H. R. 1579

To improve compliance with mine safety and health laws, empower miners to raise safety concerns, prevent future mine tragedies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2011

Mr. GEORGE MILLER of California (for himself, Ms. WOOLSEY, Mr. RAHALL, Mr. HOLT, Ms. HIRONO, Ms. SUTTON, Mr. PAYNE, and Mr. GRIJALVA) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To improve compliance with mine safety and health laws, empower miners to raise safety concerns, prevent future mine tragedies, 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
4 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
5 (a) Short Title.—This Act may be cited as the
7 (b) Table of Contents.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References.
TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION AUTHORITY

Sec. 101. Independent accident investigations.
Sec. 102. Subpoena authority and miner rights during inspections and investigations.
Sec. 103. Designation of miner representative.
Sec. 104. Additional amendments relating to inspections and investigations.

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

Sec. 201. Technical amendment.
Sec. 202. A pattern of recurring noncompliance or accidents.
Sec. 203. Injunctive authority.
Sec. 204. Revocation of approval of plans.
Sec. 205. Challenging a decision to approve, modify, or revoke a coal or other mine plan.
Sec. 206. GAO Study on MSHA Mine Plan Approval.

TITLE III—PENALTIES

Sec. 301. Civil penalties.
Sec. 302. Civil and criminal liability of officers, directors, and agents.
Sec. 303. Criminal penalties.
Sec. 304. Commission review of penalty assessments.
Sec. 305. Delinquent payments and prejudgment interest.

TITLE IV—MINERS’ RIGHTS AND PROTECTIONS

Sec. 401. Protection from retaliation.
Sec. 402. Protection from loss of pay.
Sec. 403. Underground coal miner employment standard for mines placed in pattern status.

TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

Sec. 501. Pre-shift review of mine conditions.
Sec. 502. Rock dust standards.
Sec. 503. Atmospheric monitoring systems.
Sec. 504. Technology related to respirable dust.
Sec. 505. Refresher training on miners’ rights and responsibilities.
Sec. 506. Authority to mandate additional training.
Sec. 508. Certification of personnel.

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

Sec. 601. Definitions.
Sec. 602. Assistance to States.
Sec. 603. Black lung medical reports.
Sec. 605. Rules of application to certain mines.
SEC. 2. REFERENCES.

Except as otherwise expressly provided, whenever in this Act an amendment is expressed as an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION AUTHORITY

SEC. 101. INDEPENDENT ACCIDENT INVESTIGATIONS.

(a) In General.—Section 103(b) (30 U.S.C. 813(b)) is amended by striking “(b) For the purpose” and inserting the following:

“(b) Accident Investigations.—

“(1) In General.—For all accident investigations under this Act, the Secretary shall—

“(A) determine why the accident occurred;

“(B) determine whether there were violations of law, mandatory health and safety standards, or other requirements, and if there is evidence of conduct that may constitute a violation of Federal criminal law, the Secretary may refer such evidence to the Attorney General; and
“(C) make recommendations to avoid any recurrence.

“(2) INDEPENDENT ACCIDENT INVESTIGATIONS.—

“(A) IN GENERAL.—There shall be, in addition to an accident investigation under paragraph (1), an independent investigation by an independent investigation panel (referred to in this subsection as the ‘Panel’) appointed under subparagraph (B) for—

“(i) any accident involving 3 or more deaths; or

“(ii) any accident that is of such severity or scale for potential or actual harm that, in the opinion of the Secretary of Health and Human Services, the accident merits an independent investigation.

“(B) APPOINTMENT.—

“(i) IN GENERAL.—As soon as practicable after an accident described in subparagraph (A), the Secretary of Health and Human Services shall appoint 5 members for the Panel required under this paragraph from among individuals who have expertise in accident investigations,
mine engineering, or mine safety and health that is relevant to the particular investigation.

“(ii) CHAIRPERSON.—The Panel shall include, and be chaired by, a representative from the Office of Mine Safety and Health Research, of the National Institute for Occupational Safety and Health (referred to in this subsection as NIOSH).

“(iii) CONFLICTS OF INTEREST.—Panel members, and staff and consultants assisting the Panel with an investigation, shall be free from conflicts of interest with regard to the investigation, and be subject to the same standards of ethical conduct for persons employed by the Secretary.

“(iv) COMPOSITION.—The Secretary of Health and Human Services shall appoint as members of the Panel—

“(I) 1 operator of a mine or individual representing mine operators, and

“(II) 1 representative of a labor organization that represents miners,
and may not appoint more than 1 of either
such individuals as members of the Panel.

“(v) STAFF AND EXPENSES.—The Di-
rector of NIOSH shall designate NIOSH
staff to facilitate the work of the Panel.
The Director may accept as staff personnel
on detail from other Federal agencies or
re-employ annuitants. The detail of per-
sonnel under this paragraph may be on a
non-reimbursable basis, and such detail
shall be without interruption or loss of civil
service status or privilege. The Director of
NIOSH shall have the authority to procure
on behalf of the Panel such materials, sup-
plies or services, including technical ex-
perts, as requested in writing by a majority
of the Panel.

“(vi) COMPENSATION AND TRAVEL.—
All members of the Panel who are officers
or employees of the United States shall
serve without compensation in addition to
that received for their services as officers
or employees of the United States. Each
Panel member who is not an officer or em-
ployee of the United States shall be com-
pensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of duties of the Panel. The members of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter 1 of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

“(C) DUTIES.—The Panel shall—

“(i) assess and identify any factors that caused the accident, including deficiencies in safety management systems, regulations, enforcement, industry practices or guidelines, or organizational failures;

“(ii) identify and evaluate any contributing actions or inactions of—

“(I) the operator;
“(II) any contractors or other persons engaged in mining-related functions at the site;

“(III) any State agency with oversight responsibilities;

“(IV) any agency or office within the Department of Labor;

“(V) the Federal Mine Safety and Health Review Commission; or

“(VI) any other person or entity (including equipment manufacturers);

“(iii) review the determinations and recommendations by the Secretary under paragraph (1);

“(iv) prepare a report that—

“(I) includes the findings regarding the causal factors described in clauses (i) and (ii);

“(II) identifies any strengths and weaknesses in the Secretary's investigation; and

“(III) includes recommendations, including interim recommendations where appropriate, to industry, labor organizations, State and Federal
agencies, or Congress, regarding policy, regulatory, enforcement, administrative, or other changes, which in the judgment of the Panel, would prevent a recurrence at other mines; and

“(v) publish such findings and recommendations (excluding any portions which the Attorney General requests that the Secretary withhold in relation to a criminal referral) and hold public meetings to inform the mining community and families of affected miners of the Panel’s findings and recommendations.

“(D) HEARINGS; APPLICABILITY OF CERTAIN FEDERAL LAW.—The Panel shall have the authority to conduct public hearings or meetings, but shall not be subject to the Federal Advisory Committee Act. All public hearings of the Panel shall be subject to the requirements under section 552b of title 5, United States Code.

“(E) MEMORANDUM OF UNDERSTANDING.—Not later than 90 days after the date of enactment of the Robert C. Byrd Mine Safety Protection Act of 2011, the Secretary of
Labor and the Secretary of Health and Human Services shall conclude and publically issue a memorandum of understanding that—

“(i) outlines administrative arrangements which will facilitate a coordination of efforts between the Secretary of Labor and the Panel, ensures that the Secretary’s investigation under paragraph (1) is not delayed or otherwise compromised by the activities of the Panel, and establishes a process to resolve any conflicts between such investigations;

“(ii) ensures that Panel members or staff will be able to participate in investigation activities (such as mine inspections and interviews) related to the Secretary of Labor’s investigation and will have full access to documents that are assembled or produced in such investigation, and ensures that the Secretary of Labor will make all of the authority available to such Secretary under this section, including subpoena authority, to obtain information and witnesses which may be requested by such Panel; and
“(iii) establishes such other arrangements as are necessary to implement this paragraph.

