

105TH CONGRESS  
1ST SESSION

# H. R. 609

To make improvements in the Black Lung Benefits Act.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 1997

Mr. HOLDEN (for himself, Mr. BOUCHER, Mr. KANJORSKI, Mr. MASCARA, Mr. MURTHA, and Mr. WISE) introduced the following bill; which was referred to the Committee on Education and the Workforce

---

## A BILL

To make improvements in the Black Lung Benefits Act.

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; REFERENCE.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Black Lung Benefits Restoration Act of 1997”.

6       (b) **REFERENCE.**—Whenever in this Act (other than  
7       section 9(a)(1)) an amendment or repeal is expressed in  
8       terms of an amendment to, or repeal of, a section or other  
9       provision, the reference shall be considered to be made to  
10      a section or other provision of the Black Lung Benefits  
11      Act.

1 **SEC. 2. BENEFIT OVERPAYMENT.**

2 Part C is amended by adding at the end the following:

3 “SEC. 436 (a) The repayment of benefits paid on a  
4 claim filed under this part before the final adjudication  
5 of the claim shall not be required if the claim was finally  
6 denied, unless fraud or deception was used to procure the  
7 payment of such benefits.

8 “(b) The trust fund shall refund any payments made  
9 to it as a reimbursement of benefits paid on a claim filed  
10 under this part before the final adjudication of the claim,  
11 unless fraud or deception was used to procure the payment  
12 of such benefits.

13 “(c) The trust fund shall reimburse an operator for  
14 any benefits paid on a claim filed under this part before  
15 the final adjudication of the claim if the claim was finally  
16 denied.

17 “(d) If on a claim for benefits filed under this part—

18 “(1) the Secretary makes an initial determina-  
19 tion—

20 “(A) of eligibility, or

21 “(B) that particular medical benefits are  
22 payable, or

23 “(2) an award of benefits is made,

24 the operator found to be the responsible operator under  
25 section 422(h) shall, within 30 days of the date of such

1 determination or award, commence the payment of month-  
2 ly benefits accruing thereafter and of medical benefits that  
3 have been found payable. If an operator fails to timely  
4 make any payment required by an initial determination  
5 or by an award, such determination or award shall be con-  
6 sidered final as of the date of its issuance.”.

7 **SEC. 3. EVIDENCE.**

8 Section 422 (30 U.S.C. 932) is amended by adding  
9 at the end the following:

10 “(m)(1)(A) During the course of all proceedings on  
11 a claim for benefits under this part, the results of not  
12 more than 3 medical examinations offered by the claimant  
13 may be received as evidence to support eligibility for bene-  
14 fits.

15 “(B) During the course of all proceedings on a claim  
16 for benefits under this part, the responsible operator and  
17 the trust fund—

18 “(i) may each require, at no expense to the  
19 claimant, not more than one medical examination of  
20 the miner, and

21 “(ii) may not each offer as evidence the results  
22 of more than one medical examination of the miner.

23 “(C) An administrative law judge may require the  
24 miner to submit to a medical examination by a physician  
25 assigned by the District Director if the administrative law

1 judge determines that, at any time, there is good cause  
2 for requiring such examination. For purposes of this sub-  
3 paragraph, good cause shall exist only when the adminis-  
4 trative law judge is unable to determine from existing evi-  
5 dence whether the claimant is entitled to benefits.

6 “(D) The complete pulmonary evaluation provided  
7 each miner under section 413(b) and any consultive eval-  
8 uation developed by the District Director shall be received  
9 into evidence notwithstanding subparagraph (A) or (B).

10 “(E) Any record of—

11 “(i) hospitalization for a pulmonary or related  
12 disease,

13 “(ii) medical treatment for a pulmonary or re-  
14 lated disease, and

15 “(iii) a biopsy or an autopsy,

16 may be received into evidence notwithstanding subpara-  
17 graph (A) or (B).

18 “(2) In addition to the medical examinations author-  
19 ized by paragraph (1), each party may submit one inter-  
20 pretive medical opinion (whether presented as documen-  
21 tary evidence or in oral testimony) reviewing each clinical  
22 study or physical examination (including a consultive read-  
23 ing of a chest roentgenogram, an evaluation of a blood  
24 gas study, and an evaluation of a pulmonary function

1 study) derived from any medical examination or contained  
2 in a record referred to in paragraph (1)(E).

