

111TH CONGRESS
2D SESSION

S. 3671

To improve compliance with mine and occupational safety and health laws, empower workers to raise safety concerns, prevent future mine and other workplace tragedies, establish rights of families of victims of workplace accidents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 2010

Mr. ROCKEFELLER (for himself and Mr. GOODWIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To improve compliance with mine and occupational safety and health laws, empower workers to raise safety concerns, prevent future mine and other workplace tragedies, establish rights of families of victims of workplace accidents, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “The Robert C. Byrd Mine and Workplace Safety and
6 Health Act of 2010”.

- 1 (b) TABLE OF CONTENTS.—The table of contents for
 2 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, investigations, and recordkeeping.

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

- Sec. 201. Significant and substantial violations.
 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.

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—WORKER RIGHTS AND PROTECTIONS

- Sec. 401. Protection from retaliation.
 Sec. 402. Protection from loss of pay.

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 miner rights and responsibilities.
 Sec. 506. Authority to mandate additional training.
 Sec. 507. Certification of personnel.

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

- Sec. 601. Definitions.
 Sec. 602. Assistance to States.
 Sec. 603. Black lung medical reports.
 Sec. 604. Study on workforce needs.
 Sec. 605. Mine Safety and Health Administration strategic planning.

TITLE VII—AMENDMENTS TO THE OCCUPATIONAL SAFETY AND
HEALTH ACT

Sec. 701. Enhanced protections from retaliation.

Sec. 702. Victims' rights.

Sec. 703. Correction of serious, willful, or repeated violations pending contest
and procedures for a stay.

Sec. 704. Conforming amendments.

Sec. 705. Civil penalties.

Sec. 706. Criminal penalties.

Sec. 707. Penalties.

Sec. 708. Effective date.

1 SEC. 2. REFERENCES.

2 Except in title VII and as otherwise expressly pro-
3 vided, whenever in this Act an amendment is expressed
4 as an amendment to a section or other provision, the ref-
5 erence shall be considered to be made to a section or other
6 provision of the Federal Mine Safety and Health Act of
7 1977 (30 U.S.C. 801 et seq.).

8 TITLE I—ADDITIONAL INSPEC-
9 TION AND INVESTIGATION
10 AUTHORITY

11 SEC. 101. INDEPENDENT ACCIDENT INVESTIGATIONS.

12 (a) IN GENERAL.—Section 103(b) (30 U.S.C.
13 813(b)) is amended by striking “(b) For the purpose” and
14 inserting the following:

15 “(b) ACCIDENT INVESTIGATIONS.—

16 “(1) IN GENERAL.—For all accident investiga-
17 tions under this Act, the Secretary shall—

18 “(A) determine why the accident occurred;

19 “(B) determine whether there were viola-
20 tions of law, mandatory health and safety

standards, or other requirements, and if such violations are found, issue citations and penalties, and in cases involving possible criminal actions, refer such matters 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 sub-

1 paragraph (A), the Secretary of Health
2 and Human Services shall appoint 5 mem-
3 bers for the Panel required under this
4 paragraph from among individuals who
5 have expertise in accident investigations,
6 mine engineering, or mine safety and
7 health that is relevant to the particular in-
8 vestigation.

9 “(ii) CHAIRPERSON.—The Panel shall
10 include, and be chaired by, a representative
11 from the Office of Mine Safety and Health
12 Research, of the National Institute for Oc-
13 cupational Safety and Health (referred to
14 in this subsection as NIOSH).

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

22 “(iv) COMPOSITION.—The Secretary
23 of Health and Human Services shall ap-
24 point as members of the Panel—

1 “(I) 1 operator of a mine or indi-
2 vidual representing mine operators,
3 and

4 “(II) 1 member of a labor orga-
5 nization or other representative of
6 miners,

7 and may not appoint more than 1 of either
8 such individuals as members of the Panel.

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

24 “(vi) COMPENSATION AND TRAVEL.—
25 All members of the Panel who are officers

1 or employees of the United States shall
2 serve without compensation in addition to
3 that received for their services as officers
4 or employees of the United States. Each
5 Panel member who is not an officer or em-
6 ployee of the United States shall be com-
7 pensated at a rate equal to the daily equiv-
8 alent of the annual rate of basic pay pre-
9 scribed for level IV of the Executive Sched-
10 ule under section 5315 of title 5, United
11 States Code, for each day (including travel
12 time) during which such member is en-
13 gaged in the performance of duties of the
14 Panel. The members of the Panel shall be
15 allowed travel expenses, including per diem
16 in lieu of subsistence, at rates authorized
17 for employees of agencies under subchapter
18 1 of chapter 57 of title 5, United States
19 Code, while away from their homes or reg-
20 ular places of business in the performance
21 of services for the Panel.

22 “(C) DUTIES.—The Panel shall—

23 “(i) assess and identify any factors
24 that caused the accident, including defi-
25 ciencies in safety management systems,

1 regulations, enforcement, industry prac-
2 tices or guidelines, or organizational fail-
3 ures;

4 “(ii) identify and evaluate any con-
5 tributing actions or inactions of—

6 “(I) the operator;

7 “(II) any contractors or other
8 persons engaged in mining-related
9 functions at the site;

10 “(III) any State agency with
11 oversight responsibilities;

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

14 “(V) any other person or entity
15 (including equipment manufacturers);

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

19 “(iv) prepare a report that—

20 “(I) includes the findings regard-
21 ing the causal factors described in
22 clauses (i) and (ii);

23 “(II) identifies any strengths and
24 weaknesses in the Secretary’s inves-
25 tigation; 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.

1 “(E) MEMORANDUM OF UNDER-
2 STANDING.—Not later than 90 days after the
3 date of enactment of the Robert C. Byrd Mine
4 and Workplace Safety and Health Act of 2010,
5 the Secretary of Labor and the Secretary of
6 Health and Human Services shall conclude and
7 publically issue a memorandum of under-
8 standing that—

9 “(i) outlines administrative arrange-
10 ments which will facilitate a coordination
11 of efforts between the Secretary of Labor
12 and the Panel, ensures that the Secretary’s
13 investigation under paragraph (1) is not
14 delayed or otherwise compromised by the
15 activities of the Panel, and establishes a
16 process to resolve any conflicts between
17 such investigations;

18 “(ii) ensures that Panel members or
19 staff will be able to participate in inves-
20 tigation activities (such as mine inspections
21 and interviews) related to the Secretary of
22 Labor’s investigation and will have full ac-
23 cess to documents that are assembled or
24 produced in such investigation, and en-
25 sures that the Secretary of Labor will

1 make all of the authority available to such
2 Secretary under this section, including sub-
3 poena authority, to obtain information and
4 witnesses which may be requested by such
5 Panel; and

6 “(iii) establishes such other arrange-
7 ments as are necessary to implement this
8 paragraph.

9 “(F) PROCEDURES.—Not later than 90
10 days after the date of enactment of the Robert
11 C. Byrd Mine and Workplace Safety and
12 Health Act of 2010, the Secretary of Health
13 and Human Services shall establish procedures
14 to ensure the consistency and effectiveness of
15 Panel investigations. In establishing such proce-
16 dures, such Secretary shall consult with inde-
17 pendent safety investigation agencies, sectors of
18 the mining industry, representatives of miners,
19 families of miners involved in fatal accidents,
20 State mine safety agencies, and mine rescue or-
21 ganizations. Such procedures shall include—

22 “(i) authority for the Panel to use evi-
23 dence, samples, interviews, data, analyses,
24 findings, or other information gathered by

1 the Secretary of Labor, as the Panel deter-
2 mines valid;

3 “(ii) provisions to ensure confiden-
4 tiality if requested by any witness, to the
5 extent permitted by law, and prevent con-
6 flicts of interest in witness representation;
7 and

8 “(iii) provisions for preservation of
9 public access to the Panel’s records
10 through the Secretary of Health and
11 Human Services.

12 “(G) AUTHORIZATION OF APPROPRIA-
13 TIONS.—There is authorized to be appropriated
14 to carry out this subsection such sums as may
15 be necessary.

16 “(3) POWERS AND PROCESSES.—For the pur-
17 pose”.

18 (b) REPORTING REQUIREMENTS.—Section 511(a)
19 (30 U.S.C. 958(a)) is amended by inserting after “501,”
20 the following: “the status of implementation of rec-
21 ommendations from each independent investigation panel
22 under section 103(b) received in the preceding 5 years.”.

1 **SEC. 102. SUBPOENA AUTHORITY AND MINER RIGHTS DUR-**
2 **ING INSPECTIONS AND INVESTIGATIONS.**

3 Section 103(b) (as amended by section 101) (30
4 U.S.C. 813(b)) is further amended by adding at the end
5 the following:

6 “(4) **ADDITIONAL POWERS.**—For the purpose
7 of enabling the Secretary to perform any of the
8 functions under this Act, the Secretary or the Sec-
9 retary’s designee, may sign and issue subpoenas for
10 the attendance and testimony of witnesses and the
11 production of information, including all relevant
12 data, papers, books, documents, and items of phys-
13 ical evidence, and administer oaths. Witnesses sum-
14 moned shall be paid the same fees that are paid wit-
15 nesses in the courts of the United States. In car-
16 rying out inspections and investigations under this
17 subsection, authorized representatives of the Sec-
18 retary and attorneys representing the Secretary are
19 authorized to question any individual privately.
20 Under this section, any individual who is willing to
21 speak with or provide a statement to such author-
22 ized representatives or attorneys representing the
23 Secretary may do so without the presence, involve-
24 ment, or knowledge of the operator or the operator’s
25 agents or attorneys. The Secretary shall keep the
26 identity of an individual providing such a statement

1 confidential to the extent permitted by law. Nothing
 2 in this paragraph prevents any individual from being
 3 represented by that individual's personal attorney.".

4 **SEC. 103. DESIGNATION OF MINER REPRESENTATIVE.**

5 Section 103(f) (30 U.S.C. 813(f)) is amended by in-
 6 serting before the last sentence the following: "If any
 7 miner is entrapped or otherwise prevented as the result
 8 of an accident in such mine from designating such a rep-
 9 resentative directly, such miner's closest relative may act
 10 on behalf of such miner in designating such a representa-
 11 tive. If any miner is not currently working in such mine
 12 as the result of an accident in such mine, but would be
 13 currently working in such mine but for such accident, such
 14 miner may designate such a representative.".

15 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**
 16 **SPECTIONS, INVESTIGATIONS, AND RECORD-**
 17 **KEEPING.**

18 (a) HOURS OF INSPECTIONS.—Section 103(a) (30
 19 U.S.C. 813(a)) is amended by inserting after the third
 20 sentence the following: "Such inspections shall be con-
 21 ducted during the various shifts and days of the week dur-
 22 ing which miners are normally present in the mine to en-
 23 sure that the protections of this Act are afforded to all
 24 miners working all shifts. If an inspection of a working
 25 section of a mine occurs during a shift on which a mecha-

1 nized mining unit is producing, or customarily produces,
2 coal on such section, then such inspection shall be con-
3 ducted while such unit is producing coal at a rate that
4 is reasonably consistent with the average rate of produc-
5 tion at the mine during the previous quarter.”

6 (b) CONFLICT OF INTEREST IN THE REPRESENTA-
7 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) is
8 amended by adding at the end the following: “During in-
9 spections and investigations under this section, and during
10 any litigation under this Act, no attorney shall represent
11 or purport to represent both the operator of a coal or other
12 mine and any other individual, unless such individual has
13 knowingly and voluntarily waived all actual and reasonably
14 foreseeable conflicts of interest resulting from such rep-
15 resentation. The Secretary is authorized to take such ac-
16 tions as the Secretary considers appropriate to ascertain
17 whether such individual has knowingly and voluntarily
18 waived all such conflicts of interest. If the Secretary finds
19 that such an individual cannot be represented adequately
20 by such an attorney due to such conflicts of interest, the
21 Secretary may petition the appropriate United States Dis-
22 trict Court which shall have jurisdiction to disqualify such
23 attorney as counsel to such individual in the matter. The
24 Secretary may make such a motion as part of an ongoing
25 related civil action or as a miscellaneous action.”.