“(F) PROCEDURES.—Not later than 90 days after the date of enactment of the Robert C. Byrd Mine Safety Protection Act of 2011, the Secretary of Health and Human Services shall establish procedures to ensure the consistency and effectiveness of Panel investigations. In establishing such procedures, such Secretary shall consult with independent safety investigation agencies, sectors of the mining industry, representatives of miners, families of miners involved in fatal accidents, State mine safety agencies, and mine rescue organizations. Such procedures shall include—

“(i) authority for the Panel to use evidence, samples, interviews, data, analyses, findings, or other information gathered by the Secretary of Labor, as the Panel determines valid;

“(ii) provisions to ensure confidentiality if requested by any witness, to the extent permitted by law, and prevent con-
flicts of interest in witness representation;
and
“(iii) provisions for preservation of
public access to the Panel’s records
through the Secretary of Health and
Human Services.
“(G) AUTHORIZATION OF APPROPRIA-
TIONS.—There is authorized to be appropriated
to carry out this subsection such sums as may
be necessary.
“(3) POWERS AND PROCESSES.—For the pur-
pose”.
(b) REPORTING REQUIREMENTS.—Section 511(a)
(30 U.S.C. 958(a)) is amended by inserting after “501,”
the following: “the status of implementation of rec-
ommendations from each independent investigation panel
under section 103(b) received in the preceding 5 years”.
SEC. 102. SUBPOENA AUTHORITY AND MINER RIGHTS DUR-
ING INSPECTIONS AND INVESTIGATIONS.
Section 103(b) (as amended by section 101) (30
U.S.C. 813(b)) is further amended by adding at the end
the following:
“(4) ADDITIONAL POWERS.—For purposes of
making inspections and investigations, the Secretary
or the Secretary’s designee, may sign and issue sub-
poenas for the attendance and testimony of witnesses and the production of information, including all relevant data, papers, books, documents, and items of physical evidence, and administer oaths. Witnesses summoned shall be paid the same fees that are paid witnesses in the courts of the United States. In carrying out inspections and investigations under this subsection, authorized representatives of the Secretary and attorneys representing the Secretary are authorized to question any individual privately. Under this section, any individual who is willing to speak with or provide a statement to such authorized representatives or attorneys representing the Secretary may do so without the presence, involvement, or knowledge of the operator or the operator’s agents or attorneys. The Secretary shall keep the identity of an individual providing such a statement confidential to the extent permitted by law. Nothing in this paragraph prevents any individual from being represented by that individual’s personal attorney.”.

SEC. 103. DESIGNATION OF MINER REPRESENTATIVE.

Section 103(f) (30 U.S.C. 813(f)) is amended by inserting before the last sentence the following: “If any miner is entrapped or otherwise prevented as the result
of an accident in such mine from designating such a repre-
sentative directly, such miner's closest relative may act
on behalf of such miner in designating such a representa-
tive. If any miner is not currently working in such mine
as the result of an accident in such mine, but would be
currently working in such mine but for such accident, such
miner may designate such a representative. A representa-
tive of miners shall have the right to participate in any
accident investigation the Secretary initiates pursuant to
subsection (b), including the right to participate in inves-
tigative interviews and to review all relevant papers, books,
documents and records produced in connection with the
accident investigation, unless the Secretary in consultation
with the Attorney General excludes such representatives
from the investigation on the grounds that inclusion would
interfere with or adversely impact a criminal investigation
that is pending or under consideration.”.

SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-
SPECTIONS AND INVESTIGATIONS.

(a) HOURS OF INSPECTIONS.—Section 103(a) (30
U.S.C. 813(a)) is amended by inserting after the third
sentence the following: “Such inspections shall be con-
ducted during the various shifts and days of the week dur-
ing which miners are normally present in the mine to en-
sure that the protections of this Act are afforded to all
miners working all shifts.”.

(b) Review of Mine Pattern Status.—Section
103(a) is further amended by inserting before the last sen-
tence the following: “The Secretary shall, upon request by
an operator, review with the appropriate mine officials the
Secretary’s most recent evaluation for pattern status (as
provided in section 104(e)) for that mine during the
course of a mine’s regular quarterly inspection of an un-
derground mine or a biannual inspection of a surface
mine, or, at the discretion of the Secretary, during the
pre-inspection conference.”.

(e) Injury and Illness Reporting.—Section
103(d) (30 U.S.C. 813(d)) is amended by striking the last
sentence and inserting the following: “The records to be
kept and made available by the operator of the mine shall
include man-hours worked and occupational injuries and
illnesses with respect to the miners in their employ or
under their direction or authority, and shall be maintained
separately for each mine and be reported at a frequency
determined by the Secretary, but at least annually. Inde-
pendent contractors (within the meaning of section 3(d))
shall be responsible for reporting accidents, occupational
injuries and illnesses, and man-hours worked for each
mine with respect to the miners in their employ or under
their direction or authority, and shall be reported at a fre-
quency determined by the Secretary, but at least annually.
Reports or records of operators and contractors required
and submitted to the Secretary under this subsection shall
be signed and certified as accurate and complete by a
knowledgeable and responsible person possessing a certifi-
cation, registration, qualification, or other approval, as
provided for under section 118. Knowingly falsifying such
records or reports shall be grounds for revoking such cer-
tification, registration, qualification, or other approval
under the standards established under subsection (b)(1)
of such section.”.

(d) Orders Following an Accident.—Section
103(k) (30 U.S.C. 813(k)) is amended by striking “, when
present,”.

(e) Conflict of Interest in the Representation
of Miners.—Section 103(a) (30 U.S.C. 813(a)) is
amended by adding at the end the following: “During in-
spections and investigations under this section, and during
any litigation under this Act, no attorney shall represent
or purport to represent both the operator of a coal or other
mine and any other individual, unless such individual has
knowingly and voluntarily waived all actual and reasonably
foreseeable conflicts of interest resulting from such rep-
resentation. The Secretary is authorized to take such ac-
tions as the Secretary considers appropriate to ascertain whether such individual has knowingly and voluntarily waived all such conflicts of interest. If the Secretary finds that such an individual cannot be represented adequately by such an attorney due to such conflicts of interest, the Secretary may petition the appropriate United States District Court which shall have jurisdiction to disqualify such attorney as counsel to such individual in the matter. The Secretary may make such a motion as part of an ongoing related civil action or as a miscellaneous action.”.

**TITLE II—ENHANCED ENFORCEMENT AUTHORITY**

**SEC. 201. TECHNICAL AMENDMENT.**

Section 104(d)(1) (30 U.S.C. 814(d)(1)) is amended—

(1) in the first sentence—

(A) by striking “any mandatory health or safety standard” and inserting “any provision of this Act, including any mandatory health or safety standard or regulation promulgated under this Act”; and

(B) by striking “such mandatory health or safety standards” and inserting “such provisions, regulations, or mandatory health or safety standards”; and
(2) in the second sentence, by striking “any mandatory health or safety standard” and inserting “any provision of this Act, including any mandatory health or safety standard or regulation promulgated under this Act,”.

SEC. 202. A PATTERN OF RECURRING NONCOMPLIANCE OR ACCIDENTS.

Section 104(e) (30 U.S.C. 814(e)) is amended to read as follows:

“(e) PATTERN OF RECURRING NONCOMPLIANCE OR ACCIDENTS.—

“(1) PATTERN STATUS.—

“(A) IN GENERAL.—For purposes of this subsection, a coal or other mine shall be placed in pattern status if such mine has, as determined based on the regulations promulgated under paragraph (8)—

“(i) a pattern of—

“(I) citations for significant and substantial violations;

“(II) citations and withdrawal orders issued for unwarrantable failure to comply with mandatory health and safety standards under section 104(d);
“(III) citations for flagrant violations within the meaning of section 110(b);

“(IV) withdrawal orders issued under any other section of this Act (other than orders issued under subsections (j) or (k) of section 103); and

“(V) accidents and injuries; or

“(ii) a pattern consisting of any combination of citations, orders, accidents, or injuries described in subclauses (I) through (V).

“(B) MITIGATING CIRCUMSTANCES.—Notwithstanding subparagraph (A), if the Secretary, after conducting an assessment of a coal or other mine that otherwise qualifies for pattern status, certifies that there are mitigating circumstances wherein the operator has already implemented remedial measures that have reduced risks to the health and safety of miners to the point that such risks are no longer elevated and has taken sufficient measures to ensure such elevated risk will not recur, the Secretary may deem such mine to not be in pattern status under this subsection. The Secretary
shall issue any such certification of such mitigating circumstances that would preclude the placement of a mine in pattern status as a written finding, which shall, not later than 10 days after the certification is made, be—

“(i) made available on the public Web site of the Mine Safety and Health Administration; and

“(ii) transmitted to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

“(C) FREQUENCY.—Not less frequently than every 6 months, the Secretary shall identify any mines which meet the criteria set forth in paragraph (8).

“(2) ACTIONS FOLLOWING PLACEMENT OF MINE IN PATTERN STATUS.—For any coal or other mine that is in pattern status, the Secretary shall—

“(A) notify the operator of such mine that the mine is being placed in pattern status;

“(B) issue an order requiring such operator to cause all persons to be withdrawn from such mine, except those persons referred to in
subsection (c) or authorized by an order of the Secretary issued under this subsection;

“(C) issue a remediation order described in paragraph (3) to such operator within 3 days; and

“(D) require that the number of regular inspections of such mine required under section 103 be increased to 8 per year for an underground mine and 4 per year for a surface mine while the mine is in pattern status.

Notice advising operators that they face potential placement in pattern status shall not be a requirement for issuing a withdrawal order to operators under this subsection.

