases in which a quota (as such
20 term is defined in section 2 of the National Labor
21 Relations Act (29 U.S.C. 152)) was used as a rea-
22 son to deny a worker rights under the National
23 Labor Relations Act; and

24 (2) as often as practicable, submit a report on
25 such cases to—

1 (A) the Committee on Health, Education,
2 Labor, and Pensions of the Senate; and

3 (B) the Committee on Education and the
4 Workforce of the House of Representatives.

5 **TITLE III—OSHA STANDARDS**

6 **SEC. 301. STANDARD PROTECTING COVERED EMPLOYEES** 7 **FROM OCCUPATIONAL RISK FACTORS CAUS-** 8 **ING MUSCULOSKELETAL DISORDERS.**

9 (a) PROPOSED STANDARD.—Not later than 3 years
10 after the date of enactment of this Act, the Secretary
11 shall, pursuant to section 6 of the Occupational Safety and
12 Health Act of 1970 (29 U.S.C. 655), publish in the Fed-
13 eral Register a proposed standard for ergonomic program
14 management for covered employers with respect to covered
15 employees, including requirements for—

16 (1) hazard identification and ergonomic job
17 evaluations for covered employees, including require-
18 ments for covered employee and designated employee
19 representative participation in such identification
20 with the aim of maximizing such participation;

21 (2) hazard control at covered facilities, which
22 may rely on the principles of the hierarchy of con-
23 trols and which may include measures such as equip-
24 ment and workstation redesign, work pace reduc-

1 tions, or job rotation to less forceful or repetitive
2 jobs;

3 (3) training for covered employees regarding
4 covered employer activities, occupational risk factors,
5 and training on controls and recognition of symp-
6 toms of musculoskeletal disorders; and

7 (4) medical management for covered employees
8 that includes—

9 (A) encouraging early reporting of mus-
10 culoskeletal disorder symptoms;

11 (B) first aid delivered by those operating
12 under State licensing requirements; and

13 (C) systematic evaluation and early refer-
14 ral for medical attention.

15 (b) FINAL STANDARD.—Not later than 4 years after
16 the date of enactment this Act, the Secretary shall, pursu-
17 ant to section 6 of the Occupational Safety and Health
18 Act of 1970 (29 U.S.C. 655), publish in the Federal Reg-
19 ister a final standard based on the proposed standard
20 under subsection (a).

1 **SEC. 302. STANDARD FOR PROTECTING COVERED EMPLOY-**
2 **EES FROM DELAYS IN MEDICAL TREATMENT**
3 **REFERRALS FOLLOWING INJURIES OR ILL-**
4 **NESSES.**

5 (a) PROPOSED STANDARD.—Not later than 1 year
6 after the date of enactment of this Act, the Secretary
7 shall, pursuant to section 6 of the Occupational Safety and
8 Health Act of 1970 (29 U.S.C. 655), publish in the Fed-
9 eral Register a proposed standard requiring that—

10 (1) all covered employers have a person readily
11 available at the covered facility of the covered em-
12 ployer who is adequately trained to render first aid
13 and ensure that such person provides first aid to any
14 injured or ill covered employee and, without delay,
15 refers any such covered employee who reports an in-
16 jury or illness that requires further medical treat-
17 ment to an appropriate medical professional for such
18 treatment; and

19 (2) all covered employers provide to the covered
20 employees of the covered employer occupational med-
21 icine consultation services through a physician who
22 is board certified in occupational medicine, which
23 services shall include—

24 (A) regular review of any health and safety
25 program, medical management program, or
26 ergonomics program of the covered employer;

1 (B) review of any work-related injury or
2 illness of a covered employee;

3 (C) providing onsite health services for
4 treatment of such injury or illness; and

5 (D) consultation referral to a local health
6 care provider for treating such injury or illness.

7 (b) FINAL STANDARD.—Not later than 3 years after
8 the date of enactment of this Act, the Secretary shall, pur-
9 suant to section 6 of the Occupational Safety and Health
10 Act of 1970 (29 U.S.C. 655), publish in the Federal Reg-
11 ister a final standard based on the proposed standard
12 under subsection (a).

13 **SEC. 303. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
14 **PEATED VIOLATIONS PENDING CONTEST AND**
15 **PROCEDURES FOR A STAY.**

16 (a) IN GENERAL.—Section 10 of the Occupational
17 Safety and Health Act of 1970 (29 U.S.C. 659) is amend-
18 ed by adding at the end the following:

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

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

24 For each violation which the Secretary designates as
25 serious, willful, or repeated, the period permitted for

1 the correction of the violation shall begin to run
2 upon receipt of the citation.

3 “(2) FILING OF A MOTION OF CONTEST.—The
4 filing of a notice of contest by an employer shall not
5 operate as a stay of the period for correction of a
6 violation designated as serious, willful, or repeated.

7 “(3) CRITERIA AND RULES OF PROCEDURE FOR
8 STAYS.—

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

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

23 “(i) a substantial likelihood of success
24 on the areas contested under subparagraph
25 (A); and

1 “(ii) that a stay will not adversely af-
2 fect the health and safety of employees.