1 (c) INJURY AND ILLNESS REPORTING.—Section
2 103(d) (30 U.S.C. 813(d)) is amended by striking the last
3 sentence and inserting the following: “The records to be
4 kept and made available by the operator of the mine shall
5 include man-hours worked and occupational injuries and
6 illnesses, and shall be maintained separately for each mine
7 and be reported at a frequency determined by the Sec-
8 retary, but at least annually. Operators shall be respon-
9 sible for reporting on all miners working at such mine re-
10 gardless of their employer, except that independent con-
11 tractors (within the meaning of section 3(d)) shall only
12 be responsible for reporting on miners in their employ or
13 under their direction or authority.”.

14 (d) ORDERS FOLLOWING AN ACCIDENT.—Section
15 103(k) (30 U.S.C. 813(k)) is amended by striking “, when
16 present,”.

17 (e) ELECTRONIC DATABASE.—Section 103 (30
18 U.S.C. 813) is amended by adding at the end the fol-
19 lowing:

20 “(l) The Secretary shall establish and maintain a
21 publicly available electronic database containing current
22 and historical data on the safety records of each coal or
23 other mine. Such database shall be user-friendly and
24 searchable, and shall have the ability to provide aggregate
25 data for each mine, each operator, and each controller of

1 a mine and the ability to compare safety data between
2 mines, operators, and controllers.”.

3 (f) OUTSIDE EXPERTS IN INVESTIGATIONS.—Section
4 112 (30 U.S.C. 822) is amended—

5 (1) by striking “Except as provided” and in-
6 serting the following:

7 “(a) CIVIL LITIGATION REPRESENTATION.—Except
8 as provided”; and

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

10 “(b) MINING EXPERTS IN INVESTIGATIONS.—The
11 Attorney General shall designate 1 or more full-time em-
12 ployees with expertise in the mining industry to coordinate
13 with the Department of Labor and assist United States
14 attorneys in the investigation and prosecution of criminal
15 violations under this Act.”.

16 **TITLE II—ENHANCED** 17 **ENFORCEMENT AUTHORITY**

18 **SEC. 201. SIGNIFICANT AND SUBSTANTIAL VIOLATIONS.**

19 Section 104(d)(1) (30 U.S.C. 814(d)(1)) is amend-
20 ed—

21 (1) in the first sentence—

22 (A) by striking “any mandatory health or
23 safety standard” and inserting “any provision
24 of this Act, including any mandatory health or

1 safety standard or regulation promulgated
2 under this Act”; and

3 (B) by striking “such mandatory health or
4 safety standards” and inserting “such provi-
5 sions, regulations, or mandatory health or safe-
6 ty standards”;

7 (2) in the second sentence, by striking “any
8 mandatory health or safety standard” and inserting
9 “any provision of this Act, including any mandatory
10 health or safety standard or regulation promulgated
11 under this Act,”; and

12 (3) by inserting after the first sentence the fol-
13 lowing: “For purposes of this Act, a violation of a
14 provision of this Act, including any mandatory
15 health or safety standard or regulation promulgated
16 under this Act, is of such nature as could signifi-
17 cantly and substantially contribute to the cause and
18 effect of a safety or health hazard if there is a rea-
19 sonable possibility that such violation could result in
20 injury, illness, or death.”.

21 **SEC. 202. A PATTERN OF RECURRING NONCOMPLIANCE OR**
22 **ACCIDENTS.**

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

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

3 “(1) PATTERN STATUS.—

4 “(A) IN GENERAL.—For purposes of this
5 subsection, an operator of a coal or other mine
6 shall be in pattern status if the operator has,
7 as determined based on the regulations promul-
8 gated under paragraph (8)—

9 “(i) a pattern of—

10 “(I) citations for significant and
11 substantial violations;

12 “(II) citations and withdrawal or-
13 ders issued for unwarrantable failure
14 to comply with mandatory health and
15 safety standards under section 104(d);

16 “(III) citations for flagrant viola-
17 tions within the meaning of section
18 110(b);

19 “(IV) withdrawal orders issued
20 under any other section of this Act; or

21 “(V) accidents, injuries, or ill-
22 nesses; or

23 “(ii) a pattern consisting of any com-
24 bination of citations, orders, accidents, in-

juries, or illnesses 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 eliminated any elevated risk to the health or safety of miners 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) published in the Federal Register;

and

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

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

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

6 “(B) issue an order requiring such oper-
7 ator to cause all persons to be withdrawn from
8 such mine, except those persons referred to in
9 subsection (c) or authorized by an order of the
10 Secretary issued under this subsection;

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

13 “(D) require that the number of regular
14 inspections of such mine required under section
15 103 be increased to 8 per year for an under-
16 ground mine and 4 per year for a surface mine
17 while the mine is in pattern status.

18 Notice advising operators that they face potential
19 placement in pattern status shall not be a require-
20 ment for issuing a withdrawal order to operators
21 under this subsection.

22 “(3) REMEDIATION ORDER.—

23 “(A) IN GENERAL.—A remediation order
24 issued to an operator under paragraph (2)(C)
25 may require the operator to carry out one or

1 more of the following requirements, pursuant to
2 a timetable for commencing and completing
3 such actions or as a condition of miners reen-
4 tering the mine:

5 “(i) Provide specified training, includ-
6 ing training not otherwise required under
7 this Act.

8 “(ii) Institute and implement an effec-
9 tive health and safety management pro-
10 gram approved by the Secretary, includ-
11 ing—

12 “(I) the employment of safety
13 professionals, certified persons, and
14 adequate numbers of personnel for the
15 mine, as may be required by the Sec-
16 retary;

17 “(II) specific inspection, record-
18 keeping, reporting and other require-
19 ments for the mine as the Secretary
20 may establish; and

21 “(III) other requirements to en-
22 sure compliance and to protect the
23 health and safety of miners or prevent
24 accidents or injuries as the Secretary
25 may determine are necessary.

1 “(iii) Facilitate any effort by the Sec-
2 retary to communicate directly with miners
3 employed at the mine outside the presence
4 of the mine operators or its agents, for the
5 purpose of obtaining information about
6 mine conditions, health and safety prac-
7 tices, and advising miners of their rights
8 under this Act.

9 “(B) MODIFICATION OF AND FAILURE TO
10 COMPLY WITH REMEDIATION ORDER.—The Sec-
11 retary may modify the remediation order, as
12 necessary, to protect the health and safety of
13 miners. If the mine operator fails to fully com-
14 ply with the remediation order during the time
15 a mine is in pattern status, the Secretary shall
16 reinstate the withdrawal order under paragraph
17 (2)(B).

18 “(C) EXTENSION OF DEADLINES.—An ex-
19 tension of a deadline under the remediation
20 order may be granted on a temporary basis and
21 only upon a showing that the operator took all
22 feasible measures to comply with the order and
23 only to the extent that the operator’s failure to
24 comply is beyond the control of the operator.

1 “(4) CONDITIONS FOR LIFTING WITHDRAWAL
2 ORDER.—A withdrawal order issued under para-
3 graph (2)(B) shall not be lifted until the Secretary
4 verifies that—

5 “(A) any and all violations or other condi-
6 tions in the mine identified in the remediation
7 order have been or are being fully abated or
8 corrected as outlined in the remediation order;
9 and

10 “(B) the operator has completed any other
11 actions under the remediation order that are re-
12 quired for reopening the mine.

13 “(5) PERFORMANCE EVALUATION.—

14 “(A) PERFORMANCE BENCHMARKS.—The
15 Secretary shall evaluate the performance of
16 each operator whose mine is in pattern status
17 every 90 days during which the mine is pro-
18 ducing and determine if, for such 90-day pe-
19 riod—

20 “(i) the operator’s rate of citations for
21 significant and substantial violations—

22 “(I) are, on average, in the top
23 performing 35th percentile of such
24 rates, respectively, for all mines of
25 similar size and type; or

1 “(II) have been reduced by 70
2 percent since such mine was placed on
3 pattern status;

4 “(ii) the operator’s accident and in-
5 jury rates are, on average, in the top per-
6 forming 35th percentile of such rates, re-
7 spectively, for all mines of similar size and
8 type; and

9 “(iii) no citation or withdrawal order
10 for a violation under section 104(d), no
11 withdrawal order for imminent danger
12 under section 107 arising from a signifi-
13 cant and substantial violation, and no fla-
14 grant violations within the meaning of sec-
15 tion 110(b), were issued for such mine.

16 “(B) REISSUANCE OF WITHDRAWAL OR-
17 DERS.—If an operator being evaluated fails to
18 achieve the performance benchmarks described
19 in subparagraph (A), the Secretary may reissue
20 a withdrawal order under paragraph (2)(B) to
21 remedy any recurring conditions that led to pat-
22 tern status under this subsection, and may
23 modify the remediation order, as necessary, to
24 protect the health and safety of miners.

25 “(6) TERMINATION OF PATTERN STATUS.—

1 “(A) PERFORMANCE BENCHMARKS.—The
2 Secretary shall remove an operator of a coal or
3 other mine from pattern status if, for a 1-year
4 period during which the mine is producing—

5 “(i) the operator’s rate of citations for
6 significant and substantial violations—

7 “(I) are, on average, in the top
8 performing 25th percentile of such
9 rates, respectively, for all mines of
10 similar size and type; or

11 “(II) have been reduced by 80
12 percent since such mine was placed on
13 pattern status;

14 “(ii) the operator’s accident and in-
15 jury rates are, on average, in the top per-
16 forming 25th percentile of such rates, re-
17 spectively, for all mines of similar size and
18 type; and

19 “(iii) no citation or withdrawal orders
20 for violations under section 104(d), no
21 withdrawal orders for imminent danger
22 under section 107 arising from a signifi-
23 cant and substantial violation, and no fla-
24 grant violations within the meaning of sec-
25 tion 110(b), were issued for such mine.

1 “(B) CONTINUATION OF PATTERN STA-
 2 TUS.—Should the mine operator fail to meet
 3 the performance benchmarks described in sub-
 4 paragraph (A), the Secretary shall extend the
 5 mine’s placement in pattern status until such
 6 benchmarks are achieved.

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

11 “(8) REGULATIONS; INFORMATION ON PER-
 12 FORMANCE.—

13 “(A) IN GENERAL.—Not later than 120
 14 days after the date of enactment of the Robert
 15 C. Byrd Mine and Workplace Safety and
 16 Health Act of 2010, the Secretary shall issue
 17 interim final regulations that shall define—

18 “(i) the threshold criteria to trigger
 19 pattern status under paragraph (1) and
 20 cause a withdrawal order to be issued or
 21 reissued; and

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

24 “(B) THRESHOLD CRITERIA.—In estab-
 25 lishing threshold criteria to trigger pattern sta-

1 tus for mines with significantly poor compliance
2 that contributes to unsafe or unhealthy condi-
3 tions, the Secretary—

4 “(i) shall consider frequency and rates
5 of citations described in paragraph (1)(A)
6 and rates of reportable accidents and inju-
7 ries within the preceding 180-day period;

8 “(ii) may include factors such as mine
9 type, production levels, number of miners,
10 hours worked by miners, number of mecha-
11 nized mining units (or similar production
12 characteristics), and the designation of a
13 representative of miners at the mine;

14 “(iii) may include the mine’s history
15 of citations, violations, orders, and other
16 enforcement actions, or rates of reportable
17 accidents and injuries, over any period de-
18 termined relevant by the Secretary;

19 “(iv) may assign weight to various
20 types of citations, orders, accidents, inju-
21 ries, illnesses, or other factors; and

22 “(v) may include other factors the
23 Secretary may determine appropriate to
24 protect the safety and health of miners.

1 “(C) FINAL REGULATION.—Not later than
 2 2 years after the date of enactment of the Rob-
 3 ert C. Byrd Mine and Workplace Safety and
 4 Health Act of 2010, the Secretary shall promul-
 5 gate a final regulation implementing this para-
 6 graph.

7 “(D) GOVERNMENT ACCOUNTABILITY OF-
 8 FICE STUDY.—Not later than 2 years after the
 9 promulgation of the final regulations under sub-
 10 paragraph (C), the Comptroller General of the
 11 United States shall study the effectiveness of
 12 the threshold criteria established in this para-
 13 graph and issue to the Committee on Health,
 14 Education, Labor, and Pensions of the Senate
 15 and to the Committee on Education and Labor
 16 of the House of Representative a report on the
 17 results of the study. In conducting this study,
 18 the Comptroller General shall consult with all
 19 appropriate stakeholders.