“(3) REMEDIATION ORDER.—

“(A) IN GENERAL.—A remediation order issued to an operator under paragraph (2)(C) may require the operator to carry out one or more of the following requirements, pursuant to a timetable for commencing and completing such actions or as a condition of miners reentering the mine:

“(i) Provide specified training, including training not otherwise required under this Act.
“(ii) Institute and implement an effective health and safety management program approved by the Secretary, including—

“(I) the employment of safety professionals, certified persons, and adequate numbers of personnel for the mine, as may be required by the Secretary;

“(II) specific inspection, record-keeping, reporting and other requirements for the mine as the Secretary may establish; and

“(III) other requirements to ensure compliance and to protect the health and safety of miners or prevent accidents or injuries as the Secretary may determine are necessary.

“(iii) Facilitate any effort by the Secretary to communicate directly with miners employed at the mine outside the presence of the mine operators or its agents, for the purpose of obtaining information about mine conditions, health and safety prac-
ties, or advising miners of their rights under this Act.

“(B) **Modification of and Failure to Comply with Remediation Order.**—The Secretary may modify the remediation order, as necessary, to protect the health and safety of miners. If the mine operator fails to fully comply with the remediation order during the time a mine is in pattern status, the Secretary shall reinstate the withdrawal order under paragraph (2)(B).

“(C) **Extension of Deadlines.**—An extension of a deadline under the remediation order may be granted on a temporary basis and only upon a showing that the operator took all feasible measures to comply with the order and only to the extent that the operator’s failure to comply is beyond the control of the operator.

“(4) **Conditions for Lifting a Withdrawal Order.**—A withdrawal order issued under paragraph (2)(B) shall not be lifted until the Secretary verifies that—

“(A) any and all violations or other conditions in the mine identified in the remediation order have been or are being fully abated or
corrected as outlined in the remediation order; and

“(B) the operator has completed any other actions under the remediation order that are required for reopening the mine.

“(5) PERFORMANCE EVALUATION.—

“(A) PERFORMANCE BENCHMARKS.—The Secretary shall evaluate the performance of each mine in pattern status every 90 days during which the mine is producing and determine if, for such 90-day period—

“(i) the rate of citations at such mine for significant and substantial violations—

“(I) is in the top performing 35th percentile of such rates, respectively, for all mines of similar size and type; or

“(II) has been reduced by 70 percent from the date on which such mine was placed in pattern status, provided that the rate of such violations is not greater than the mean for all mines of similar size and type;

“(ii) the accident and injury rates at such mine are in the top performing 35th
percentile of such rates, respectively, for all mines of similar size and type; and

“(iii) no citations or withdrawal orders for a violation under section 104(d), no withdrawal orders for imminent danger under section 107 (issued in connection with a citation), and no flagrant violations within the meaning of section 110(b), were issued for such mine.

“(B) Reissuance of withdrawal orders.—If an operator being evaluated fails to achieve the performance benchmarks described in subparagraph (A), the Secretary may reissue a withdrawal order under paragraph (2)(B) to remedy any recurring conditions that led to pattern status under this subsection, and may modify the remediation order, as necessary, to protect the health and safety of miners.

“(6) Termination of pattern status.—

“(A) Performance benchmarks.—The Secretary shall remove a coal or other mine from pattern status if, for a 1-year period during which the mine is producing—

“(i) the rate of citations at such mine for significant and substantial violations—
“(I) is in the top performing 25th percentile of such rates, respectively, for all mines of similar size and type; or

“(II) has been reduced by 80 percent from the date on which such mine was placed in pattern status, provided that the rate of such violations is not greater than the mean for all mines of similar size and type;

“(ii) the accident and injury rates at such mine are in the top performing 25th percentile of such rates, respectively, for all mines of similar size and type; and

“(iii) no citations or withdrawal orders for violations under section 104(d), no withdrawal orders for imminent danger under section 107 (issued in connection with a citation), and no flagrant violations within the meaning of section 110(b), were issued for such mine.

“(B) CONTINUATION OF PATTERN STATUS.—Should the mine operator fail to meet the performance benchmarks described in subparagraph (A), the Secretary shall extend the
mine’s placement in pattern status until such benchmarks are achieved.

“(C) CONSTRUCTION.—A withdrawal order issued as the result of a condition that was entirely beyond the operator’s ability to prevent or control shall not preclude the operator from being removed from pattern status, provided the operator did not cause or allow miners to be exposed to the condition in violation of any provision of this Act or a mandatory health or safety standard or regulation promulgated under this Act.

“(7) EXPEDITED REVIEW.—If any order under this subsection is contested, the review of such order shall be conducted on an expedited basis, in accordance with section 105(d).

“(8) REGULATIONS.—

“(A) IN GENERAL.—Not later than 120 days after the date of enactment of the Robert C. Byrd Mine Safety Protection Act of 2011, the Secretary shall issue interim final regulations that shall define—

“(i) the threshold benchmarks to trigger pattern status under paragraph (1)
and cause a withdrawal order to be issued
or reissued; and

“(ii) the performance benchmarks de-
scribed in paragraphs (5)(A) and (6)(A).

“(B) Threshold benchmarks.—In es-
tablishing threshold benchmarks to trigger pat-
tern status for mines with significantly poor
compliance that contributes to unsafe or
unhealthy conditions, the Secretary—

“(i) shall—

“(I) consider rates of citations
and orders described in paragraph
(1)(A) and rates of reportable acci-
dents and injuries within the pre-
ceding 180-day period; and

“(II) assign appropriate weight
to various types of citations, orders,
accidents, injuries, or other factors;
and

“(ii) may include—

“(I) factors such as mine type,
production levels, number of miners,
hours worked by miners, number of
mechanized mining units (or similar
production characteristics), and the
presence of a representative of miners
at the mine for purposes of collective
bargaining;

“(II) the mine’s history of cita-
tions, violations, orders, and other en-
forcement actions, or rates of report-
able accidents and injuries, over any
period determined relevant by the Sec-
retary; and

“(III) other factors the Secretary
may determine appropriate to protect
the safety and health of miners.

“(C) Final Regulation.—Not later than
2 years after the date of enactment of the Rob-
ert C. Byrd Mine Safety Protection Act of
2011, the Secretary shall promulgate a final
regulation implementing this paragraph.

“(9) Public Database and Information.—
The Secretary shall establish and maintain a pub-
lically available electronic database containing the
data used to determine pattern status for all coal or
other mines which shall be updated as frequently as
practicable. Such database shall be searchable and
have the capacity to provide comparative data about
the health and safety at mines of similar sizes and
types. The Secretary shall also make publicly avail-
able—

“(A) a list of all mines the Secretary places in pattern status, updated within 7 days of placing an additional mine in pattern status;

“(B) the metrics, including percentile in-
formation, used for the purposes of the per-
formance benchmarks and threshold bench-
marks described in paragraphs (5), (6), and
(8); and

“(C) guidance for the use of such metrics
and benchmarks to assist operators in deter-
mining the performance their mines under cri-
teria established by the Secretary.

“(10) OPERATOR FEES FOR ADDITIONAL IN-
sPECTIONS.—

“(A) ASSESSMENT AND COLLECTION.—Be-
ginning 120 days after the date of enactment of
the Robert C. Byrd Mine Safety Protection Act of 2011, the Secretary shall assess and collect fees, in accordance with this paragraph, from each coal or other mine in pattern status for the costs of additional inspections under this subsection. The Secretary shall issue, by rule, a schedule of fees to be assessed against coal or
other mines of varying types and sizes, and shall collect and assess amounts under this paragraph based on the schedule.

“(B) USE.—Amounts collected as provided in subparagraph (A) shall only be available to the Secretary for making expenditures to carry out the additional inspections required under paragraph (2)(D).

“(C) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts authorized to be appropriated under this Act, there is authorized to be appropriated to the Secretary for each fiscal year in which fees are collected under subparagraph (A) an amount equal to the total amount of fees collected under such subparagraph during that fiscal year. Such amounts are authorized to remain available until expended. If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until 5 days after the date such regular appropriation is enacted.
“(D) Collection and crediting of fees.—Fees authorized and collected under this paragraph shall be deposited and credited as offsetting collections to the account providing appropriations to the Mine Safety and Health Administration and shall not be collected for any fiscal year except to the extent and in the amount provided in advance in appropriation Acts.”.

SEC. 203. INJUNCTIVE AUTHORITY.

Section 108(a)(2) (30 U.S.C. 818(a)(2)) is amended by striking “a pattern of violation of” and all that follows and inserting “a course of conduct that in the judgment of the Secretary constitutes a continuing hazard to the health or safety of miners, including violations of this Act or of mandatory health and safety standards or regulations under this Act.”.

SEC. 204. REVOCATION OF APPROVAL OF PLANS.

Section 105 (30 U.S.C. 815) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (e) the following:

“(d) Revocation of Approval of Plans.—
“(1) Revocation.—If the Secretary finds that any program or plan of an operator, or part thereof, that was approved by the Secretary under this Act is based on inaccurate information or that circumstances that existed when such plan was approved have materially changed and that continued operation of such mine under such plan constitutes a hazard to the safety or health of miners, the Secretary shall revoke the approval of such program or plan.

