

109TH CONGRESS  
1ST SESSION

# H. R. 1367

To amend title 11 of the United States Code to protecting the labor rights of current and former employees of coal industry employers that are debtors under such title.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mr. BOUCHER (for himself, Mr. COSTELLO, Mr. RAHALL, and Mr. STRICKLAND) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 11 of the United States Code to protecting the labor rights of current and former employees of coal industry employers that are debtors under such title.

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

3       **SECTION 1. FINDINGS; SENSE OF THE CONGRESS.**

4       (a) FINDINGS.—The Congress finds the following:

5               (1) The workers who mine American coal have  
6       fueled nearly 2 centuries of industrial development,  
7       and are crucial to the Nation's economic well-being.

8               (2) The Federal Government has had a central  
9       role with regard to both the coal industry and the

1 health and welfare of coal miners. Both the Con-  
2 gress and the executive branch have frequently inter-  
3 vened in the coal industry to protect the interests of  
4 both coal miners and the industry itself. For exam-  
5 ple—

6 (A) the Congress enacted legislation—

7 (i) regulating the coal industry to pro-  
8 tect the health and safety of coal miners;  
9 and

10 (ii) guaranteeing health care for coal  
11 miners and their families, and providing  
12 benefits to victims of black lung disease;  
13 and

14 (B) the Executive Branch has seized the  
15 Nation's coal mines for the purpose of negoti-  
16 ating a collective bargaining agreement on the  
17 mine owners' behalf, has otherwise frequently  
18 intervened in collective bargaining in the coal  
19 industry, and has created numerous panels and  
20 commissions to study problems and issues  
21 unique to coal mining communities and the coal  
22 Industry.

23 (3) Because coal is an abundant domestic re-  
24 source, a strong coal industry serves to reduce  
25 American dependence upon foreign oil and is vital

1 both to commerce and to the defense of the United  
2 States.

3 (4) As the result of the abuse of the provisions  
4 of bankruptcy law, certain coal industry employers  
5 have been able to gain unfair advantages over their  
6 competitors, primarily at the expense of their em-  
7 ployees.

8 (b) SENSE OF THE CONGRESS.— It is the sense of  
9 the Congress that the abuse of the provisions of bank-  
10 ruptcy law by certain coal industry employers is damaging  
11 to the economic health of the United States, as well as  
12 to the employees who are directly harmed by such legal  
13 abuses.

14 **SEC. 2. AMENDMENTS TO TITLE 11 OF THE UNITED STATES**  
15 **CODE.**

16 Title 11 of the United States Code is amended—

17 (1) in section 101 by inserting after paragraph  
18 (5) the following:

19 “(5A) COAL INDUSTRY EMPLOYER.—The term  
20 ‘coal industry employer’ means an employer in the  
21 coal industry, and all members of the employer’s  
22 controlled group of corporations and all trades and  
23 businesses under common control (within the mean-  
24 ing of sections 52(a) and 52(b) of the Internal Rev-  
25 enue Code of 1986).

1           “(5B) COVERED FACILITY OF A COAL INDUS-  
2           TRY EMPLOYER.—The term ‘covered facility of a  
3           coal industry employer’ means any facility owned or  
4           operated by a coal industry employer that is involved  
5           in the production, processing, or transportation of  
6           coal.”;

7           (2) in section 363 by adding at the end the fol-  
8           lowing:

9           “(p) Notwithstanding subsection (f), a covered facil-  
10          ity of a debtor that is coal industry employer that is sold  
11          by the trustee shall remain subject to the labor rights of  
12          the current and former employees of the debtor. For pur-  
13          poses of this subsection, the term ‘labor rights’ means—

14               “(1) if the employees at a covered facility of a  
15              coal industry employer to be sold are covered under  
16              the terms of a current collective bargaining agree-  
17              ment (other than an agreement that has been re-  
18              jected pursuant to the terms of sections 365 or  
19              1113), the obligations of the debtor arising under  
20              that agreement or under the National Labor Rela-  
21              tions Act; or

22               “(2) if the employees at a covered facility of a  
23              coal industry employer to be sold are represented by  
24              a labor organization but are not covered under the  
25              terms of an current collective bargaining agreement,

1 the obligations of the debtor arising under the Na-  
2 tional Labor Relations Act.

3 Furthermore, in the case of the sale of a covered facility  
4 of a coal industry employer at which employees are rep-  
5 resented by a labor organization, such labor organization  
6 shall be conclusively presumed to enjoy majority support  
7 for a period of 1 year from the date of such sale, or such  
8 longer period as required by applicable nonbankruptcy  
9 law.”;

10 (3) in section 1113 by adding at the end the  
11 following:

12 “(g)(1) Notwithstanding any other provision of this  
13 section, no application for the rejection of a collective bar-  
14 gaining agreement between a coal industry employer relat-  
15 ing to a covered facility of such coal industry employer  
16 shall be approved unless the following additional condi-  
17 tions are met:

18 “(A) The information provided pursuant to sub-  
19 section (b)(1)(B) has been personally verified by the  
20 principal officers (including the principal executive  
21 officer and principal financial officer) of the debtor  
22 under penalty of perjury.

23 “(B) As soon as practicable after the filing of  
24 an application under this section, the Secretary of  
25 Labor shall submit a list of five disinterested indi-

viduals who are qualified and willing to serve as trustees in the case. The United States trustee shall appoint one of such individuals to serve as trustee in the case.

“(C) The court finds that the executive management of the debtor has not received any wage increases or bonuses during the period that the case is pending under this title, or within the year preceding the filing of the petition, or that any such wage increases or bonuses have been disgorged and refunded to the debtor.

“(D) The court finds that the proposal made pursuant to subsection (b)(1)(A)—

“(i) does not purport to relieve the debtor, or the purchaser of a covered facility of a coal industry employer, from any obligations otherwise arising under the National Labor Relations Act;

“(ii) provides that the purchaser of any facility owned by the debtor is to be considered a ‘successor’ under the National Labor Relations Act;

“(iii) does not abridge labor rights, as defined in section 363(p); and

1           “(iv) provides that existing employees re-  
2           tain all noneconomic employment rights pro-  
3           vided under the terms of the collective bar-  
4           gaining agreement (including the right to not  
5           be terminated without cause and any recall  
6           rights following a layoff), both with regard to  
7           the debtor and the purchaser of a covered facil-  
8           ity of a coal industry employer.

9           “(2) Any obligations arising under the terms of a col-  
10          lective bargaining agreement prior to the entry of relief  
11          under this section shall be secured by a lien on all of the  
12          assets of the debtor.”; and

13           (4) in section 1114 by adding the following at  
14          the end:

15          “(m) If the court enters an order approving an appli-  
16          cation for the modification of retiree benefits owed by a  
17          coal industry employer relating to a covered facility of  
18          such coal industry employer, all members of the debtor’s  
19          controlled group of corporations and all trades and busi-  
20          nesses under common control (within the meaning of sec-  
21          tions 52(a) and 52(b) of the Internal Revenue Code of  
22          1986) shall be jointly and severally liable for all damages  
23          arising as the result of the entry of such order, and all  
24          such claims shall be entitled to priority pursuant to section  
25          507(a)(1).”.

1 **SEC. 3. EFFECTIVE DATE AND APPLICATION OF AMEND-**  
2 **MENTS.**

3       This Act and the amendments made by this Act shall  
4 take effect on the date of the enactment of this Act, and  
5 shall apply with respect to cases commenced under title  
6 11 of the United States Code before, on, or after such  
7 date.