20 “(9) PUBLIC DATABASE AND INFORMATION.—
 21 The Secretary shall establish and maintain a pub-
 22 lically available electronic database containing the
 23 data used to determine pattern status for all coal or
 24 other mines. Such database shall be searchable, shall
 25 have the capacity to provide comparative data about

1 the health and safety at mines of similar sizes and
 2 types. The Secretary shall also make publicly avail-
 3 able—

4 “(A) a list of all mines the Secretary
 5 places in pattern status, updated not less fre-
 6 quently than quarterly; and

7 “(B) the metrics, including percentile in-
 8 formation, used for the purposes of the per-
 9 formance benchmarks and threshold criteria de-
 10 scribed in paragraphs (5), (6), and (8).

11 “(10) OPERATOR FEES FOR ADDITIONAL IN-
 12 SPECTIONS.—

13 “(A) ASSESSMENT AND COLLECTION.—Be-
 14 ginning 120 days after the date of enactment of
 15 the Robert C. Byrd Mine and Workplace Safety
 16 and Health Act of 2010, the Secretary shall as-
 17 sess and collect fees, in accordance with this
 18 paragraph, from each coal or other mine in pat-
 19 tern status for the costs of additional inspec-
 20 tions under this subsection. The Secretary shall
 21 issue, by rule, a schedule of fees to be assessed
 22 against coal or other mines of varying types
 23 and sizes, and shall collect and assess amounts
 24 under this paragraph based on the schedule.

1 “(B) MINES IN PATTERN STATUS INSPEC-
2 TION FUND.—There is established in the Treas-
3 ury of the United States a separate account for
4 the deposit of fees collected under this para-
5 graph to be known as the Mines in Pattern Sta-
6 tus Inspection Fund. The Secretary shall de-
7 posit any fees collected pursuant to subpara-
8 graph (A) into the fund.

9 “(C) USE.—Amounts in the Mines in Pat-
10 tern Status Inspection Fund shall be available
11 to the Secretary, as provided in subparagraph
12 (D), for making expenditures to carry out the
13 additional inspections required under paragraph
14 (2)(D).

15 “(D) AUTHORIZATION OF APPROPRIA-
16 TIONS.—In addition to any other amounts ap-
17 propriated, there is authorized to be appro-
18 priated from the Mines in Pattern Status In-
19 spection Fund to the Assistant Secretary for
20 Mine Safety and Health for each fiscal year in
21 which fees are collected under subparagraph
22 (A) an amount equal to the total amount col-
23 lected during the previous fiscal year from fees
24 assessed pursuant to this paragraph. Such

1 amounts are authorized to remain available
2 until expended.

3 “(E) CREDITING AND AVAILABILITY OF
4 FEES.—Fees authorized and collected under
5 this paragraph shall be available for obligation
6 only to the extent and in the amount provided
7 in advance in appropriations Acts.”.

8 **SEC. 203. INJUNCTIVE AUTHORITY.**

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

16 **SEC. 204. REVOCATION OF APPROVAL OF PLANS.**

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

18 (1) by redesignating subsection (d) as sub-
19 section (e); and

20 (2) by inserting after subsection (c) the fol-
21 lowing:

22 “(d) REVOCATION OF APPROVAL OF PLANS.—

23 “(1) REVOCATION.—If the Secretary finds that
24 any program or plan of an operator, or part thereof,
25 that was approved by the Secretary under this Act

1 is based on inaccurate information or that cir-
 2 cumstances that existed when such plan was ap-
 3 proved have materially changed and that continued
 4 operation of such mine under such plan constitutes
 5 a hazard to the safety or health of miners, the Sec-
 6 retary shall revoke the approval of such program or
 7 plan.

8 “(2) WITHDRAWAL ORDERS.—Upon revocation
 9 of the approval of a program or plan under sub-
 10 section (a), the Secretary may immediately issue an
 11 order requiring the operator to cause all persons, ex-
 12 cept those persons referred to in section 104(c), to
 13 be withdrawn from such mine, and to be prohibited
 14 from entering such mine, until the operator has sub-
 15 mitted and the Secretary has approved a new plan.”.

16 **SEC. 205. CHALLENGING A DECISION TO APPROVE, MOD-**
 17 **IFY, OR REVOKE A COAL OR OTHER MINE**
 18 **PLAN.**

19 Section 105(e) (as redesignated by section 204(1))
 20 (30 U.S.C. 815(e)) is amended by adding at the end the
 21 following: “In any proceeding in which a party challenges
 22 the Secretary’s decision to approve, modify, or revoke a
 23 coal or other mine plan under this Act, the Commission
 24 and the courts shall affirm the Secretary’s decision unless
 25 the challenging party establishes that such decision was

1 arbitrary, capricious, an abuse of discretion, or otherwise
 2 not in accordance with law.”.

3 **TITLE III—PENALTIES**

4 **SEC. 301. CIVIL PENALTIES.**

5 (a) MAXIMUM CIVIL PENALTIES.—Section 110(a)(1)
 6 (30 U.S.C. 820(a)(1)) is amended—

7 (1) by inserting “including any regulation pro-
 8 mulgated under this Act,” after “this Act,”; and

9 (2) by striking “violation.” and inserting “viola-
 10 tion, except that, in the case of a significant and
 11 substantial violation, the penalty shall be not more
 12 than \$150,000 for each such violation.”.

13 (b) INCREASED CIVIL PENALTIES DURING PATTERN
 14 STATUS.—Section 110(b) (30 U.S.C. 820(b)) is amended
 15 by adding at the end the following:

16 “(3) Notwithstanding any other provision of this Act,
 17 an operator of a coal or other mine that is in pattern sta-
 18 tus under section 104(e) and that fails to meet the per-
 19 formance benchmarks set forth by the Secretary under
 20 section 104(e)(5)(A) during any performance review of the
 21 mine following the first performance review shall be as-
 22 sessed an increased civil penalty for any violation of this
 23 Act, including any mandatory health or safety standard
 24 or regulation promulgated under this Act. Such increased
 25 penalty shall be twice the amount that would otherwise

1 be assessed for the violation under this Act, including the
 2 regulations promulgated under this Act, subject to the
 3 maximum civil penalty established for the violation under
 4 this Act. This paragraph shall apply to violations at such
 5 mine that occur during the period beginning after the
 6 failed performance review following the first performance
 7 review, and ending when the Secretary determines at a
 8 subsequent performance review that the mine meets the
 9 performance benchmarks.”.

10 (c) CIVIL PENALTY FOR RETALIATION.—Section
 11 110(a) (30 U.S.C. 820(a)) is further amended—

12 (1) by redesignating paragraph (4) as para-
 13 graph (5); and

14 (2) by inserting after paragraph (3) the fol-
 15 lowing:

16 “(4) If any person violates section 105(c), the Sec-
 17 retary shall propose, and the Commission shall assess, a
 18 civil penalty of not less than \$10,000 or more than
 19 \$100,000 for the first occurrence of such violation, and
 20 not less than \$20,000 or more than \$200,000 for any sub-
 21 sequent violation, during any 3-year period.”.

22 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**
 23 **RECTORS, AND AGENTS.**

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

1 “(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS,
 2 DIRECTORS, AND AGENTS.—Whenever an operator vio-
 3 lates a provision of this Act, including any mandatory
 4 health or safety standard or regulation promulgated under
 5 this Act, or knowingly violates or fails or refuses to comply
 6 with any order issued under this Act or any order incor-
 7 porated in a final decision issued under this Act, any di-
 8 rector, officer, or agent of such operator who knowingly
 9 authorized, ordered, or carried out such violation, failure,
 10 or refusal, or any policy or practice that contributed to
 11 the occurrence of such violation, failure, or refusal, shall
 12 be subject to the same civil penalties, fines, and imprison-
 13 ment that may be imposed upon a person under this sec-
 14 tion.”.

15 **SEC. 303. CRIMINAL PENALTIES.**

16 (a) INTENT REQUIREMENTS FOR CRIMINAL PEN-
 17 ALTY STANDARDS.—Section 110(d) (30 U.S.C. 820(d)) is
 18 amended—

19 (1) by striking “willfully” and inserting “know-
 20 ingly”;

21 (2) by striking “\$250,000, or by imprisonment
 22 for not more than one year” and inserting
 23 “\$1,000,000, or by imprisonment for not more than
 24 5 years”; and

1 (3) by striking “\$500,000, or by imprisonment
 2 for not more than five years” and inserting
 3 “\$2,000,000, or by imprisonment for not more than
 4 10 years”.

5 (b) CRIMINAL PENALTY FOR RETALIATION.—Section
 6 110(d) is further amended—

7 (1) by inserting “(1)” before “Any operator”;
 8 and

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

10 “(2) Whoever knowingly takes any action that is di-
 11 rectly or indirectly harmful to any person, including action
 12 that interferes with the lawful employment or livelihood
 13 of any person, because such person has provided an au-
 14 thorized representative of the Secretary or another law en-
 15 forcement officer with any information related to the exist-
 16 ence of a health or safety violation or an unhealthful or
 17 unsafe condition, policy, or practice under this Act shall
 18 be fined under title 18, United States Code, imprisoned
 19 for not more than 10 years, or both.”.

20 (c) ADVANCE NOTICE OF INSPECTIONS.—

21 (1) IN GENERAL.—Section 110(e) (30 U.S.C.
 22 820(e)) is amended—

23 (A) by striking “Unless” and inserting
 24 “(1) Unless”; and

25 (B) by adding at the end the following:

1 “(2) Unless otherwise authorized by this Act, any op-
 2 erator, agent or contractor of any operator, miner, inspec-
 3 tor, employee of the Administration, or State mine inspec-
 4 tor, that knowingly gives, causes to give, or attempts to
 5 give or cause to give advance notice of any inspection to
 6 be conducted under this Act shall be fined under title 18,
 7 United States Code, imprisoned for not more than 5 years,
 8 or both.”.

9 (2) POSTING OF ADVANCE NOTICE PEN-
 10 ALTIES.—Section 109 (30 U.S.C. 819) is amended
 11 by adding at the end the following:

12 “(e) POSTING OF ADVANCE NOTICE PENALTIES.—
 13 Each operator of a coal or other mine shall post, on the
 14 bulletin board described in subsection (a) and in a con-
 15 spicuous place near each staffed entrance onto the mine
 16 property, a notice stating, in a form and manner to be
 17 prescribed by the Secretary—

18 “(1) that giving, causing to give, or attempting
 19 to give or cause to give advance notice of any inspec-
 20 tion to be conducted under this Act is unlawful pur-
 21 suant to section 110(e); and

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

1 **SEC. 304. COMMISSION REVIEW OF PENALTY ASSESS-**
2 **MENTS.**

3 Section 110(i) (30 U.S.C. 820(i)) is amended by
4 striking “In assessing civil monetary penalties, the Com-
5 mission shall consider” and inserting the following: “In
6 any review of a citation and proposed penalty assessment
7 contested by an operator, the Commission shall assess not
8 less than the penalty derived by using the same method-
9 ology (including any point system) prescribed in regula-
10 tions under this Act, so as to ensure consistency in oper-
11 ator penalty assessments, except that the Commission may
12 assess a penalty for less than the amount that would result
13 from the utilization of such methodology if the Commis-
14 sion finds that there are extraordinary circumstances. If
15 there is no such methodology prescribed for a citation or
16 there are such extraordinary circumstances, the Commis-
17 sion shall assess the penalty by considering”.

18 **SEC. 305. DELINQUENT PAYMENTS AND PREJUDGMENT IN-**
19 **TEREST.**

20 (a) PRE-FINAL ORDER INTEREST.—Section 110(j)
21 (30 U.S.C. 820(j)) is amended by striking the second and
22 third sentences and inserting the following: “Pre-final
23 order interest on such penalties shall begin to accrue on
24 the date the operator contests a citation issued under this
25 Act, including any mandatory health or safety standard
26 or regulation promulgated under this Act, and shall end

1 upon the issuance of the final order. Such pre-final order
 2 interest shall be calculated at the current underpayment
 3 rate determined by the Secretary of the Treasury pursu-
 4 ant to section 6621 of the Internal Revenue Code of 1986,
 5 and shall be compounded daily. Post-final order interest
 6 shall begin to accrue 30 days after the date a final order
 7 of the Commission or the court is issued, and shall be
 8 charged at the rate of 8 percent per annum.”.