“(2) Withdrawal orders.—Upon revocation of the approval of a program or plan under subsection (a), the Secretary may immediately issue an order requiring the operator to cause all persons, except those persons referred to in section 104(c), to be withdrawn from such mine or an area of such mine, and to be prohibited from entering such mine or such area, until the operator has submitted and the Secretary has approved a new plan.”.

SEC. 205. CHALLENGING A DECISION TO APPROVE, MODIFY, OR REVOKE A COAL OR OTHER MINE PLAN.

Section 105(e) (as redesignated by section 204(1)) (30 U.S.C. 815(e)) is amended by adding at the end the following: “In any proceeding in which a party challenges
the Secretary’s decision whether to approve, modify, or re-
voke a coal or other mine plan under this Act, the Com-
mission shall affirm the Secretary’s decision unless the
challenging party establishes that such decision was arbi-
trary, capricious, an abuse of discretion, or otherwise not
in accordance with law.”.

SEC. 206. GAO STUDY ON MSHA MINE PLAN APPROVAL.

Not later than 1 year after the date of enactment
of this Act, the Comptroller General shall provide a report
to Congress on the timeliness of the Mine Safety and
Health Administration’s approval of underground coal
mines’ required plans and plan amendments, including—

(1) factors that contribute to any delays in the
approval of these plans; and

(2) as appropriate, recommendations for im-
proving timeliness of plan review and for achieving
prompt decisions.

TITLE III—PENALTIES

SEC. 301. CIVIL PENALTIES.

(a) TECHNICAL CORRECTION.—Section 110(a)(1)
(30 U.S.C. 820(a)(1)) is amended by inserting “including
any regulation promulgated under this Act,” after “this
Act,”.
(b) INCREASED CIVIL PENALTIES DURING PATTERN STATUS.—Section 110(b) (30 U.S.C. 820(b)) is amended by adding at the end the following:

“(3) Notwithstanding any other provision of this Act, an operator of a coal or other mine that is in pattern status under section 104(e) and that fails to meet the performance benchmarks set forth by the Secretary under section 104(e)(5)(A) during any performance review of the mine following the first performance review shall be assessed an increased civil penalty for any violation of this Act, including any mandatory health or safety standard or regulation promulgated under this Act. Such increased penalty shall be twice the amount that would otherwise be assessed for the violation under this Act, including the regulations promulgated under this Act, subject to the maximum civil penalty established for the violation under this Act. This paragraph shall apply to violations at such mine that occur during the time period after the operator fails to meet the performance benchmarks in this paragraph, and ending when the Secretary determines at a subsequent performance review that the mine meets the performance benchmarks under section 104(e)(5)(A).”.

(e) CIVIL PENALTY FOR RETALIATION.—Section 110(a) (30 U.S.C. 820(a)) is further amended—
(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3) the following:

“(4) If any person violates section 105(e), the Secretary shall propose, and the Commission shall assess, a civil penalty of not less than $10,000 or more than $100,000 for the first occurrence of such violation, and not less than $20,000 or more than $200,000 for any subsequent violation, during any 3-year period.”.

SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DIRECTORS, AND AGENTS.

Section 110(c) (30 U.S.C. 820(c)) is amended to read as follows:

“(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DIRECTORS, AND AGENTS.—

“(1) CIVIL PENALTIES.—Whenever an operator engages in conduct for which the operator is subject to civil penalties under this section, any director, officer, or agent of such operator who knowingly authorizes, orders, or carries out such conduct, or who knowingly authorizes, orders, or carries out any policy or practice that results in such conduct and having reason to believe it would so result, shall be sub-
ject to the same civil penalties under this section as
if it were an operator engaging in such conduct.

“(2) CRIMINAL PENALTIES.—Whenever an op-
erator engages in conduct for which the operator
may be subject to criminal penalties under sub-
section (d), any director, officer, or agent of such
operator who knowingly authorizes, orders, or car-
rries out such conduct, or who knowingly authorizes,
orders, or carries out a policy or practice that re-
results in such conduct, and knowing that it will so re-
result, shall be subject to the same penalties under
paragraphs (1) or (2) of subsection (d) as if such
person were an operator engaging in such conduct.”.

SEC. 303. CRIMINAL PENALTIES.

(a) IN GENERAL.—Section 110 (30 U.S.C. 820) is
amended by striking subsection (d) and—

(1) by inserting the following new heading:

“(d) CRIMINAL PENALTIES.—”;

(2) by inserting after the heading (as added by
paragraph (1) of this subsection), the following new
paragraph:

“(1) IN GENERAL.—Whoever, being an oper-
ator, knowingly—

“(A) violates a mandatory health or safety
standard, or

...
“(B) violates or fails or refuses to comply with any order issued under section 104 or section 107, or any order incorporated in a final decision issued under this Act (except an order incorporated in a decision under subsection (a)(1) or section 105(c)), shall, upon conviction, be fined not more than $250,000, or imprisoned for not more than 1 year, or both, except that if the operator commits the violation after having been previously convicted of a violation under this paragraph and, if the operator knows or has reason to know that such subsequent violation has the potential to expose a miner to risk of serious injury, serious illness, or death, the operator shall, upon conviction, be fined not more than $1,000,000, or imprisoned for not more than 5 years, or both.”;

(3) by inserting after paragraph (1) (as added by paragraph (2) of this subsection), the following new paragraph:

“(2) **Significant risk of serious injury, serious illness, or death.**—Whoever, being an operator, knowingly—
“(A) tampers with or disables a required safety device (except with express authorization from the Secretary),

“(B) violates a mandatory health or safety standard, or

“(C) violates or fails or refuses to comply with an order issued under section 104 or 107, or any order incorporated in a final decision issued under this Act (except an order incorporated in a decision under subsection (a)(1) or section 105(c)), and thereby recklessly exposes a miner to significant risk of serious injury, serious illness, or death, shall, upon conviction, be fined not more than $1,000,000, or imprisoned for not more than 5 years, or both, except that if the operator commits the violation after having been previously convicted of a violation under this paragraph, the operator shall, upon conviction, be fined not more than $2,000,000, or imprisoned for not more than 10 years, or both.”; and

(4) by inserting after paragraph (2) (as added by paragraph (3) of this subsection), the following new paragraph:
“(3) CRIMINAL PENALTIES FOR RETALIA-
TION.—Whoever knowingly—

“(A) with the intent to retaliate, interferes
with the lawful employment or livelihood of a
person, or the spouse, sibling, child, or parent
of a person, because any of them provides infor-
mation to an authorized representative of the
Secretary, a State or local mine safety or health
officer or official, or other law enforcement offi-
cer, in reasonable belief that the information is
ture and related to an apparent health or safety
violation, or unhealthful or unsafe condition,
policy, or practice under this Act, or

“(B) interferes, or threatens to interfere,
with the lawful employment or livelihood of a
person, or the spouse, sibling, child, or parent
of a person, with the intent to prevent any of
them from so providing such information, shall
be fined under title 18 or imprisoned for not
more than 5 years, or both.”.

(b) ADVANCE NOTICE OF INSPECTIONS.—

(1) IN GENERAL.—Section 110(e) (30 U.S.C.
820(e)) is amended to read as follows:

“(e) Whoever knowingly, with intent to give advance
notice of an inspection conducted or to be conducted under
this Act, and thereby to impede, interfere with, or frustrate such inspection, engages in, or directs another person to engage in, conduct that a reasonable person would expect to result in such advance notice, shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, except that a miner (other than a director, officer or agent of the operator involved) who commits the offense at the direction of a superior shall be fined under title 18, or imprisoned not more than 1 year, or both, unless the miner commits a second or subsequent offense under this subsection (without regard to whether the offense was committed at the direction of a superior) in which case the miner shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.”.

(2) POSTING OF ADVANCE NOTICE PENALTIES.—Section 109 (30 U.S.C. 819) is amended by adding at the end the following:

“(e) POSTING OF ADVANCE NOTICE PENALTIES.—Each operator of a coal or other mine shall post, on the bulletin board described in subsection (a) and in a conspicuous place near each staffed entrance onto the mine property, a notice stating, in a form and manner to be prescribed by the Secretary—
“(1) that it is unlawful pursuant to section 110(e) for any person, with the intent to impede, interfere with, or frustrate an inspection conducted or to be conducted under this Act, to engage in, or direct another person to engage in, any conduct that a reasonable person would expect to result in advance notice of such inspection; and

“(2) the maximum penalties for a violation under such subsection.”.

SEC. 304. COMMISSION REVIEW OF PENALTY ASSESSMENTS.

