AN ACT

RELATING TO OCCUPATIONAL HEALTH AND SAFETY; ADJUSTING THE PENALTIES FOR VIOLATIONS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT TO CONFORM WITH FEDERAL LAW; REQUIRING THE DEPARTMENT OF ENVIRONMENT TO ADJUST PENALTIES ON AN ANNUAL BASIS TO ACCOUNT FOR INFLATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 50-9-24 NMSA 1978 (being Laws 1975, Chapter 290, Section 14, as amended) is amended to read:

"50-9-24. PENALTIES.--

A. Any employer who willfully or repeatedly violates any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act may be assessed a civil penalty not to exceed one hundred twenty-six thousand seven hundred forty-nine dollars ($126,749) for each violation; provided that a civil penalty shall not be less than nine thousand fifty-four dollars ($9,054) for each willful violation.

B. Any employer who has received a citation for a serious violation of any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act shall be assessed a civil penalty not to exceed twelve thousand six hundred seventy-five dollars ($12,675) for each violation.
C. Any employer who has received a citation for a violation of any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act that is determined not to be of a serious nature may be assessed a civil penalty of up to twelve thousand six hundred seventy-five dollars ($12,675) for each violation.

D. Any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction, which period shall not begin to run until the date of the final order of the commission in the case of any review proceeding provided for in Section 50-9-17 NMSA 1978 initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty not to exceed twelve thousand six hundred seventy-five dollars ($12,675) for each day during which the failure or violation continues.

E. Any civil penalty assessed against the state, a political subdivision of the state or any agency of either pursuant to Subsection B, C or G of this section shall not be collected during the time permitted for correction of the violation, and if the violation is corrected within such time, the civil penalty shall be deemed paid without further action of the state, political subdivision or agency.

F. For purposes of this section, a serious violation shall be deemed to exist in a place of employment
if there is a substantial probability that death or serious physical harm could result from a condition that exists or from one or more practices, means, methods, operations or processes that have been adopted or are in use in the place of employment unless the employer did not and could not with the exercise of reasonable diligence know of the presence of the violation.

G. Any employer who violates any of the posting requirements as prescribed by the Occupational Health and Safety Act shall be assessed a civil penalty not to exceed twelve thousand six hundred seventy-five dollars ($12,675) for each violation.

H. The commission has authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the history of previous violations.

I. Civil penalties imposed pursuant to the provisions of this section shall be paid into the general fund.

J. No later than April 1 of each year, the secretary shall adjust as necessary the minimum and maximum penalty amounts established in Subsections A through D and G of this section to account for inflation. The amounts shall
be increased by the percentage of the preceding calendar
year's increase of the consumer price index for all urban
consumers, United States city average for all items,
published by the United States department of labor. The
amount of the increase, if any, shall be rounded to the
nearest dollar, but shall not exceed one hundred fifty
percent of the current penalty amount. The secretary may
issue rules to carry out the provisions of this subsection
that conform with the federal Occupational Safety and Health

K. Any employer who willfully violates any
provision of the Occupational Health and Safety Act or any
regulation or order promulgated pursuant to that act causing
death to any employee by that violation shall, upon
conviction, be punished by a fine of not more than ten
thousand dollars ($10,000) or by imprisonment for not more
than six months or by both; except that if the conviction is
for a violation committed after a first conviction of the
person, punishment shall be by a fine of not more than twenty
thousand dollars ($20,000) or by imprisonment for less than
one year or by both.

L. Any person who gives advance notice of any
inspection to be conducted under the Occupational Health and
Safety Act without authority of the secretary shall, upon
conviction, be punished by a fine of not more than one
thousand dollars ($1,000) or by imprisonment for not more than six months or by both.

M. Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to the Occupational Health and Safety Act shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) for each such violation or by imprisonment for not more than six months or by both.

N. A person who reveals a trade secret in violation of Section 50-9-21 NMSA 1978 violates this subsection and shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) or by imprisonment for less than one year or both."

SECTION 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.