9 (b) ENSURING PAYMENT OF PENALTIES.—

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

12 (A) by redesignating subsection (l) as sub-
 13 section (m); and

14 (B) by inserting after subsection (k) the
 15 following:

16 “(l) ENSURING PAYMENTS OF PENALTIES.—

17 “(1) DELINQUENT PAYMENT LETTER.—If the
 18 operator of a coal or other mine fails to pay any civil
 19 penalty assessment that has become a final order of
 20 the Commission or a court within 90 days after such
 21 assessment became a final order, the Secretary shall
 22 send the operator a letter advising the operator of
 23 the consequences under this subsection of such fail-
 24 ure to pay. The letter shall also advise the operator
 25 of the opportunity to enter into or modify a payment

1 plan with the Secretary based upon a demonstrated
2 inability to pay, the procedure for entering into such
3 plan, and the consequences of not entering into or
4 not complying with such plan.

5 “(2) WITHDRAWAL ORDERS FOLLOWING FAIL-
6 URE TO PAY.—If an operator that receives a letter
7 under paragraph (1) has not paid the assessment by
8 the date that is 180 days after such assessment be-
9 came a final order and has not entered into a pay-
10 ment plan with the Secretary, the Secretary shall
11 issue an order requiring such operator to cause all
12 persons, except those referred to in section 104(c),
13 to be withdrawn from, and to be prohibited from en-
14 tering, the mine that is covered by the final order
15 described in paragraph (1), until the operator pays
16 such assessment in full (including interest and ad-
17 ministrative costs) or enters into a payment plan
18 with the Secretary. If such operator enters into a
19 payment plan with the Secretary and at any time
20 fails to comply with the terms specified in such pay-
21 ment plan, the Secretary shall issue an order requir-
22 ing such operator to cause all persons, except those
23 referred to in section 104(c), to be withdrawn from
24 the mine that is covered by such final order, and to
25 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—WORKER 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

1 discharged or cause discrimination against or
2 otherwise interfere with the exercise of the stat-
3 utory rights of any miner or other employee of
4 an operator, representative of miners, or appli-
5 cant for employment, because—

6 “(i) such miner or other employee,
7 representative, or applicant for employ-
8 ment—

9 “(I) has filed or made a com-
10 plaint, including a complaint notifying
11 the operator or the operator’s agent,
12 or the representative of the miners at
13 the coal or other mine of an alleged
14 danger or safety or health violation in
15 a coal or other mine;

16 “(II) instituted or caused to be
17 instituted any proceeding under or re-
18 lated to this Act or has testified or is
19 about to testify in any such pro-
20 ceeding or because of the exercise by
21 such miner or other employee, rep-
22 resentative, or applicant for employ-
23 ment on behalf of him or herself or
24 others of any right afforded by this
25 Act;

1 “(III) has testified or is about to
 2 testify before Congress or any Federal
 3 or State proceeding related to safety
 4 or health in a coal or other mine; or

5 “(IV) refused to violate any pro-
 6 vision of this Act; or

7 “(ii) such miner is the subject of med-
 8 ical evaluations and potential transfer
 9 under a standard published pursuant to
 10 section 101.

11 “(B) RETALIATION FOR REFUSAL TO PER-
 12 FORM DUTIES.—

13 “(i) IN GENERAL.—No person shall
 14 discharge or in any manner discriminate
 15 against a miner or other employee of an
 16 operator for refusing to perform the min-
 17 er’s or other employee’s duties if the miner
 18 or other employee has a good-faith and
 19 reasonable belief that performing such du-
 20 ties would pose a safety or health hazard
 21 to the miner or other employee or to any
 22 other miner or employee.

23 “(ii) STANDARD.—For purposes of
 24 clause (i), the circumstances causing the
 25 miner’s or other employee’s good-faith be-

1 lief that performing such duties would pose
2 a safety or health hazard shall be of such
3 a nature that a reasonable person, under
4 the circumstances confronting the miner or
5 other employee, would conclude that there
6 is such a hazard. In order to qualify for
7 protection under this paragraph, the miner
8 or other employee, when practicable, shall
9 have communicated or attempted to com-
10 municate the safety or health concern to
11 the operator and have not received from
12 the operator a response reasonably cal-
13 culated to allay such concern.

14 “(2) COMPLAINT.—Any miner or other em-
15 ployee or representative of miners or applicant for
16 employment who believes that he or she has been
17 discharged, disciplined, or otherwise discriminated
18 against by any person in violation of paragraph (1)
19 may file a complaint with the Secretary alleging
20 such discrimination not later than 180 days after
21 the later of the last date on which an alleged viola-
22 tion of paragraph (1) occurs or the date on which
23 the miner or other employee or representative knows
24 or should reasonably have known that such alleged
25 violation occurred.

1 “(3) INVESTIGATION AND HEARING.—

2 “(A) COMMENCEMENT OF INVESTIGATION
3 AND INITIAL DETERMINATION.—Upon receipt
4 of such complaint, the Secretary shall forward
5 a copy of the complaint to the respondent, and
6 shall commence an investigation within 15 days
7 of the Secretary’s receipt of the complaint, and,
8 as soon as practicable after commencing such
9 investigation, make the determination required
10 under subparagraph (B) regarding the rein-
11 statement of the miner or other employee.

12 “(B) REINSTATEMENT.—If the Secretary
13 finds that such complaint was not frivolously
14 brought, the Commission, on an expedited basis
15 upon application of the Secretary, shall order
16 the immediate reinstatement of the miner or
17 other employee until there has been a final
18 Commission order disposing of the underlying
19 complaint of the miner or other employee. If ei-
20 ther the Secretary or the miner or other em-
21 ployee pursues the underlying complaint, such
22 reinstatement shall remain in effect until the
23 Commission has disposed of such complaint on
24 the merits, regardless of whether the Secretary
25 pursues such complaint by filing a complaint

1 under subparagraph (D) or the miner or other
2 employee pursues such complaint by filing an
3 action under paragraph (4). If neither the Sec-
4 retary nor the miner or other employee pursues
5 the underlying complaint within the periods
6 specified in paragraph (4), such reinstatement
7 shall remain in effect until such time as the
8 Commission may, upon motion of the operator
9 and after providing notice and an opportunity
10 to be heard to the parties, vacate such com-
11 plaint for failure to prosecute.

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

15 “(i) providing the respondent an op-
16 portunity to submit to the Secretary a
17 written response to the complaint and to
18 present statements from witnesses or pro-
19 vide evidence; and

20 “(ii) providing the complainant an op-
21 portunity to receive any statements or evi-
22 dence provided to the Secretary and rebut
23 any statements or evidence.

24 “(D) ACTION BY THE SECRETARY.—If,
25 upon such investigation, the Secretary deter-

1 mines that the provisions of this subsection
2 have been violated, the Secretary shall imme-
3 diately file a complaint with the Commission,
4 with service upon the alleged violator and the
5 miner or other employee or representative of
6 miners alleging such discrimination or inter-
7 ference and propose an order granting appro-
8 priate relief.

9 “(E) ACTION OF THE COMMISSION.—The
10 Commission shall afford an opportunity for a
11 hearing (in accordance with section 554 of title
12 5, United States Code, but without regard to
13 subsection (a)(3) of such section) and there-
14 after shall issue an order, based upon findings
15 of fact, affirming, modifying, or vacating the
16 Secretary’s proposed order, or directing other
17 appropriate relief. Such order shall become final
18 30 days after its issuance. The complaining
19 miner or other employee, representative, or ap-
20 plicant for employment may present additional
21 evidence on his or her own behalf during any
22 hearing held pursuant to this paragraph.

23 “(F) RELIEF.—The Commission shall have
24 authority in such proceedings to require a per-
25 son committing a violation of this subsection to

1 take such affirmative action to abate the viola-
2 tion and prescribe a remedy as the Commission
3 considers appropriate, including—

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

10 “(ii) any other compensatory and con-
11 sequential damages sufficient to make the
12 complainant whole, and exemplary dam-
13 ages where appropriate; and

14 “(iii) expungement of all warnings,
15 reprimands, or derogatory references that
16 have been placed in paper or electronic
17 records or databases of any type relating
18 to the actions by the complainant that
19 gave rise to the unfavorable personnel ac-
20 tion, and, at the complainant’s direction,
21 transmission of a copy of the decision on
22 the complaint to any person whom the
23 complainant reasonably believes may have
24 received such unfavorable information.

1 “(4) NOTICE TO AND ACTION OF COMPLAIN-
2 ANT.—

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

10 “(B) ACTION OF COMPLAINANT.—If the
11 Secretary, upon investigation, determines that
12 the provisions of this subsection have not been
13 violated, the complainant shall have the right,
14 within 30 days notice of the Secretary’s deter-
15 mination, to file an action in his or her own be-
16 half before the Commission, charging discrimi-
17 nation or interference in violation of paragraph
18 (1).

19 “(C) HEARING AND DECISION.—The Com-
20 mission shall afford an opportunity for a hear-
21 ing (in accordance with section 554 of title 5,
22 United States Code, but without regard to sub-
23 section (a)(3) of such section), and thereafter
24 shall issue an order, based upon findings of
25 fact, dismissing or sustaining the complainant’s

1 charges and, if the charges are sustained,
2 granting such relief as it deems appropriate as
3 described in paragraph (3)(D). Such order shall
4 become final 30 days after its issuance.

5 “(5) BURDEN OF PROOF.—In adjudicating a
6 complaint pursuant to this subsection, the Commis-
7 sion may determine that a violation of paragraph (1)
8 has occurred only if the complainant demonstrates
9 that any conduct described in paragraph (1) with re-
10 spect to the complainant was a contributing factor
11 in the adverse action alleged in the complaint. A de-
12 cision or order that is favorable to the complainant
13 shall not be issued pursuant to this subsection if the
14 respondent demonstrates by clear and convincing
15 evidence that the respondent would have taken the
16 same adverse action in the absence of such conduct.

17 “(6) ATTORNEYS’ FEES.—Whenever an order is
18 issued sustaining the complainant’s charges under
19 this subsection, a sum equal to the aggregate
20 amount of all costs and expenses, including attor-
21 ney’s fees, as determined by the Commission to have
22 been reasonably incurred by the complainant for, or
23 in connection with, the institution and prosecution of
24 such proceedings shall be assessed against the per-
25 son committing such violation. The Commission

1 shall determine whether such costs and expenses
 2 were reasonably incurred by the complainant without
 3 reference to whether the Secretary also participated
 4 in the proceeding.

5 “(7) EXPEDITED PROCEEDINGS; JUDICIAL RE-
 6 VIEW.—Proceedings under this subsection shall be
 7 expedited by the Secretary and the Commission. Any
 8 order issued by the Commission under this sub-
 9 section shall be subject to judicial review in accord-
 10 ance with section 106. Violations by any person of
 11 paragraph (1) shall be subject to the provisions of
 12 sections 108 and 110(a)(4).

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

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

23 **SEC. 402. PROTECTION FROM LOSS OF PAY.**

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

1 **“SEC. 111. ENTITLEMENT OF MINERS.**

2 “(a) PROTECTION FROM LOSS OF PAY.—

3 “(1) WITHDRAWAL ORDER.—If a coal or other
4 mine or area of such mine is closed by an order
5 issued under section 103, 104, 107, 108, or 110 all
6 miners who are idled by such order shall be entitled,
7 regardless of the result of any review of such order,
8 to full compensation by the operator at their regular
9 rates of pay and in accordance with their regular
10 schedules of pay for the entire period for which they
11 are idled.

12 “(2) CLOSURE IN ADVANCE OF ORDER.—If the
13 Secretary finds that such mine or such area of a
14 mine was closed by the operator in anticipation of
15 the issuance of such an order, all miners who are
16 idled by such closure shall be entitled to full com-
17 pensation by the operator at their regular rates of
18 pay and in accordance with their regular schedules
19 of pay, from the time of such closure until such time
20 as the Secretary authorizes reopening of such mine
21 or such area of the mine.

22 “(3) REFUSAL TO COMPLY.—Whenever an op-
23 erator violates or fails or refuses to comply with any
24 order issued under section 103, 104, 107, 108, or
25 110, all miners employed at the affected mine who
26 would have been withdrawn from, or prevented from

1 entering, such mine or area thereof as a result of
2 such order shall be entitled to full compensation by
3 the operator at their regular rates of pay, in addi-
4 tion to pay received for work performed after such
5 order was issued, for the period beginning when
6 such order was issued and ending when such order
7 is complied with, vacated, or terminated.