Section 110(i) (30 U.S.C. 820(i)) is amended by striking “In assessing civil monetary penalties, the Commission shall consider” and inserting the following: “In any review of a citation and proposed penalty assessment contested by an operator, the Commission shall assess not less than the penalty derived by using the same methodology (including any point system) prescribed in regulations under this Act, so as to ensure consistency in operator penalty assessments, except that the Commission may assess a penalty for less than the amount that would result from the utilization of such methodology if the Commission finds that there are extraordinary circumstances. If there is no such methodology prescribed for a citation or
there are such extraordinary circumstances, the Commission shall assess the penalty by considering’’.

SEC. 305. DELINQUENT PAYMENTS AND PREJUDGMENT INTEREST.

(a) PRE-FINAL ORDER INTEREST.—Section 110(j) (30 U.S.C. 820(j)) is amended by striking the second and third sentences and inserting the following: “Pre-final order interest on such penalties shall begin to accrue on the date the operator contests a citation issued under this Act, including any mandatory health or safety standard or regulation promulgated under this Act, and shall end upon the issuance of the final order. Such pre-final order interest shall be calculated at the current underpayment rate determined by the Secretary of the Treasury pursuant to section 6621 of the Internal Revenue Code of 1986, and shall be compounded daily. Post-final order interest shall begin to accrue 30 days after the date a final order of the Commission or the court is issued, and shall be charged at the rate of 8 percent per annum.’’.

(b) ENSURING PAYMENT OF PENALTIES.—

(1) AMENDMENTS.—Section 110 (30 U.S.C. 820) is further amended—

(A) by redesignating subsection (l) as subsection (m); and
(B) by inserting after subsection (k) the following:

“(l) ENSURING PAYMENT OF PENALTIES.—

“(1) DELINQUENT PAYMENT LETTER.—If the operator of a coal or other mine fails to pay any civil penalty assessment that has become a final order of the Commission or a court within 45 days after such assessment became a final order, the Secretary shall send the operator a letter advising the operator of the consequences under this subsection of such failure to pay. The letter shall also advise the operator of the opportunity to enter into or modify a payment plan with the Secretary based upon a demonstrated inability to pay, the procedure for entering into such plan, and the consequences of not entering into or not complying with such plan.

“(2) WITHDRAWAL ORDERS FOLLOWING FAILURE TO PAY.—If an operator that receives a letter under paragraph (1) has not paid the assessment by the date that is 180 days after such assessment became a final order and has not entered into a payment plan with the Secretary, the Secretary shall issue an order requiring such operator to cause all persons, except those referred to in section 104(c), to be withdrawn from, and to be prohibited from en-
tering, the mine that is covered by the final order described in paragraph (1), until the operator pays such assessment in full (including interest and admin-istrative costs) or enters into a payment plan with the Secretary. If such operator enters into a payment plan with the Secretary and at any time fails to comply with the terms specified in such pay-ment plan, the Secretary shall issue an order requir-ing such operator to cause all persons, except those referred to in section 104(c), to be withdrawn from the mine that is covered by such final order, and to be prohibited from entering such mine, until the op-erator rectifies the noncompliance with the payment plan in the manner specified in such payment plan.”.

(2) Applicability and Effective Date.—The amendments made by paragraph (1) shall apply to all unpaid civil penalty assessments under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), except that, for any unpaid civil penalty assessment that became a final order of the Commission or a court before the date of enactment of this Act, the time periods under section 110(n) of the Federal Mine Safety and Health Act of 1977 (as amended) (30 U.S.C. 820(n)) shall be calculated as
beginning on the date of enactment of this Act instead of on the date of the final order.

TITLE IV—MINERS’ RIGHTS AND PROTECTIONS

SEC. 401. PROTECTION FROM RETALIATION.

Section 105(c) (30 U.S.C. 815(c)) is amended to read as follows:

“(c) Protection From Retaliation.—

“(1) Retaliation prohibited.—

“(A) Retaliation for complaint or testimony.—No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner or other employee of an operator, representative of miners, or applicant for employment (including the spouse, sibling, child, or parent of such miner or employee, if such individual is employed or is applying for employment at a mine under the control of the operator), because—

“(i) such miner or other employee, representative, or applicant for employment—
“(I) has filed or made a complaint, or is about to file or make a complaint, including a complaint notifying the operator or the operator’s agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine;

“(II) instituted or caused to be instituted, or is about to institute or cause to be instituted, any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such miner or other employee, representative, or applicant for employment on behalf of him or herself or others of any right afforded by this Act, or has reported any injury or illness to an operator or agent;

“(III) has testified or is about to testify before Congress or any Federal or State proceeding related to safety or health in a coal or other mine; or
“(IV) refused to violate any provision of this Act, including any mandatory health and safety standard or regulation; or

“(ii) such miner is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101.

“(B) Retaliation for refusal to perform duties.—

“(i) In general.—No person shall discharge or in any manner discriminate against a miner or other employee of an operator for refusing to perform the miner’s or other employee’s duties if the miner or other employee has a good-faith and reasonable belief that performing such duties would pose a safety or health hazard to the miner or other employee or to any other miner or employee.

“(ii) Standard.—For purposes of clause (i), the circumstances causing the miner’s or other employee’s good-faith belief that performing such duties would pose a safety or health hazard shall be of such
a nature that a reasonable person, under the circumstances confronting the miner or other employee, would conclude that there is such a hazard. In order to qualify for protection under this paragraph, the miner or other employee, when practicable, shall have communicated or attempted to communicate the safety or health concern to the operator and have not received from the operator a response reasonably calculated to allay such concern.

“(2) COMPLAINT.—Any miner or other employee or representative of miners or applicant for employment who believes that he or she has been discharged, disciplined, or otherwise discriminated against by any person in violation of paragraph (1) may file a complaint with the Secretary alleging such discrimination not later than 180 days after the later of—

“(A) the last date on which an alleged violation of paragraph (1) occurs; or

“(B) the date on which the miner or other employee or representative knows or should reasonably have known that such alleged violation occurred.
“(3) INVESTIGATION AND HEARING.—

“(A) COMMENCEMENT OF INVESTIGATION AND INITIAL DETERMINATION.—Upon receipt of such complaint, the Secretary shall forward a copy of the complaint to the respondent, and shall commence an investigation within 15 days of the Secretary’s receipt of the complaint, and, as soon as practicable after commencing such investigation, make the determination required under subparagraph (B) regarding the reinstatement of the miner or other employee.

“(B) REINSTATEMENT.—If the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner or other employee until there has been a final Commission order disposing of the underlying complaint of the miner or other employee. If either the Secretary or the miner or other employee pursues the underlying complaint, such reinstatement shall remain in effect until the Commission has disposed of such complaint on the merits, regardless of whether the Secretary pursues such complaint by filing a complaint
under subparagraph (D) or the miner or other employee pursues such complaint by filing an action under paragraph (4). If neither the Secretary nor the miner or other employee pursues the underlying complaint within the periods specified in paragraph (4), such reinstatement shall remain in effect until such time as the Commission may, upon motion of the operator and after providing notice and an opportunity to be heard to the parties, vacate such complaint for failure to prosecute.

“(C) INVESTIGATION.—Such investigation shall include interviewing the complainant and—

“(i) providing the respondent an opportunity to submit to the Secretary a written response to the complaint and to present statements from witnesses or provide evidence; and

“(ii) providing the complainant an opportunity to receive any statements or evidence provided to the Secretary and to provide additional information or evidence, or to rebut any statements or evidence.
“(D) Action by the Secretary.—If, upon such investigation, the Secretary determines that the provisions of this subsection have been violated, the Secretary shall immediately file a complaint with the Commission, with service upon the alleged violator and the miner or other employee, representative of miners, or applicant for employment alleging such discrimination or interference and propose an order granting appropriate relief.

“(E) Action of the Commission.—The Commission shall afford an opportunity for a hearing on the record (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, affirming, modifying, or vacating the Secretary’s proposed order, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The complaining miner or other employee, representative, or applicant for employment may present additional evidence on his or her own behalf during any hearing held pursuant to this paragraph.
“(F) RELIEF.—The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation and prescribe a remedy as the Commission considers appropriate, including—

“(i) the rehiring or reinstatement of the miner or other employee with back pay and interest and without loss of position or seniority, and restoration of the terms, rights, conditions, and privileges associated with the complainant’s employment;

“(ii) any other compensatory and consequential damages sufficient to make the complainant whole, and exemplary damages where appropriate; and

“(iii) expungement of all warnings, reprimands, or derogatory references that have been placed in paper or electronic records or databases of any type relating to the actions by the complainant that gave rise to the unfavorable personnel action, and, at the complainant’s direction, transmission of a copy of the decision on the complaint to any person whom the
complainant reasonably believes may have received such unfavorable information.

“(4) NOTICE TO AND ACTION OF COMPLAINANT.—

“(A) NOTICE TO COMPLAINANT.—Not later than 90 days of the receipt of a complaint filed under paragraph (2), the Secretary shall notify, in writing, the miner or other employee, applicant for employment, or representative of miners of his determination whether a violation has occurred.