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

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

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

19 “(iii) That if a party is aggrieved by
20 a decision issued by an administrative law
21 judge regarding the stay, such party has
22 the right to file an objection with the Com-
23 mission not later than 5 days after receipt
24 of the administrative law judge’s decision.
25 Within 10 days after receipt of the objec-

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

19 “(iv) For notification to employees or
20 representatives of affected employees of re-
21 quests for such hearings, and to provide an
22 opportunity for affected employees or rep-
23 resentatives of affected employees to par-
24 ticipate as parties to such hearings.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) IN GENERAL.—The Occupational Safety
2 and Health Act of 1970 is amended—

3 (A) in the first sentence of section 10(b)
4 (29 U.S.C. 659(b)), by inserting “, with the ex-
5 ception of violations designated as serious, will-
6 ful, or repeated,” after “(which period shall not
7 begin to run”; and

8 (B) in section 17 (29 U.S.C. 666) by strik-
9 ing subsection (d) and inserting the following:

10 “(d) Any employer who fails to correct a violation
11 designated by the Secretary as serious, willful, or repeated
12 and for which a citation has been issued under section 9(a)
13 within the period permitted for its correction (and a stay
14 has not been issued by the Commission under section
15 10(d)) may be assessed a civil penalty of not more than
16 \$7,000 for each day during which such failure or violation
17 continues. Any employer who fails to correct any other vio-
18 lation for which a citation has been issued under section
19 9(a) of this title within the period permitted for its correc-
20 tion (which period shall not begin to run until the date
21 of the final order of the Commission in the case of any
22 review proceeding under section 10 initiated by the em-
23 ployer in good faith and not solely for delay of avoidance
24 of penalties) may be assessed a civil penalty of not more

1 than \$7,000 for each day during which such failure or vio-
2 lation continues.”.

3 (2) ADJUSTMENT UNDER THE FEDERAL CIVIL
4 PENALTIES INFLATION ADJUSTMENT ACT OF 1990.—

5 (A) CATCH-UP.—Not later than 1 year
6 after the date of enactment of this Act, the Sec-
7 retary of Labor shall adjust the maximum
8 amounts described in subsection (d) of section
9 17 of the Occupational Safety and Health Act
10 of 1970 (29 U.S.C. 666), as amended by para-
11 graph (1)(B), so that each such amount equals
12 the maximum amount of the civil penalty under
13 such subsection (as in effect on the day before
14 such date of enactment) as adjusted by section
15 4 of the Federal Civil Penalties Inflation Ad-
16 justment Act of 1990 (28 U.S.C. 2461 note).

17 (B) SUBSEQUENT ADJUSTMENTS.—Sub-
18 paragraph (A) and the amendment made by
19 this paragraph (1)(B) shall not be construed to
20 affect the application of the Federal Civil Pen-
21 alties Inflation Adjustment Act of 1990 (28
22 U.S.C. 2461 note) to the civil penalty amount
23 under section 17(d) of the Occupational Safety
24 and Health Act of 1970 (29 U.S.C. 666) for
25 any adjustment under section 4 of the Federal

1 Civil Penalties Inflation Adjustment Act of
2 1990 (28 U.S.C. 2461 note) after the catch-up
3 adjustment made by the Secretary of Labor
4 under subparagraph (A).

5 **SEC. 304. DEFINITIONS.**

6 For purposes of sections 301 and 302, the terms
7 “covered employee”, “covered employer”, “covered facil-
8 ity”, and “designated employee representative” have the
9 meanings given such terms in section 8(a) of the Fair
10 Labor Standards Act of 1938 (as added by section 101).

11 **TITLE IV—MISCELLANEOUS**
12 **PROVISIONS**

13 **SEC. 401. SEVERABILITY.**

14 If any provision of this Act (including an amendment
15 made by this Act) or the application of such provision to
16 any person, entity, government, or circumstance, is held
17 to be unconstitutional, the remainder of this Act (includ-
18 ing the amendments made by this Act), or the application
19 of such provision to all other persons, entities, govern-
20 ments, or circumstances, shall not be affected thereby.

21 **SEC. 402. PREEMPTION.**

22 (a) INTERACTION WITH OTHER LAWS.—Nothing in
23 this Act (including the amendments made by this Act) or
24 the regulations promulgated under this Act shall be con-
25 strued to supersede or preempt any law or ordinance of

1 a State, or political subdivision of a State, that requires
2 limitations on any quota for a covered employee of a cov-
3 ered employer that are comparable to or greater than the
4 protections provided in this Act.

5 (b) COLLECTIVE BARGAINING AGREEMENTS.—Noth-
6 ing in this Act (including the amendments made by this
7 Act) or the regulations promulgated under this Act shall
8 be construed to supersede or preempt employment terms
9 or conditions agreed upon in collective bargaining agree-
10 ments that are more beneficial to a covered employee.

11 (c) OSHA.—No action by the Director under this Act
12 (including the amendments made by this Act) shall be con-
13 strued as an exercise of statutory authority within the
14 meaning of section 4(b)(1) of the Occupational Safety and
15 Health Act of 1970 (29 U.S.C. 653(b)(1)).

16 (d) DEFINITIONS.—For purposes of this section, the
17 terms “Director”, “covered employee”, “covered em-
18 ployer”, “designated employee representative”, and
19 “quota” have the meanings given such terms in section
20 8(a) of the Fair Labor Standards Act of 1938 (as added
21 by section 101).

22 **SEC. 403. AUTHORIZATION OF APPROPRIATIONS.**

23 There is authorized to be appropriated to carry out
24 this Act such sums as may be necessary for each of the
25 fiscal years 2025 through 2035.