8 “(b) ENFORCEMENT.—

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

18 “(2) FAILURE TO PAY COMPENSATION DUE.—

19 Consistent with the authority of the Secretary to
20 order miners withdrawn from a mine under this Act,
21 the Secretary shall order a mine that has been sub-
22 ject to a withdrawal order under section 103, 104,
23 107, 108, or 110, and has reopened, to be closed
24 again if compensation in accordance with the provi-
25 sions of this section is not paid by the end of the

1 next regularly scheduled payroll period following the
 2 lifting of a withdrawal order.”.

3 **TITLE V—MODERNIZING**
 4 **HEALTH AND SAFETY STAND-**
 5 **ARDS**

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

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

9 “(3)(A) Not later than 30 days after the issuance of
 10 the interim final rules promulgated under subparagraph
 11 (C), each operator of an underground coal mine shall im-
 12 plement a communication program at the underground
 13 coal mine to ensure that each miner entering the mine
 14 is made aware, at the start of such miner’s shift, of the
 15 current conditions of the mine, including—

16 “(i) any conditions that are hazardous or that
 17 violate a mandatory health or safety standard or a
 18 plan approved under this Act; and

19 “(ii) the general conditions of that miner’s as-
 20 signed working section or other area.

21 “(B) In an effort to facilitate the communications de-
 22 scribed in subparagraph (A), each agent of the operator
 23 who is responsible for ensuring the safe and healthful
 24 working conditions at the mine, including mine foremen,
 25 assistant mine foremen, and mine examiners, shall, upon

1 exiting the mine or workplace, verbally communicate with
 2 any oncoming agent replacing the exiting agent on duty
 3 in order to update the oncoming agent on the conditions
 4 the exiting agent observed during the exiting agent’s shift,
 5 including any conditions that are hazardous or that violate
 6 a mandatory health or safety standard or a plan approved
 7 under this Act. Such communications process shall be
 8 completed prior to the start of each shift at the mine and
 9 recorded in a book designated for that purpose and avail-
 10 able for inspection by all interested parties. In the event
 11 the mine operation is idle prior to the start of any shift,
 12 the oncoming agent of the operator shall meet with the
 13 individual who was responsible for examining the mine to
 14 obtain the necessary information.

15 “(C) Not later than 90 days after the date of enact-
 16 ment of the Robert C. Byrd Mine and Workplace Safety
 17 and Health Act of 2010, the Secretary shall promulgate
 18 interim final rules implementing the requirements of sub-
 19 paragraphs (A) and (B).”.

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

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

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

25 “(1) IN GENERAL.—Where rock”;

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

7 (3) by adding at the end the following:

8 “(2) METHODS OF MEASUREMENT.—

9 “(A) IN GENERAL.—Each operator of an
 10 underground coal mine shall take accurate sam-
 11 ples of the amount of coal dust, including float
 12 coal dust deposited on rock-dusted surfaces,
 13 loose coal, and other combustible materials in
 14 the active workings of such mines, to ensure
 15 that the coal dust is kept below explosive levels
 16 through the appropriate application of rock
 17 dusting.

18 “(B) DIRECT READING MONITORS.—By
 19 the later of June 15, 2011, or the date that is
 20 30 days after the Secretary of Health and
 21 Human Services has certified in writing that di-
 22 rect reading monitors are commercially avail-
 23 able to measure total incombustible content in
 24 coal dust and the Department of Labor has ap-
 25 proved such monitors for use in underground

1 coal mines, the Secretary shall require opera-
 2 tors to take coal dust samples using direct
 3 reading monitors.

4 “(C) REGULATIONS.—The Secretary shall,
 5 not later than 180 days after the date of enact-
 6 ment of the Robert C. Byrd Mine and Work-
 7 place Safety and Health Act of 2010, promul-
 8 gate an interim final rule that prescribes meth-
 9 ods for sampling of total incombustible content
 10 of coal dust using direct reading monitors and
 11 includes requirements for locations, methods,
 12 and intervals for mandatory operator sampling.

13 “(D) RECOMMENDATIONS.—Not later than
 14 1 year after the date of enactment of the Rob-
 15 ert C. Byrd Mine and Workplace Safety and
 16 Health Act of 2010, the Secretary of Health
 17 and Human Services shall, based upon the lat-
 18 est research, recommend to the Secretary of
 19 Labor any revisions to the mandatory operator
 20 sampling locations, methods, and intervals in-
 21 cluded in the interim final rule described in
 22 subparagraph (B) that may be warranted in
 23 light of such research.”.

24 (b) REPORT.—Not later than 2 years after the date
 25 of enactment of this Act, the Secretary of Health and

1 Human Services, in consultation with the Secretary of
 2 Labor, shall prepare and submit, to the Committee on
 3 Education and Labor of the House of Representatives and
 4 the Committee on Health, Education, Labor, and Pen-
 5 sions of the Senate, a report—

6 (1) regarding whether any direct reading device
 7 described in section 304(d)(2)(B) of the Federal
 8 Mine Safety and Health Act of 1977 (30 U.S.C.
 9 864(d)(2)(B)) is sufficiently reliable and accurate
 10 for the enforcement of the mandatory health or safe-
 11 ty standards by the Secretary of Labor under such
 12 Act, and whether additional improvement to such di-
 13 rect reading device, or additional verification regard-
 14 ing reliability and accuracy, would be needed for en-
 15 forcement purposes; and

16 (2) identifying any limitations or impediments
 17 for such use in underground coal mines.

18 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

21 “(u) ATMOSPHERIC MONITORING SYSTEMS.—

22 “(1) NIOSH RECOMMENDATIONS.—Not later
 23 than 6 months after the date of enactment of the
 24 Robert C. Byrd Mine and Workplace Safety and
 25 Health Act of 2010, the Director of the National In-

1 stitute for Occupational Safety and Health, acting
2 through the Office of Mine Safety and Health Re-
3 search, shall issue recommendations to the Secretary
4 regarding—

5 “(A) how to ensure that atmospheric moni-
6 toring systems are utilized in the underground
7 coal mining industry to maximize the health
8 and safety of underground coal miners; and

9 “(B) the implementation of redundant sys-
10 tems, such as the bundle tubing system, that
11 can continuously monitor the mine atmosphere
12 following incidents such as fires, explosions, en-
13 trapments, and inundations.

14 “(2) ATMOSPHERIC MONITORING SYSTEM REG-
15 ULATIONS.—Not later than 270 days following the
16 receipt of the recommendations described in para-
17 graph (1), the Secretary shall promulgate regula-
18 tions requiring that each operator of an under-
19 ground coal mine install atmospheric monitoring sys-
20 tems, consistent with such recommendations, that—

21 “(A) protect miners where the miners nor-
22 mally work and travel;

23 “(B) provide real-time information regard-
24 ing methane and carbon monoxide levels, and

1 airflow direction, as appropriate, with sensing,
2 annunciating, and recording capabilities; and

3 “(C) can, to the maximum extent prac-
4 ticable, withstand explosions and fires.”.

5 **SEC. 504. TECHNOLOGY RELATED TO RESPIRABLE DUST.**

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

7 (1) by striking “of Health and Human Serv-
8 ices”; and

9 (2) by striking the second sentence and insert-
10 ing the following: “Not later than 2 years after the
11 date of enactment of the Robert C. Byrd Mine and
12 Workplace Safety and Health Act of 2010, the Sec-
13 retary shall promulgate final regulations that require
14 operators, beginning on the date such regulations
15 are issued, to provide coal miners with the maximum
16 feasible protection from respirable dust, including
17 coal and silica dust, that is achievable through envi-
18 ronmental controls.”.

19 **SEC. 505. REFRESHER TRAINING ON MINER RIGHTS AND**
20 **RESPONSIBILITIES.**

21 (a) IN GENERAL.—Section 115(a)(3) (30 U.S.C.
22 825(a)(3)) is amended to read as follows:

23 “(3) all miners shall receive not less than 9
24 hours of refresher training not less frequently than
25 once every 12 months, and such training shall in-

1 clude one hour of training on the statutory rights
 2 and responsibilities of miners and their representa-
 3 tives under this Act and other applicable Federal
 4 and State law, pursuant to a program of instruction
 5 developed by the Secretary and delivered by an em-
 6 ployee of the Administration or by a trainer ap-
 7 proved by the Administration that is a party inde-
 8 pendent from the operator;”.

9 (b) **TIMING OF INITIAL STATUTORY RIGHTS TRAIN-**
 10 **ING.**—Notwithstanding section 115 of the Federal Mine
 11 Safety and Health Act (as amended by subsection (a)) (30
 12 U.S.C. 825) or the health and safety training program ap-
 13 proved under such section, an operator shall ensure that
 14 all miners already employed by the operator on the date
 15 of enactment of this Act shall receive the one hour of stat-
 16 utory rights and responsibilities training described in sec-
 17 tion 115(a)(3) of such Act not later than 180 days after
 18 such date.

19 **SEC. 506. AUTHORITY TO MANDATE ADDITIONAL TRAINING.**

20 (a) **IN GENERAL.**—Section 115 (30 U.S.C. 825) is
 21 further amended by redesignating subsection (e) as sub-
 22 section (f) and inserting after subsection (d) the following:

23 “(e) **AUTHORITY TO MANDATE ADDITIONAL TRAIN-**
 24 **ING.**—

1 “(1) IN GENERAL.—The Secretary is authorized
2 to issue an order requiring that an operator of a
3 coal or other mine provide additional training be-
4 yond what is otherwise required by law, and speci-
5 fying the time within which such training shall be
6 provided, if the Secretary finds that—

7 “(A)(i) a serious or fatal accident has oc-
8 curred at such mine; or

9 “(ii) such mine has experienced accident
10 and injury rates, citations for violations of this
11 Act (including mandatory health or safety
12 standards or regulations promulgated under
13 this Act), citations for significant and substan-
14 tial violations, or withdrawal orders issued
15 under this Act at a rate above the average for
16 mines of similar size and type; and

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

19 “(2) WITHDRAWAL ORDER.—If the operator
20 fails to provide training ordered under paragraph
21 (1) within the specified time, the Secretary shall
22 issue an order requiring such operator to cause all
23 affected persons, except those persons referred to in
24 section 104(c), to be withdrawn, and to be prohib-

1 ited from entering such mine, until such operator
2 has provided such training.”.

3 (b) CONFORMING AMENDMENTS.—Section 104(g)(2)
4 (30 U.S.C. 814(g)(2)) is amended by striking “under
5 paragraph (1)” both places it appears and inserting
6 “under paragraph (1) or under section 115(e)”.

7 **SEC. 507. CERTIFICATION OF PERSONNEL.**

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

10 **“SEC. 117. CERTIFICATION OF PERSONNEL.**

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

23 “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-
24 MENTS AND PROCEDURES.—

1 “(1) IN GENERAL.—Not later than 1 year after
2 the date of enactment of the Robert C. Byrd Mine
3 and Workplace Safety and Health Act of 2010, the
4 Secretary shall issue mandatory standards to estab-
5 lish—

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

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

14 “(C) procedures and criteria for revoking
15 such certification, registration, qualification, or
16 other approval, including procedures that en-
17 sure that the Secretary responds to requests for
18 revocation.

19 “(2) COORDINATION WITH STATES.—In devel-
20 oping such standards, the Secretary shall consult
21 with States that have miner certification programs
22 to ensure effective coordination with existing State
23 standards and requirements for certification. The
24 standards required under paragraph (1) may provide
25 that the certification, registration, qualification, or

1 other approval of the State in which the coal or
 2 other mine is located satisfies the requirement of
 3 subsection (a) if the State's program of certification,
 4 registration, qualification, or other approval is no
 5 less stringent than the standards established by the
 6 Secretary under paragraph (1).

7 “(c) OPERATOR FEES FOR CERTIFICATION.—

8 “(1) ASSESSMENT AND COLLECTION.—Begin-
 9 ning 180 days after the date of enactment of the
 10 Robert C. Byrd Mine and Workplace Safety and
 11 Health Act of 2010, the Secretary shall assess and
 12 collect fees, in accordance with this subsection, from
 13 each operator for each person certified under this
 14 section. Fees shall be assessed and collected in
 15 amounts determined by the Secretary as necessary
 16 to fund the certification programs established under
 17 this section.

18 “(2) MINE SAFETY AND HEALTH CERTIFI-
 19 CATION FUND.—There is established in the Treasury
 20 of the United States a separate account for the de-
 21 posit of fees collected under this subsection to be
 22 known as the Mine Safety and Health Certification
 23 Fund. The Secretary shall deposit any fees collected
 24 pursuant to paragraph (1) into the fund.