“(B) ACTION OF COMPLAINANT.—If the Secretary, upon investigation, determines that the provisions of this subsection have not been violated, the complainant shall have the right, within 30 days after receiving notice of the Secretary’s determination, to file an action in his or her own behalf before the Commission, charging discrimination or interference in violation of paragraph (1).

“(C) HEARING AND DECISION.—The Commission shall afford an opportunity for a hearing on the record (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section),
and thereafter shall issue an order, based upon findings of fact, dismissing or sustaining the complainant’s charges and, if the charges are sustained, granting such relief as it deems appropriate as described in paragraph (3)(D). Such order shall become final 30 days after its issuance.

“(5) **BURDEN OF PROOF.**—In adjudicating a complaint pursuant to this subsection, the Commission may determine that a violation of paragraph (1) has occurred only if the complainant demonstrates that any conduct described in paragraph (1) with respect to the complainant was a contributing factor in the adverse action alleged in the complaint. A decision or order that is favorable to the complainant shall not be issued pursuant to this subsection if the respondent demonstrates by clear and convincing evidence that the respondent would have taken the same adverse action in the absence of such conduct.

“(6) **ATTORNEYS’ FEES.**—Whenever an order is issued sustaining the complainant’s charges under this subsection, a sum equal to the aggregate amount of all costs and expenses, including attorney’s fees, as determined by the Commission to have been reasonably incurred by the complainant for, or
in connection with, the institution and prosecution of
such proceedings shall be assessed against the per-
son committing such violation. The Commission
shall determine whether such costs and expenses
were reasonably incurred by the complainant without
reference to whether the Secretary also participated
in the proceeding.

“(7) Expedited proceedings; judicial re-
view.—Proceedings under this subsection shall be
expedited by the Secretary and the Commission. Any
order issued by the Commission under this sub-
section shall be subject to judicial review in accord-
ance with section 106. Violations by any person of
paragraph (1) shall be subject to the provisions of
sections 108 and 110(a)(4).

“(8) Procedural rights.—The rights and
remedies provided for in this subsection may not be
waived by any agreement, policy, form, or condition
of employment, including by any pre-dispute arbitra-
tion agreement or collective bargaining agreement.

“(9) Savings.—Nothing in this subsection shall
be construed to diminish the rights, privileges, or
remedies of any miner or employee who exercises
rights under any Federal or State law or common
law, or under any collective bargaining agreement.”.

•HR 1579 IH
SEC. 402. PROTECTION FROM LOSS OF PAY.

Section 111 (30 U.S.C. 821) is amended to read as follows:

“SEC. 111. ENTITLEMENT OF MINERS.

“(a) Protection From Loss of Pay.—

“(1) Withdrawal Orders.—If a coal or other mine or area of such mine is closed by an order issued under section 103, 104, 107, 108, or 110, all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. If a coal or other mine or area of such mine is closed by an order issued under section 104, 107 (in connection with a citation), 108, or 110, all miners who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay and in accordance with their regular
schedules of pay for the entire period for which they
are idled, not to exceed 60 days.

“(2) Closure in advance of order.—If the
Secretary finds that such mine or such area of a
mine was closed by the operator in anticipation of
the issuance of such an order, all miners who are
idled by such closure shall be entitled to full com-
ensation by the operator at their regular rates of
pay and in accordance with their regular schedules
of pay, from the time of such closure until such time
as the Secretary authorizes reopening of such mine
or such area of the mine, not to exceed 60 days, ex-
cept where an operator promptly withdraws miners
upon discovery of a hazard, and notifies the Sec-
retary where required, and within the prescribed
time period.

“(3) Refusal to comply.—Whenever an op-
erator violates or fails or refuses to comply with any
order issued under section 103, 104, 107, 108, or
110, all miners employed at the affected mine who
would have been withdrawn from, or prevented from
entering, such mine or area thereof as a result of
such order shall be entitled to full compensation by
the operator at their regular rates of pay, in addi-
tion to pay received for work performed after such
order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated.

“(b) ENFORCEMENT.—

“(1) COMMISSION ORDERS.—The Commission shall have authority to order compensation due under this section upon the filing of a complaint by a miner or his representative and after opportunity for hearing on the record subject to section 554 of title 5, United States Code. Whenever the Commission issues an order sustaining the complaint under this subsection in whole or in part, the Commission shall award the complainant reasonable attorneys’ fees and costs.

“(2) FAILURE TO PAY COMPENSATION DUE.—Consistent with the authority of the Secretary to order miners withdrawn from a mine under this Act, the Secretary shall order a mine that has been subject to a withdrawal order under section 103, 104, 107, 108, or 110, and has reopened, to be closed again if compensation in accordance with the provisions of this section is not paid by the end of the next regularly scheduled payroll period following the lifting of a withdrawal order.
“(c) Expedited Review.—If an order is issued which results in payments to miners under subsection (a), the operators shall have the right to an expedited review before the Commission using timelines and procedures established pursuant to section 316(b)(2)(G)(ii).”.

SEC. 403. UNDERGROUND COAL MINER EMPLOYMENT STANDARD FOR MINES PLACED IN PATTERN STATUS.

The Federal Mine Safety and Health Act of 1977 is further amended by adding at the end of title I the following:

“SEC. 117. UNDERGROUND COAL MINER EMPLOYMENT STANDARD FOR MINES PLACED IN PATTERN STATUS.

“(a) In General.—For purposes of ensuring miners’ health and safety and miners’ right to raise concerns thereof, when an underground coal mine is placed in pattern status pursuant to section 104(e), and for 3 years after such placement, the operator of such mine may not discharge or constructively discharge a miner who is paid on an hourly basis and employed at such underground coal mine without reasonable job-related grounds based on a failure to satisfactorily perform job duties, including compliance with this Act and with mandatory health and safety standards or other regulations issued under this Act,
or other legitimate business reason, where the miner has
completed the employer’s probationary period, not to ex-
ceed 6 months.

“(b) Cause of Action.—A miner aggrieved by a
violation of subsection (a) may file a complaint in Federal
district court in the district where the mine is located
within 1 year of such violation.

“(c) Remedies.—In an action under subsection (b),
for any prevailing miner the court shall take affirmative
action to further the purposes of the Act, which may in-
clude reinstatement with backpay and compensatory dam-
ages. Reasonable attorneys’ fees and costs shall be award-
ed to any prevailing miner under this section.

“(d) Pre-Dispute Waiver Prohibited.—A min-
er’s right to a cause of action under this section may not
be waived with respect to disputes that have not arisen
as of the time of the waiver.

“(e) Construction.—Nothing in this section shall
be construed to limit the availability of rights and rem-
edies of miners under any other State or Federal law or
a collective bargaining agreement.”.
TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

SEC. 501. PRE-SHIFT REVIEW OF MINE CONDITIONS.

Section 303(d) (30 U.S.C. 863(d)) is amended by adding at the end the following:

“(3)(A) Not later than 30 days after the issuance of the interim final rules promulgated under subparagraph (B), each operator of an underground coal mine shall implement a communication program at the underground coal mine to ensure that each miner is orally briefed on and made aware of, prior to traveling to or arriving at the miner’s work area and commencing the miner’s assigned tasks—

“(i) any conditions that are hazardous, or that violate a mandatory health or safety standard or a plan approved under this Act, where the miner is expected to work or travel; and

“(ii) the general conditions of that miner’s assigned working section or other area where the miner is expected to work or travel.

“(B) Not later than 180 days after the date of enactment of the Robert C. Byrd Mine Safety Protection Act of 2011, the Secretary shall promulgate interim final rules implementing the requirements of subparagraph (A). The
Secretary shall issue a final rule not later than 2 years after such date.”.

**SEC. 502. ROCK DUST STANDARDS.**

(a) **STANDARDS.—** Section 304(d) (30 U.S.C. 864(d)) is amended—

(1) by striking “Where rock” and inserting the following: “ROCK DUST.—

“(1) IN GENERAL.—Where rock”;

(2) by striking “65 per centum” and all that follows and inserting “80 percent. Where methane is present in any ventilating current, the percentage of incombustible content of such combined dusts shall be increased 0.4 percent for each 0.1 percent of methane.”; and

(3) by adding at the end the following:

“(2) **METHODS OF MEASUREMENT.—**

“(A) IN GENERAL.—Each operator of an underground coal mine shall take accurate and representative samples which shall measure the total incombustible content of combined coal dust, rock dust, and other dust in such mine to ensure that the coal dust is kept below explosive levels through the appropriate application of rock dust.”
“(B) DIRECT READING MONITORS.—By the later of June 15, 2011, or the date that is 30 days after the Secretary of Health and Human Services has certified in writing that direct reading monitors are commercially available to measure total incombustible content in samples of combined coal dust, rock dust, and other dust and the Department of Labor has approved such monitors for use in underground coal mines, the Secretary shall require operators to take such dust samples using direct reading monitors.

“(C) REGULATIONS.—The Secretary shall, not later than 180 days after the date of enactment of the Robert C. Byrd Mine Safety Protection Act of 2011, promulgate an interim final rule that prescribes methods for operator sampling of total incombustible content in samples of combined coal dust, rock dust, and other dust using direct reading monitors and includes requirements for locations, methods, and intervals for mandatory operator sampling.

“(D) RECOMMENDATIONS.—Not later than 1 year after the date of enactment of the Robert C. Byrd Mine Safety Protection Act of
2011, the Secretary of Health and Human Services shall, based upon the latest research, recommend to the Secretary of Labor any revisions to the mandatory operator sampling locations, methods, and intervals included in the interim final rule described in subparagraph (B) that may be warranted in light of such research.

“(3) LIMITATION.—Until a final rule is issued by the Secretary under section 502(b)(2) of the Robert C. Byrd Mine Safety Protection Act of 2011, any measurement taken by a direct reading monitor described in paragraph (2) shall not be admissible to establish a violation in an enforcement action under this Act.”

(b) REPORT AND RULEMAKING AUTHORITY.—

(1) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall prepare and submit, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, a report—
(A) regarding whether any direct reading monitor described in section 304(d)(2)(B) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 864(d)(2)(B)) is sufficiently reliable and accurate for the enforcement of the mandatory health or safety standards by the Secretary of Labor under such Act, and whether additional improvement to such direct reading monitor, or additional verification regarding reliability and accuracy, would be needed for enforcement purposes; and

(B) identifying any limitations or impediments for such use in underground coal mines.

(2) AUTHORITY.—If the Secretary determines that such direct reading monitor is sufficiently reliable and accurate for the enforcement of mandatory health and safety standards under the Federal Mines Safety and Health Act of 1977 following such report or any update thereto, the Secretary shall promulgate a final rule authorizing the use of such direct reading monitor for purposes of compliance and enforcement, in addition to other methods for determining total incombustible content. Such rule shall specify mandatory operator sampling locations, methods, and intervals.
SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.

Section 317 (30 U.S.C. 877) is amended by adding at the end the following:

“(u) ATMOSPHERIC MONITORING SYSTEMS.—

“(1) NIOSH RECOMMENDATIONS.—Not later than 1 year after the date of enactment of the Robert C. Byrd Mine Safety Protection Act of 2011, the Director of the National Institute for Occupational Safety and Health, acting through the Office of Mine Safety and Health Research, in consultation, including through technical working groups, with operators, vendors, State mine safety agencies, the Secretary, and labor representatives of miners, shall issue recommendations to the Secretary regarding—

“(A) how to ensure that atmospheric monitoring systems are utilized in the underground coal mining industry to maximize the health and safety of underground coal miners;

“(B) the implementation of redundant systems, such as the bundle tubing system, that can continuously monitor the mine atmosphere following incidents such as fires, explosions, entrapments, and inundations; and

“(C) other technologies available to conduct continuous atmospheric monitoring.
“(2) Atmospheric monitoring system regulations.—Not later than 1 year following the receipt of the recommendations described in paragraph (1), the Secretary shall promulgate regulations requiring that each operator of an underground coal mine install atmospheric monitoring systems, consistent with such recommendations, that—

“(A) protect miners where the miners normally work and travel;

“(B) provide real-time information regarding methane and carbon monoxide levels, and airflow direction, as appropriate, with sensing, annunciating, and recording capabilities; and

“(C) can, to the maximum extent practicable, withstand explosions and fires.”.

SEC. 504. TECHNOLOGY RELATED TO RESPIRABLE DUST.

Section 202(d) (30 U.S.C. 842(d)) is amended—

(1) by striking “of Health, Education, and Welfare”; and

(2) by striking the second sentence and inserting the following: “Not later than 2 years after the date of enactment of the Robert C. Byrd Mine Safety Protection Act of 2011, the Secretary shall promulgate final regulations that require operators, beginning on the date such regulations are issued, to
provide coal miners with the maximum feasible pro-
tection from respirable dust, including coal and silica
dust, that is achievable through environmental con-
trols, and that meet the applicable standards.”.

SEC. 505. REFRESHER TRAINING ON MINERS’ RIGHTS AND

RESPONSIBILITIES.

(a) In General.—Section 115(a)(3) (30 U.S.C.
825(a)(3)) is amended to read as follows:

“(3) all miners shall receive not less than 9
hours of refresher training not less frequently than
once every 12 months, and such training shall in-
clude one hour of training on the statutory rights
and responsibilities of miners and their representa-
tives under this Act and other applicable Federal
and State law, pursuant to a program of instruction
developed by the Secretary and delivered by an em-
ployee of the Administration or by a trainer ap-
proved by the Administration that is a party inde-
dependent from the operator;”.

(b) National Hazard Reporting Hotline.—Sec-

tion 115 (30 U.S.C. 825) is further amended—

(1) by redesignating subsections (c) through (e)
as subsections (d) through (f), respectively; and

(2) by inserting after subsection (b) the fol-

lowing:
“(c) Any health and safety training program of instruction provided under this section shall include distribution to miners of information regarding miners’ rights under the Act, as well as a toll-free hotline telephone number, which the Secretary shall maintain to receive complaints from miners and the public regarding hazardous conditions, discrimination, safety or health violations, or other mine safety or health concerns. Information regarding the hotline shall be provided in a portable, convenient format, such as a durable wallet card, to enable miners to keep the information on their person.”.

(c) Timing of Initial Statutory Rights Training.—Notwithstanding section 115 of the Federal Mine Safety and Health Act (as amended by subsection (a)) (30 U.S.C. 825) or the health and safety training program approved under such section, an operator shall ensure that all miners already employed by the operator on the date of enactment of this Act shall receive the one hour of statutory rights and responsibilities training described in section 115(a)(3) of such Act not later than 180 days after such date.

SEC. 506. AUTHORITY TO MANDATE ADDITIONAL TRAINING.

(a) In General.—Section 115 (30 U.S.C. 825) is further amended by redesignating subsections (e) and (f)
(as redesignated) as subsections (f) and (g) and inserting after subsection (d) (as redesignated) the following:

“(e) Authority to Mandate Additional Training.—

“(1) In general.—The Secretary is authorized to issue an order requiring that an operator of a coal or other mine provide additional training beyond what is otherwise required by law, and specifying the time within which such training shall be provided, if the Secretary finds that—

“(A)(i) a serious or fatal accident has occurred at such mine; or

“(ii) such mine has experienced accident and injury rates, citations for violations of this Act (including mandatory health or safety standards or regulations promulgated under this Act), citations for significant and substantial violations, or withdrawal orders issued under this Act at a rate above the average for mines of similar size and type; and

“(B) additional training would benefit the health and safety of miners at the mine.

“(2) Withdrawal order.—If the operator fails to provide training ordered under paragraph (1) within the specified time, the Secretary shall
issue an order requiring such operator to cause all
affected persons, except those persons referred to in
section 104(c), to be withdrawn, and to be prohib-
ited from entering such mine, until such operator
has provided such training.”.

(b) CONFORMING AMENDMENTS.—Section 104(g)(2)
(30 U.S.C. 814(g)(2)) is amended by striking “under
paragraph (1)” both places it appears and inserting
“under paragraph (1) or under section 115(e)”.

SEC. 507. BROOKWOOD-SAGO MINE SAFETY GRANTS.

Section 14(e)(2) of the Mine Improvement and New
is amended by inserting before the period “, and under-
ground mine rescue training activities which simulate
mine accident conditions”.

SEC. 508. CERTIFICATION OF PERSONNEL.

(a) IN GENERAL.—Title I is further amended by add-
ing at the end the following:

“SEC. 118. CERTIFICATION OF PERSONNEL.

“(a) Certification Required.—Any person who is
authorized or designated by the operator of a coal or other
mine to perform any duties or provide any training that
this Act, including a mandatory health or safety standard
or regulation promulgated pursuant to this Act, requires
to be performed or provided by a certified, registered,
qualified, or otherwise approved person, shall be permitted
to perform such duties or provide such training only if
such person has a current certification, registration, quali-
fication, or approval to perform such duties or provide
such training consistent with the requirements of this sec-
tion.

“(b) Establishment of Certification Require-
ments and Procedures.—

“(1) In general.—Not later than 1 year after
the date of enactment of the Robert C. Byrd Mine
Safety Protection Act of 2011, the Secretary shall
issue mandatory standards to establish—

“(A) requirements for such certification,
registration, qualification, or other approval, in-
cluding the experience, examinations, and ref-
ferences that may be required as appropriate;

“(B) time limits for such certifications and
procedures for obtaining and renewing such cer-
tification, registration, qualification, or other
approval; and

“(C) procedures and criteria for revoking
such certification, registration, qualification, or
other approval, including procedures that en-
sure that the Secretary (or a State agency, as
applicable) responds to requests for revocation
and that the names of individuals whose certification or other approval has been revoked are provided to and maintained by the Secretary, and are made available to appropriate State agencies through an electronic database.