1 “(3) USE.—Amounts in the Mine Safety and
2 Health Certification Fund shall be available to the
3 Secretary, as provided in paragraph (4), for making
4 expenditures to carry out the certification programs
5 established under this subsection.

6 “(4) AUTHORIZATION OF APPROPRIATIONS.—In
7 addition to funds appropriated under section 114,
8 there is authorized to be appropriated from the Mine
9 Safety and Health Certification Fund to the Assist-
10 ant Secretary for Mine Safety and Health for each
11 fiscal year in which fees are collected under para-
12 graph (1) an amount equal to the total amount col-
13 lected during the previous fiscal year from fees as-
14 sessed pursuant to this subsection. Such amounts
15 are authorized to remain available until expended.

16 “(5) CREDITING AND AVAILABILITY OF FEES.—
17 Fees authorized and collected under this subsection
18 shall be available for obligation only to the extent
19 and in the amount provided in advance in appropria-
20 tions Acts.

21 “(d) CITATION; WITHDRAWAL ORDER.—Any oper-
22 ator who permits a person to perform any of the health
23 or safety related functions described in subsection (a)
24 without a current certification which meets the require-
25 ments of this section shall be considered to have com-

mitted 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 (e) 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

1 “(B) controls such mine by making or hav-
 2 ing the authority to make management or oper-
 3 ational decisions that affect, directly or indi-
 4 rectly, the health or safety at such mine; or
 5 “(2) any independent contractor performing
 6 services or construction at such mine;”.

7 (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.
 8 802(e)) is amended by striking “the miners” and inserting
 9 “any miner”.

10 (c) DEFINITION OF MINER.—Section 3(g) (30 U.S.C.
 11 802(g)) is amended by inserting after “or other mine” the
 12 following: “ , and includes any individual who is not cur-
 13 rently working in a coal or other mine but would be cur-
 14 rently working in such mine, but for an accident in such
 15 mine”.

16 (d) DEFINITION OF SIGNIFICANT AND SUBSTANTIAL
 17 VIOLATIONS.—Section 3 (30 U.S.C. 802) is further
 18 amended—

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

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

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

25 (4) by adding at the end the following:

1 “(p) ‘significant and substantial violation’ means a
 2 violation of this Act, including any mandatory health or
 3 safety standard or regulation promulgated under this Act,
 4 that is of such nature as could significantly and substan-
 5 tially contribute to the cause and effect of a coal or other
 6 mine safety or health hazard as described in section
 7 104(d).”.

8 **SEC. 602. ASSISTANCE TO STATES.**

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

10 (1) in subsection (a)—

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

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

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

19 (D) by adding at the end the following:

20 “(4) to assist such State in developing and im-
 21 plementing any certification program for coal or
 22 other mines required for compliance with section
 23 117.”; and

24 (2) in subsection (h), by striking “\$3,000,000
 25 for fiscal year 1970, and \$10,000,000 in each suc-

ceeding 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 following:

“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 pulmonary condition shall, not later than 14 days after the miner has been examined, deliver to the claimant a complete 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. STUDY ON WORKFORCE NEEDS.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study on the workforce needs of the mining industry and Federal and State enforcement agencies, including the need for engineers and mine safety and health professionals.

1 (b) ISSUES TO BE STUDIED.—The study in sub-
2 section (a) shall include—

3 (1) an analysis of the training and expertise of
4 the mine engineers and the safety and health work-
5 force; and

6 (2) the need for a highly trained workforce of
7 engineers and safety and health professionals with-
8 in—

9 (A) the mining industry;

10 (B) the Mine Safety Health Administra-
11 tion; and

12 (C) State enforcement agencies responsible
13 for mine safety and health.

14 (c) REPORT.—The Comptroller General of the United
15 States shall prepare and submit to the Committee on
16 Health, Education, Labor, and Pensions of the Senate and
17 to the Committee on Education and Labor of the House
18 of Representatives a report on the study in subsection (a).

19 (d) RECOMMENDATIONS.—As needed, the Comp-
20 troller General of the United States shall provide rec-
21 ommendations for improvement in the report in subsection
22 (c).

1 **SEC. 605. MINE SAFETY AND HEALTH ADMINISTRATION**

2 **STRATEGIC PLANNING.**

3 (a) STRATEGIC PLAN.—Not later than December 31,
4 2011, the Secretary of Labor, acting through the Assist-
5 ant Secretary of Labor for Mine Safety and Health, shall
6 submit to the Director of the Office of Management and
7 Budget and to the Congress and post on the public website
8 of the Mine Safety and Health Administration, a 5-year
9 strategic plan for program activities. Such plan shall be—

10 (1) prepared in accordance with the require-
11 ments for agency strategic plans under section 306
12 of title 5, United States Code, except as otherwise
13 provided in this section;

14 (2) aligned with the strategic plan of the De-
15 partment of Labor; and

16 (3) revised at least once every 4 years.

17 (b) ANNUAL PERFORMANCE PLAN.—Beginning with
18 the Mine Safety and Health Administration budget sub-
19 mission for fiscal year 2013, the Secretary of Labor, act-
20 ing through the Assistant Secretary of Labor for Mine
21 Safety and Health, shall submit to the Director of the Of-
22 fice of Management and Budget an annual performance
23 plan covering each program activity set forth in the budget
24 of the Mine Safety and Health Administration. Such plan
25 shall—

1 (1) be prepared in accordance with the require-
2 ments for performance plans under section 1115 of
3 title 31, United States Code, except as otherwise
4 provided in this section;

5 (2) be consistent with the strategic plan of the
6 Mine Safety and Health Administration under sub-
7 section (a); and

8 (3) include a strategic workforce plan that pro-
9 vides a clear line of sight between the performance
10 goals and objectives of the Mine Safety and Health
11 Administration and the human capital strategies em-
12 ployed to meet such goals and objectives.

13 (c) REPORT.—Not later than 150 days after the end
14 of a fiscal year, beginning with fiscal year 2013, the Sec-
15 retary of Labor, acting through the Assistant Secretary
16 of Labor for Mine Safety and Health, shall prepare and
17 submit to the President and the Congress and post on the
18 public website of the Mine Safety and Health Administra-
19 tion, a report on the program performance for the previous
20 fiscal year. Such report shall—

21 (1) be prepared in accordance with the require-
22 ments for program performance reports under sec-
23 tion 1116 of title 31, United States Code; and

1 (2) address the extent to which the Mine Safety
 2 and Health Administration is using performance in-
 3 formation to improve program performance.

4 **TITLE VII—AMENDMENTS TO**
 5 **THE OCCUPATIONAL SAFETY**
 6 **AND HEALTH ACT**

7 **SEC. 701. ENHANCED PROTECTIONS FROM RETALIATION.**

8 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the
 9 Occupational Safety and Health Act of 1970 (29 U.S.C.
 10 660(c)(1)) is amended—

11 (1) by striking “discharge” and all that follows
 12 through “because such” and inserting the following:
 13 “discharge or cause to be discharged, or in any man-
 14 ner discriminate against or cause to be discriminated
 15 against, any employee because—

16 “(A) such”;

17 (2) by striking “this Act or has” and inserting
 18 the following: “this Act;

19 “(B) such employee has”;

20 (3) by striking “such proceeding or because of
 21 the exercise” and inserting the following: “before
 22 Congress or in any Federal or State proceeding re-
 23 lated to safety or health;

24 “(C) such employee has refused to violate any
 25 provision of this Act; or

1 “(D) of the exercise”; and

2 (4) by inserting before the period at the end the
3 following: “, including the reporting of any injury,
4 illness, or unsafe condition to the employer, agent of
5 the employer, safety and health committee involved,
6 or employee safety and health representative in-
7 volved”.

8 (b) PROHIBITION OF RETALIATION.—Section 11(c)
9 of such Act (29 U.S.C. 660(c)) is amended by striking
10 paragraph (2) and inserting the following:

11 “(2)(A) No person shall discharge, or cause to be dis-
12 charged, or in any manner discriminate against, or cause
13 to be discriminated against, an employee for refusing to
14 perform the employee’s duties if the employee has a rea-
15 sonable apprehension that performing such duties would
16 result in serious injury to, or serious impairment of the
17 health of, the employee or other employees.

18 “(B) For purposes of subparagraph (A), the cir-
19 cumstances causing the employee’s good-faith belief that
20 performing such duties would pose a safety or health haz-
21 ard shall be of such a nature that a reasonable person,
22 under the circumstances confronting the employee, would
23 conclude that there is such a hazard. In order to qualify
24 for protection under this paragraph, the employee, when
25 practicable, shall have communicated or attempted to com-

1 municate the safety or health concern to the employer and
 2 have not received from the employer a response reasonably
 3 calculated to allay such concern.”.

4 (c) PROCEDURE.—Section 11(c) of such Act (29
 5 U.S.C. 660(c)) is amended by striking paragraph (3) and
 6 inserting the following:

7 “(3) COMPLAINT.—Any employee who believes
 8 that the employee has been discharged, disciplined,
 9 or otherwise discriminated against by any person in
 10 violation of paragraph (1) or (2) may seek relief for
 11 such violation by filing a complaint with the Sec-
 12 retary under paragraph (5).

13 “(4) STATUTE OF LIMITATIONS.—

14 “(A) IN GENERAL.—An employee may take
 15 the action permitted by paragraph (3)(A) not
 16 later than 180 days after the later of—

17 “(i) the date on which an alleged vio-
 18 lation of paragraph (1) or (2) occurs; or

19 “(ii) the date on which the employee
 20 knows or should reasonably have known
 21 that such alleged violation occurred.

22 “(B) REPEAT VIOLATION.—Except in
 23 cases when the employee has been discharged,
 24 a violation of paragraph (1) or (2) shall be con-

1 sidered to have occurred on the last date an al-
2 leged repeat violation occurred.

3 “(5) INVESTIGATION.—

4 “(A) IN GENERAL.—An employee may,
5 within the time period required under para-
6 graph (4)(B), file a complaint with the Sec-
7 retary alleging a violation of paragraph (1) or
8 (2). If the complaint alleges a prima facie case,
9 the Secretary shall conduct an investigation of
10 the allegations in the complaint, which—

11 “(i) shall include—

12 “(I) interviewing the complain-
13 ant;

14 “(II) providing the respondent an
15 opportunity to—

16 “(aa) submit to the Sec-
17 retary a written response to the
18 complaint; and

19 “(bb) meet with the Sec-
20 retary to present statements from
21 witnesses or provide evidence;
22 and

23 “(III) providing the complainant
24 an opportunity to—

1 “(aa) receive any statements
2 or evidence provided to the Sec-
3 retary;

4 “(bb) meet with the Sec-
5 retary; and

6 “(cc) rebut any statements
7 or evidence; and

8 “(ii) may include issuing subpoenas
9 for the purposes of such investigation.

10 “(B) DECISION.—Not later than 90 days
11 after the filing of the complaint, the Secretary
12 shall—

13 “(i) determine whether reasonable
14 cause exists to believe that a violation of
15 paragraph (1) or (2) has occurred; and

16 “(ii) issue a decision granting or de-
17 nying relief.

18 “(6) PRELIMINARY ORDER FOLLOWING INVES-
19 TIGATION.—If, after completion of an investigation
20 under paragraph (5)(A), the Secretary finds reason-
21 able cause to believe that a violation of paragraph
22 (1) or (2) has occurred, the Secretary shall issue a
23 preliminary order providing relief authorized under
24 paragraph (14) at the same time the Secretary
25 issues a decision under paragraph (5)(B). If a de

1 novo hearing is not requested within the time period
2 required under paragraph (7)(A)(i), such prelimi-
3 nary order shall be deemed a final order of the Sec-
4 retary and is not subject to judicial review.

5 “(7) HEARING.—

6 “(A) REQUEST FOR HEARING.—

7 “(i) IN GENERAL.—A de novo hearing
8 on the record before an administrative law
9 judge may be requested—

10 “(I) by the complainant or re-
11 spondent within 30 days after receiv-
12 ing notification of a decision granting
13 or denying relief issued under para-
14 graph 5(D) or paragraph (6) respec-
15 tively;

16 “(II) by the complainant within
17 30 days after the date the complaint
18 is dismissed without investigation by
19 the Secretary under paragraph (5)(A);
20 or

21 “(III) by the complainant within
22 120 days after the date of filing the
23 complaint, if the Secretary has not
24 issued a decision under paragraph
25 (5)(B).