“(2) COORDINATION WITH STATES.—In developing such standards, the Secretary shall consult with States that have miner certification programs to ensure effective coordination with existing State standards and requirements for certification. The standards required under paragraph (1) shall provide that the certification, registration, qualification, or other approval of the State in which the coal or other mine is located satisfies the requirement of subsection (a) if the State’s program of certification, registration, qualification, or other approval is no less stringent than the standards established by the Secretary under paragraph (1).

“(c) OPERATOR FEES FOR CERTIFICATION.—

“(1) ASSESSMENT AND COLLECTION.—Beginning 180 days after the date of enactment of the Robert C. Byrd Mine Safety Protection Act of 2011, the Secretary shall assess and collect fees, in accordance with this subsection, from each operator for each person certified under this section. Fees shall
be assessed and collected in amounts determined by
the Secretary as necessary to fund the certification
programs established under this section.

“(2) Use.—Amounts collected as provided in
paragraph (1) shall only be available to the Secre-
try, as provided in paragraph (3), for making ex-
penditures to carry out the certification programs
established under this subsection.

“(3) Authorization of Appropriations.—In
addition to funds authorized to be appropriated
under section 114, there is authorized to be appro-
priated to the Secretary for each fiscal year in which
fees are collected under paragraph (1) an amount
equal to the total amount of fees collected under
paragraph (1) during that fiscal year. Such amounts
are authorized to remain available until expended. If
on the first day of a fiscal year a regular approipa-
tion to the Administration has not been enacted, the
Administration shall continue to collect fees (as off-
setting collections) under this subsection at the rate
in effect during the preceding fiscal year, until 5
days after the date such regular appropriation is en-
acted.

“(4) Collecting and Crediting of Fees.—
Fees authorized and collected under this subsection
shall be deposited and credited as offsetting collections to the account providing appropriations to the Mine Safety and Health Administration and shall not be collected for any fiscal year except to the extent and in the amount provided in advance in appropriation Acts.

“(d) Citation; Withdrawal Order.—Any operator who permits a person to perform any of the health or safety related functions described in subsection (a) without a current certification which meets the requirements of this section shall be considered to have committed an unwarrantable failure under section 104(d)(1), and the Secretary shall issue an order requiring that the miner be withdrawn or reassigned to duties that do not require such certification.”.

(b) Conforming Amendments.—Section 318 (30 U.S.C. 878) is amended—

(1) by striking subsections (a) and (b);

(2) in subsection (c), by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(3) in subsection (g), by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and
(4) by redesignating subsections (c) through (j) as paragraphs (1) through (8), respectively.

**TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS**

**SEC. 601. DEFINITIONS.**

(a) **Definition of Operator.**—Section 3(d) is amended to read as follows:

“(d) ‘operator’ means—

“(1) any owner, lessee, or other person that—

“(A) operates or supervises a coal or other mine; or

“(B) controls such mine by making or having the authority to make management or operational decisions that affect, directly or indirectly, the health or safety at such mine; or

“(2) any independent contractor performing services or construction at such mine;”.

(b) **Definition of Agent.**—Section 3(e) (30 U.S.C. 802(e)) is amended by striking “the miners” and inserting “any miner”.

(e) **Definition of Miner.**—Section 3(g) (30 U.S.C. 802(g)) is amended by inserting after “or other mine” the following: “, and includes any individual who is not curr-
rently working in a coal or other mine but would be cur-
rently working in such mine, but for an accident in such
mine”.

(d) Definition of Significant and Substantial
Violations.—Section 3 (30 U.S.C. 802) is further
amended—

(1) in subsection (m), by striking “and” after
the semicolon;

(2) in subsection (n), by striking the period at
the end and inserting a semicolon;

(3) in subsection (o), by striking the period at
the end and inserting “; and”; and

(4) by adding at the end the following:

“(p) ‘significant and substantial violation’
means a violation of this Act, including any manda-
tory health or safety standard or regulation promul-
gated under this Act, that is of such nature as could
significantly and substantially contribute to the
cause and effect of a coal or other mine safety or
health hazard as described in section 104(d).”.

SEC. 602. ASSISTANCE TO STATES.

Section 503 (30 U.S.C. 953(a)) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1),
by striking “, in coordination with the Sec-
retary of Health, Education, and Welfare and
the Secretary of the Interior,”;

(B) in paragraph (2), by striking “and”
after the semicolon;

(C) in paragraph (3), by striking the pe-
riod and inserting “; and”; and

(D) by adding at the end the following:
“(4) to assist such State in developing and im-
plementing any certification program for coal or
other mines required for compliance with section
118.”; and

(2) in subsection (h), by striking “$3,000,000
for fiscal year 1970, and $10,000,000 annually in
each succeeding fiscal year” and inserting
“$20,000,000 for each fiscal year”.

SEC. 603. BLACK LUNG MEDICAL REPORTS.

Title IV of the Black Lung Benefits Act (30 U.S.C.
901 et seq.) is amended by adding at the end the fol-
lowing:

“SEC. 435. MEDICAL REPORTS.

“In any claim for benefits for a miner under this title,
an operator that requires a miner to submit to a medical
examination regarding the miner’s respiratory or pul-
monary condition shall, not later than 14 days after the
miner has been examined, deliver to the claimant a com-
plete copy of the examining physician’s report. The examining physician’s report shall be in writing and shall set out in detail the examiner’s findings, including any diagnoses and conclusions and the results of any diagnostic imaging techniques and tests that were performed on the miner.”.

SEC. 604. AUTHORIZATION OF COOPERATIVE AGREEMENTS BY NIOSH OFFICE OF MINE SAFETY AND HEALTH.

Section 22(h)(3) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671(h)(3)) is amended—

(1) in subparagraph (B), by striking “and” at the end;

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following:

“(C) enter into cooperative agreements or contracts with international institutions and private entities to improve mine safety and health through the development and evaluation of new interventions; and”.

SEC. 605. RULES OF APPLICATION TO CERTAIN MINES.

(a) INAPPLICABILITY OF AMENDMENTS TO CERTAIN MINES.—
(1) **SPECIAL RULE.**—Subject to paragraph (2), the amendments made by this Act shall not apply to—

(A) surface mines, except for surface facilities or impoundments physically connected to—

(i) underground coal or underground metal mines; or

(ii) other underground mines which are gassy mines; or

(B) underground mines which are not coal, metal, or gassy mines.

(2) **EXCEPTIONS.**—Notwithstanding paragraph (1), the amendments made by sections 101, 301(c), 303(a)(4), 304, 305(a), 401, 601, 602, and 603 shall apply to the mines described in subparagraphs (A) and (B) of paragraph (1).

(3) **DEFINITION.**—For purposes of this section, the term "gassy mine" means a mine, tunnel, or other underground workings in which a flammable mixture has been ignited, or has been found with a permissible flame safety lamp, or has been determined by air analysis to contain 0.25 percent or more (by volume) of methane in any open workings when tested at a point not less than 12 inches from the roof, face of rib.
(b) Rule of Construction Relating to Applicability of Certain Provisions to Surface Mines.—Title I is further amended by adding at the end the following:

"SEC. 119. APPLICABILITY OF CERTAIN PROVISIONS TO CERTAIN MINES.

"(a) Rule of Construction.—Subject to subsection (c), with respect to the mines described in subsection (b), this Act as in effect on the date before the date of enactment of the Robert C. Byrd Mine Safety Protection Act of 2011, shall continue to apply to such mines as then in effect.

"(b) Applicable Mines.—

"(1) In general.—The mines referred to in subsection (a) are—

"(A) surface mines, except for surface facilities or impoundments physically connected to—

"(i) underground coal or underground metal mines; or

"(ii) other underground mines which are gassy mines; and

"(B) underground mines which are not coal, metal, or gassy mines."
“(2) DEFINITION.—As used in paragraph (1),
the term ‘gassy mine’ means a mine, tunnel, or
other underground workings in which a flammable
mixture has been ignited, or has been found with a
permissible flame safety lamp, or has been deter-
mined by air analysis to contain 0.25 percent or
more (by volume) of methane in any open workings
when tested at a point not less than 12 inches from
the roof, face of rib.

“(c) EXCEPTIONS.—Notwithstanding subsection (a),
the amendments made by sections 101, 301(c), 303(a)(4),
304, 305(a), 401, 601, 602, and 603 of the Robert C.
Byrd Mine Safety Protection Act of 2011 shall apply to
the mines described in subsection (b).

“(d) SAVINGS PROVISION.—Nothing in this section
shall impact the authority of the Secretary to promulgate
or modify regulations pursuant to the authority under any
such provisions as in effect on the date before the date
of enactment of the Robert C. Byrd Mine Safety Protec-
tion Act of 2011, or shall be construed to alter or modify
precedent with regards to the Commission or courts.”.