1 “(ii) REINSTATEMENT ORDER.—The
2 request for a hearing shall not operate to
3 stay any preliminary reinstatement order
4 issued under paragraph (6).

5 “(B) PROCEDURES.—

6 “(i) IN GENERAL.—A hearing re-
7 quested under this paragraph shall be con-
8 ducted expeditiously and in accordance
9 with rules established by the Secretary for
10 hearings conducted by administrative law
11 judges.

12 “(ii) SUBPOENAS; PRODUCTION OF
13 EVIDENCE.—In conducting any such hear-
14 ing, the administrative law judge may issue
15 subpoenas. The respondent or complainant
16 may request the issuance of subpoenas
17 that require the deposition of, or the at-
18 tendance and testimony of, witnesses and
19 the production of any evidence (including
20 any books, papers, documents, or record-
21 ings) relating to the matter under consid-
22 eration.

23 “(iii) DECISION.—The administrative
24 law judge shall issue a decision not later
25 than 90 days after the date on which a

hearing was requested under this paragraph and promptly notify, in writing, the parties and the Secretary of such decision, including the findings of fact and conclusions of law. If the administrative law judge finds that a violation of paragraph (1) or (2) has occurred, the judge shall issue an order for relief under paragraph (14). If review under paragraph (8) is not timely requested, such order shall be deemed a final order of the Secretary that is not subject to judicial review.

“(8) ADMINISTRATIVE APPEAL.—

“(A) IN GENERAL.—Not later than 30 days after the date of notification of a decision and order issued by an administrative law judge under paragraph (7), the complainant or respondent may file, with objections, an administrative appeal with an administrative review body designated by the Secretary (referred to in this paragraph as the ‘review board’).

“(B) STANDARD OF REVIEW.—In reviewing the decision and order of the administrative law judge, the review board shall affirm the decision and order if it is determined that the fac-

1 tual findings set forth therein are supported by
2 substantial evidence and the decision and order
3 are made in accordance with applicable law.

4 “(C) DECISIONS.—If the review board
5 grants an administrative appeal, the review
6 board shall issue a final decision and order af-
7 firming or reversing, in whole or in part, the
8 decision under review by not later than 90 days
9 after receipt of the administrative appeal. If it
10 is determined that a violation of paragraph (1)
11 or (2) has occurred, the review board shall issue
12 a final decision and order providing relief au-
13 thorized under paragraph (14). Such decision
14 and order shall constitute final agency action
15 with respect to the matter appealed.

16 “(9) SETTLEMENT IN THE ADMINISTRATIVE
17 PROCESS.—

18 “(A) IN GENERAL.—At any time before
19 issuance of a final order, an investigation or
20 proceeding under this subsection may be termi-
21 nated on the basis of a settlement agreement
22 entered into by the parties.

23 “(B) PUBLIC POLICY CONSIDERATIONS.—
24 Neither the Secretary, an administrative law
25 judge, or review board conducting a hearing

1 under this subsection shall accept a settlement
 2 that contains conditions conflicting with the
 3 rights protected under this Act or that are con-
 4 trary to public policy, including a restriction on
 5 a complainant's right to future employment
 6 with employers other than the specific employ-
 7 ers named in a complaint.

8 “(10) INACTION BY THE REVIEW BOARD OR AD-
 9 MINISTRATIVE LAW JUDGE.—

10 “(A) IN GENERAL.—The complainant may
 11 bring a de novo action described in subpara-
 12 graph (B) if—

13 “(i) an administrative law judge has
 14 not issued a decision and order within the
 15 90-day time period required under para-
 16 graph (7)(B)(iii); or

17 “(ii) the review board has not issued
 18 a decision and order within the 90-day
 19 time period required under paragraph
 20 (8)(C).

21 “(B) DE NOVO ACTION.—Such de novo ac-
 22 tion may be brought at law or equity in the
 23 United States district court for the district
 24 where a violation of paragraph (1) or (2) alleg-
 25 edly occurred or where the complainant resided

1 on the date of such alleged violation. The court
2 shall have jurisdiction over such action without
3 regard to the amount in controversy and to
4 order appropriate relief under paragraph (14).
5 Such action shall, at the request of either party
6 to such action, be tried by the court with a
7 jury.

8 “(11) JUDICIAL REVIEW.—

9 “(A) TIMELY APPEAL TO THE COURT OF
10 APPEALS.—Any party adversely affected or ag-
11 grieved by a final decision and order issued
12 under this subsection may obtain review of such
13 decision and order in the United States Court
14 of Appeals for the circuit where the violation,
15 with respect to which such final decision and
16 order was issued, allegedly occurred or where
17 the complainant resided on the date of such al-
18 leged violation. To obtain such review, a party
19 shall file a petition for review not later than 60
20 days after the final decision and order was
21 issued. Such review shall conform to chapter 7
22 of title 5, United States Code. The commence-
23 ment of proceedings under this subparagraph
24 shall not, unless ordered by the court, operate
25 as a stay of the final decision and order.

1 “(B) LIMITATION ON COLLATERAL AT-
 2 TACK.—An order and decision with respect to
 3 which review may be obtained under subpara-
 4 graph (A) shall not be subject to judicial review
 5 in any criminal or other civil proceeding.

6 “(12) ENFORCEMENT OF ORDER.—If a re-
 7 spondent fails to comply with an order issued under
 8 this subsection, the Secretary or the complainant on
 9 whose behalf the order was issued may file a civil ac-
 10 tion for enforcement in the United States district
 11 court for the district in which the violation was
 12 found to occur to enforce such order. If both the
 13 Secretary and the complainant file such action, the
 14 action of the Secretary shall take precedence. The
 15 district court shall have jurisdiction to grant all ap-
 16 propriate relief described in paragraph (14).

17 “(13) BURDENS OF PROOF.—

18 “(A) CRITERIA FOR DETERMINATION.—In
 19 making a determination or adjudicating a com-
 20 plaint pursuant to this subsection, the Sec-
 21 retary, administrative law judge, review board,
 22 or a court may determine that a violation of
 23 paragraph (1) or (2) has occurred only if the
 24 complainant demonstrates that any conduct de-
 25 scribed in paragraph (1) or (2) with respect to

1 the complainant was a contributing factor in
 2 the adverse action alleged in the complaint.

3 “(B) PROHIBITION.—Notwithstanding sub-
 4 paragraph (A), a decision or order that is favor-
 5 able to the complainant shall not be issued in
 6 any administrative or judicial action pursuant
 7 to this subsection if the respondent dem-
 8 onstrates by clear and convincing evidence that
 9 the respondent would have taken the same ad-
 10 verse action in the absence of such conduct.

11 “(14) RELIEF.—

12 “(A) ORDER FOR RELIEF.—If the Sec-
 13 retary, administrative law judge, review board,
 14 or a court determines that a violation of para-
 15 graph (1) or (2) has occurred, the Secretary or
 16 court, respectively, shall have jurisdiction to
 17 order all appropriate relief, including injunctive
 18 relief, compensatory and exemplary damages,
 19 including—

20 “(i) affirmative action to abate the
 21 violation;

22 “(ii) reinstatement without loss of po-
 23 sition or seniority, and restoration of the
 24 terms, rights, conditions, and privileges as-
 25 sociated with the complainant’s employ-

1 ment, including opportunities for pro-
2 motions to positions with equivalent or bet-
3 ter compensation for which the complain-
4 ant is qualified;

5 “(iii) compensatory and consequential
6 damages sufficient to make the complain-
7 ant whole, (including back pay, prejudg-
8 ment interest, and other damages); and

9 “(iv) expungement of all warnings,
10 reprimands, or derogatory references that
11 have been placed in paper or electronic
12 records or databases of any type relating
13 to the actions by the complainant that
14 gave rise to the unfavorable personnel ac-
15 tion, and, at the complainant’s direction,
16 transmission of a copy of the decision on
17 the complaint to any person whom the
18 complainant reasonably believes may have
19 received such unfavorable information.

20 “(B) ATTORNEYS’ FEES AND COSTS.—If
21 the Secretary or an administrative law judge,
22 review board, or court grants an order for relief
23 under subparagraph (A), the Secretary, admin-
24 istrative law judge, review board, or court, re-

1 spectively, shall assess, at the request of the
2 employee against the employer—

3 “(i) reasonable attorneys’ fees; and

4 “(ii) costs (including expert witness
5 fees)) reasonably incurred, as determined
6 by the Secretary, administrative law judge,
7 review board, or court, respectively, in con-
8 nection with bringing the complaint upon
9 which the order was issued.

10 “(15) PROCEDURAL RIGHTS.—The rights and
11 remedies provided for in this subsection may not be
12 waived by any agreement, policy, form, or condition
13 of employment, including by any pre-dispute arbitra-
14 tion agreement or collective bargaining agreement.

15 “(16) SAVINGS.—Nothing in this subsection
16 shall be construed to diminish the rights, privileges,
17 or remedies of any employee who exercises rights
18 under any Federal or State law or common law, or
19 under any collective bargaining agreement.

20 “(17) ELECTION OF VENUE.—

21 “(A) IN GENERAL.—An employee of an
22 employer who is located in a State that has a
23 State plan approved under section 18 may file
24 a complaint alleging a violation of paragraph
25 (1) or (2) by such employer with—

1 “(i) the Secretary under paragraph
2 (5); or

3 “(ii) a State plan administrator in
4 such State.

5 “(B) REFERRALS.—If—

6 “(i) the Secretary receives a complaint
7 pursuant to subparagraph (A)(i), the Sec-
8 retary shall not refer such complaint to a
9 State plan administrator for resolution; or

10 “(ii) a State plan administrator re-
11 ceives a complaint pursuant to subpara-
12 graph (A)(ii), the State plan administrator
13 shall not refer such complaint to the Sec-
14 retary for resolution.”.

15 (d) RELATION TO ENFORCEMENT.—Section 17(j) of
16 such Act (29 U.S.C. 666(j)) is amended by inserting be-
17 fore the period the following: “, including the history of
18 violations under section 11(c)”.

19 **SEC. 702. VICTIMS’ RIGHTS.**

20 The Occupational Safety and Health Act of 1970 is
21 amended by inserting after section 9 (29 U.S.C. 658) the
22 following:

23 **“SEC. 9A. VICTIMS’ RIGHTS.**

24 “(a) RIGHTS BEFORE THE SECRETARY.—A victim or
25 the representative of a victim, shall be afforded the right,

1 with respect to an inspection or investigation conducted
2 under section 8 to—

3 “(1) meet with the Secretary regarding the in-
4 spection or investigation conducted under such sec-
5 tion before the Secretary’s decision to issue a cita-
6 tion or take no action;

7 “(2) receive, at no cost, a copy of any citation
8 or report, issued as a result of such inspection or in-
9 vestigation, at the same time as the employer re-
10 ceives such citation or report;

11 “(3) be informed of any notice of contest or ad-
12 dition of parties to the proceedings filed under sec-
13 tion 10(c); and

14 “(4) be provided notification of the date and
15 time or any proceedings, service of pleadings, and
16 other relevant documents, and an explanation of the
17 rights of the employer, employee and employee rep-
18 resentative, and victim to participate in proceedings
19 conducted under section 10(c).

20 “(b) RIGHTS BEFORE THE COMMISSION.—Upon re-
21 quest, a victim or representative of a victim shall be af-
22 forded the right with respect to a work-related bodily in-
23 jury or death to—

24 “(1) be notified of the time and date of any
25 proceeding before the Commission;

1 “(2) receive pleadings and any decisions relat-
2 ing to the proceedings; and

3 “(3) be provided an opportunity to appear and
4 make a statement in accordance with the rules pre-
5 scribed by the Commission.

6 “(c) MODIFICATION OF CITATION.—Before entering
7 into an agreement to withdraw or modify a citation issued
8 as a result of an inspection or investigation of an incident
9 under section 8, the Secretary shall notify a victim or rep-
10 resentative of a victim and provide the victim or represent-
11 ative of a victim with an opportunity to appear and make
12 a statement before the parties conducting settlement nego-
13 tiations. In lieu of an appearance, the victim or represent-
14 ative of the victim may elect to submit a letter to the Sec-
15 retary and the parties.

16 “(d) SECRETARY PROCEDURES.—The Secretary shall
17 establish procedures—

18 “(1) to inform victims of their rights under this
19 section; and

20 “(2) for the informal review of any claim of a
21 denial of such a right.

22 “(e) COMMISSION PROCEDURES AND CONSIDER-
23 ATIONS.—The Commission shall—

1 “(1) establish procedures relating to the rights
2 of victims to be heard in proceedings before the
3 Commission; and

4 “(2) in rendering any decision, provide due con-
5 sideration to any statement or information provided
6 by any victim before the Commission.

7 “(f) FAMILY LIAISONS.—The Secretary shall des-
8 ignate at least 1 employee at each area office of the Occu-
9 pational Safety and Health Administration to serve as a
10 family liaison to—

11 “(1) keep victims informed of the status of in-
12 vestigations, enforcement actions, and settlement ne-
13 gotiations; and

14 “(2) assist victims in asserting their rights
15 under this section.

16 “(g) DEFINITION.—In this section, the term ‘victim’
17 means—

18 “(1) an employee, including a former employee,
19 who has sustained a work-related injury or illness
20 that is the subject of an inspection or investigation
21 conducted under section 8; or

22 “(2) a family member (as further defined by
23 the Secretary) of a victim described in paragraph
24 (1), if—

1 “(A) the victim dies as a result of a inci-
 2 dent that is the subject of an inspection or in-
 3 vestigation conducted under section 8; or

4 “(B) the victim sustains a work-related in-
 5 jury or illness that is the subject of an inspec-
 6 tion or investigation conducted under section 8,
 7 and the victim because of incapacity cannot rea-
 8 sonably exercise the rights under this section.”.

9 **SEC. 703. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
 10 **PEATED VIOLATIONS PENDING CONTEST AND**
 11 **PROCEDURES FOR A STAY.**

12 Section 10 of the Occupational Safety and Health Act
 13 of 1970 (29 U.S.C. 659) is amended by adding at the end
 14 the following:

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

18 “(1) PERIOD PERMITTED FOR CORRECTION OF
 19 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—
 20 For each violation which the Secretary designates as
 21 serious, willful, or repeated, the period permitted for
 22 the correction of the violation shall begin to run
 23 upon receipt of the citation.

24 “(2) FILING OF A MOTION OF CONTEST.—The
 25 filing of a notice of contest by an employer—

1 “(A) shall not operate as a stay of the pe-
 2 riod for correction of a violation designated as
 3 serious, willful, or repeated; and

4 “(B) may operate as a stay of the period
 5 for correction of a violation not designated by
 6 the Secretary as serious, willful, or repeated.

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

9 “(A) MOTION FOR A STAY.—An employer
 10 may file with the Commission a motion to stay
 11 a period for the correction of a violation des-
 12 ignated as serious, willful, or repeated.

13 “(B) CRITERIA.—In determining whether
 14 a stay should be issued on the basis of a motion
 15 filed under subparagraph (A), the Commission
 16 shall consider whether—

17 “(i) the employer has demonstrated a
 18 substantial likelihood of success on its con-
 19 test to the citation;

20 “(ii) the employer will suffer irrep-
 21 arable harm absent a stay; and

22 “(iii) a stay will adversely affect the
 23 health and safety of workers.

24 “(C) RULES OF PROCEDURE.—The Com-
 25 mission shall develop rules of procedure for con-

ducting a hearing on a motion filed under subparagraph (A) on an expedited basis. At a minimum, such rules shall provide:

“(i) That a hearing before an administrative law judge shall occur not later than 15 days following the filing of the motion for a stay (unless extended at the request of the employer), and shall provide for a decision on the motion not later than 15 days following the hearing (unless extended at the request of the employer).

“(ii) That a decision of an administrative law judge on a motion for stay is rendered on a timely basis.

“(iii) That if a party is aggrieved by a decision issued by an administrative law judge regarding the stay, such party has the right to file an objection with the Commission not later than 5 days after receipt of the administrative law judge’s decision. Within 10 days after receipt of the objection, a Commissioner, if a quorum is seated pursuant to section 12(f), shall decide whether to grant review of the objection. If, within 10 days after receipt of the ob-

jection, no decision is made on whether to review the decision of the administrative law judge, the Commission declines to review such decision, or no quorum is seated, the decision of the administrative law judge shall become a final order of the Commission. If the Commission grants review of the objection, the Commission shall issue a decision regarding the stay not later than 30 days after receipt of the objection. If the Commission fails to issue such decision within 30 days, the decision of the administrative law judge shall become a final order of the Commission.

“(iv) For notification to employees or representatives of affected employees of requests for such hearings and shall provide affected employees or representatives of affected employees an opportunity to participate as parties to such hearings.”.

SEC. 704. CONFORMING AMENDMENTS.

(a) SECTION 17.—Section 17(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666(d)) (29 U.S.C. 666(d)) is amended to read as follows:

1 “(d) Any employer who fails to correct a violation
 2 designated by the Secretary as serious, willful, or repeated
 3 and for which a citation has been issued under section 9(a)
 4 within the period permitted for its correction (and a stay
 5 has not been issued by the Commission under section
 6 10(d)) may be assessed a civil penalty of not more than
 7 \$7,000 for each day during which such failure or violation
 8 continues. Any employer who fails to correct any other vio-
 9 lation for which a citation has been issued under section
 10 9(a) of this title within the period permitted for its correc-
 11 tion (which period shall not begin to run until the date
 12 of the final order of the Commission in the case of any
 13 review proceeding under section 10 initiated by the em-
 14 ployer in good faith and not solely for delay of avoidance
 15 of penalties) may be assessed a civil penalty of not more
 16 than \$7,000 for each day during which such failure or vio-
 17 lation continues.”.

18 **SEC. 705. CIVIL PENALTIES.**

19 (a) IN GENERAL.—Section 17 of the Occupational
 20 Safety and Health Act of 1970 (29 U.S.C. 666) is amend-
 21 ed—

22 (1) in subsection (a)—

23 (A) by striking “\$70,000” and inserting
 24 “\$120,000”;

1 (B) by striking “\$5,000” and inserting
2 “\$8,000”; and

3 (C) by adding at the end the following: “In
4 determining whether a violation is repeated, the
5 Secretary shall consider the employer’s history
6 of violations under this Act and under State oc-
7 cupational safety and health plans established
8 under section 18. If such a willful or repeated
9 violation caused or contributed to the death of
10 an employee, such civil penalty amounts shall
11 be increased to not more than \$250,000 for
12 each such violation, but not less than \$50,000
13 for each such violation, except that for an em-
14 ployer with 25 or fewer employees such penalty
15 shall not be less than \$25,000 for each such
16 violation.”;

17 (2) in subsection (b)—

18 (A) by striking “\$7,000” and inserting
19 “\$12,000”; and

20 (B) by adding at the end the following: “If
21 such a violation caused or contributed to the
22 death of an employee, such civil penalty
23 amounts shall be increased to not more than
24 \$50,000 for each such violation, but not less
25 than \$20,000 for each such violation, except

1 that for an employer with 25 or fewer employ-
 2 ees such penalty shall not be less than \$10,000
 3 for each such violation.”;

4 (3) in subsection (c), by striking “\$7,000” and
 5 inserting “\$12,000”;

6 (4) in subsection (d), as amended, by striking
 7 “\$7,000” each place it occurs and inserting
 8 “\$12,000”;

9 (5) by redesignating subsections (e) through (l)
 10 as subsections (f) through (m), respectively; and

11 (6) in subsection (j) (as redesignated by para-
 12 graph (5)), by striking “\$7,000” and inserting
 13 “\$12,000;”.

14 (b) INFLATION ADJUSTMENT.—Section 17 is further
 15 amended by inserting after subsection (d) the following:

16 “(e) Amounts provided under this section for civil
 17 penalties shall be adjusted by the Secretary at least once
 18 during each 4-year period beginning January 1, 2015, to
 19 account for the percentage increase or decrease in the
 20 Consumer Price Index for all urban consumers during
 21 such period.”.

22 **SEC. 706. CRIMINAL PENALTIES.**

23 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) (as
 24 amended by section 705) is further amended—

1 (1) by amending subsection (f) to read as fol-
2 lows:

3 “(f)(1) Any employer who knowingly violates any
4 standard, rule, or order promulgated under section 6 of
5 this Act, or of any regulation prescribed under this Act,
6 and that violation caused or contributed to the death of
7 any employee, shall, upon conviction, be punished by a fine
8 in accordance with title 18, United States Code, or by im-
9 prisonment for not more than 10 years, or both, except
10 that if the conviction is for a violation committed after
11 a first conviction of such person under this subsection or
12 subsection (i), punishment shall be by a fine in accordance
13 title 18, United States Code, or by imprisonment for not
14 more than 20 years, or by both.

15 “(2) For the purpose of this subsection, the term ‘em-
16 ployer’ means, in addition to the definition contained in
17 section 3 of this Act, any officer or director.”;

18 (2) in subsection (g), by striking “fine of not
19 more than \$1,000 or by imprisonment for not more
20 than six months,” and inserting “fine in accordance
21 with title 18, United States Code, or by imprison-
22 ment for not more than 2 years,”;

23 (3) in subsection (h), by striking “fine of not
24 more than \$10,000, or by imprisonment for not
25 more than six months,” and inserting “fine in ac-

1 cordance with title 18, United States Code, or by
2 imprisonment for not more than 5 years,”;

3 (4) by redesignating subsections (j) through
4 (m) as subsections (k) through (n), respectively; and

5 (5) by inserting after subsection (i) the fol-
6 lowing:

7 “(j)(1) Any employer who knowingly violates any
8 standard, rule, or order promulgated under section 6, or
9 any regulation prescribed under this Act, and that viola-
10 tion causes or contributes to serious bodily harm to any
11 employee but does not cause death to any employee, shall,
12 upon conviction, be punished by a fine in accordance with
13 title 18, United States Code, or by imprisonment for not
14 more than 5 years, or by both, except that if the conviction
15 is for a violation committed after a first conviction of such
16 person under this subsection or subsection (e), punishment
17 shall be by a fine in accordance with title 18, United
18 States Code, or by imprisonment for not more than 10
19 years, or by both.

20 “(2) For the purpose of this subsection, the term ‘em-
21 ployer’ means, in addition to the definition contained in
22 section 3 of this Act, any officer or director.

23 “(3) For purposes of this subsection, the term ‘seri-
24 ous bodily harm’ means bodily injury or illness that in-
25 volves—

1 “(A) a substantial risk of death;

2 “(B) protracted unconsciousness;

3 “(C) protracted and obvious physical disfigure-
4 ment; or

5 “(D) protracted loss or impairment, either tem-
6 porary or permanent, of the function of a bodily
7 member, organ, or mental faculty.”.

8 (b) JURISDICTION FOR PROSECUTION UNDER STATE
9 AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C.
10 666) (as amended by section 705 and subsection (a)) is
11 further amended by adding at the end the following:

12 “(o) Nothing in this Act shall preclude a State or
13 local law enforcement agency from conducting criminal
14 prosecutions in accordance with the laws of such State or
15 locality.”.

16 **SEC. 707. PENALTIES.**

17 Section 17(n) (as redesignated by section 706(a)(4))
18 (29 U.S.C. 666(n)) is amended by adding at the end the
19 following: “Pre-final order interest on such penalties shall
20 begin to accrue on the date the party contests a citation
21 issued under this Act, and shall end upon the issuance
22 of the final order. Such pre-final order interest shall be
23 calculated at the current underpayment rate determined
24 by the Secretary of the Treasury pursuant to section 6621
25 of the Internal Revenue Code of 1986, and shall be com-

1 pounded daily. Post-final order interest shall begin to ac-
2 crue 30 days after the date a final order of the Commis-
3 sion or the court is issued, and shall be charged at the
4 rate of 8 percent per year.”.

5 **SEC. 708. EFFECTIVE DATE.**

6 (a) GENERAL RULE.—Except as provided for in sub-
7 section (b), this title and the amendments made by this
8 title shall take effect not later than 90 days after the date
9 of the enactment of this Act.

10 (b) EXCEPTION FOR STATES AND POLITICAL SUB-
11 DIVISIONS.—A State that has a State plan approved under
12 section 18 (29 U.S.C. 667) shall amend its State plan to
13 conform with the requirements of this Act and the amend-
14 ments made by this Act not later than 12 months after
15 the date of the enactment of this Act. The Secretary of
16 Labor may extend the period for a State to make such
17 amendments to its State plan by not more than 12
18 months, if the State’s legislature is not in session during
19 the 12-month period beginning with the date of the enact-
20 ment of this Act. Such amendments to the State plan shall
21 take effect not later than 90 days after the adoption of
22 such amendments by such State.

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