3 “(3) A request for modification of a denied claim  
4 under section 22 of the Longshore and Harbor Workers’  
5 Compensation Act, as made applicable to this Act by sub-  
6 section (a) of this section, shall be considered as if it were  
7 a new claim for the purpose of applying the limitations  
8 prescribed by paragraphs (1) and (2).

9 “(4) The opinion of a miner’s treating physician, if  
10 offered in accordance with paragraph (1)(A), shall be  
11 given substantial weight over the opinion of other physi-  
12 cians in determining the claimant’s eligibility for benefits  
13 if the treating physician is board-certified in a specialty  
14 relevant to the diagnosis of total disability or death due  
15 to pneumoconiosis.

16 “(5) For purposes of this subsection, a medical exam-  
17 ination consists of a physical examination and all appro-  
18 priate clinical studies (not including a biopsy or an au-  
19 topsy) related to the diagnosis of total disability or death  
20 due to pneumoconiosis.”.

21 **SEC. 4. SURVIVOR BENEFITS.**

22 (a) DEATH.—Section 422 (30 U.S.C. 932), as  
23 amended by section 3, is amended by adding at the end  
24 the following:

1       “(n) If an eligible survivor files a claim for benefits  
2 under this part and if the miner—

3               “(1) was receiving benefits for pneumoconiosis  
4 pursuant to a final adjudication under this part, or

5               “(2) was totally disabled by pneumoconiosis at  
6 the time of the miner’s death,

7 the miner’s death shall be considered to have occurred as  
8 a result of the pneumoconiosis.”.

9       (b) RULES FOR WIDOWS AND WIDOWERS.—Section  
10 422 (30 U.S.C. 932), as amended by subsection (a), is  
11 amended by adding at the end the following:

12       “(o)(1) A widow or widower of a miner who was mar-  
13 ried to the miner for less than 9 months at any time pre-  
14 ceding the miner’s death is not qualified to receive survi-  
15 vor benefits under this part unless the widow or widower  
16 was the natural or adoptive parent of the miner’s child.

17       “(2) The widow or widower of a miner is disqualified  
18 to receive survivor benefits under this part if the widow  
19 or widower remarries before attaining the age of 50.

20       “(3) A widow or widower may not receive an aug-  
21 mentation in survivor benefits on any basis arising out of  
22 a remarriage of the widow or widower.”.

1 **SEC. 5. RESPONSIBLE OPERATOR.**

2 Section 422(h) (30 U.S.C. 932(h)) is amended by in-  
3 serting “(1)” after “(h)” and by adding at the end the  
4 following:

5 “(2)(A) Prior to issuing an initial determination of  
6 eligibility, the Secretary shall, after investigation, notice,  
7 and a hearing as provided in section 19 of the Longshore  
8 and Harbor Workers’ Compensation Act, as made applica-  
9 ble to this Act by subsection (a) of this section, determine  
10 whether any operator meets the Secretary’s criteria for li-  
11 ability as a responsible operator under this Act. If a hear-  
12 ing is timely requested on the liability issue, the decision  
13 of the administrative law judge conducting the hearing  
14 shall be issued not later than 120 days after such request  
15 and shall not be subject to further appellate review.

16 “(B) If the administrative law judge determines that  
17 an operator’s request for a hearing on the liability issue  
18 was made without reasonable grounds, the administrative  
19 law judge may assess the operator for the costs of the pro-  
20 ceeding (not to exceed \$750).”.

21 **SEC. 6. ATTORNEY FEES.**

22 Section 422 (30 U.S.C. 932), as amended by section  
23 4(b), is amended by adding at the end the following:

24 “(p)(1) If in any administrative or judicial proceeding  
25 on a claim for benefits a determination is made that a  
26 claimant is entitled to such benefits, the claimant shall

1 be entitled to receive all reasonable costs and expenses (in-  
2 cluding expert witness and attorney's fees) incurred by the  
3 claimant in such proceeding and in any other administra-  
4 tive or judicial proceeding on such claim occurring before  
5 such proceeding.

6       “(2) In the case of a proceeding held with respect  
7 to such claim—

8               “(A) the person or Board which made the de-  
9 termination that the claimant is entitled to benefits  
10 in an administrative proceeding and any other per-  
11 son or Board which made a prior determination in  
12 an administrative proceeding on such claim, or

13               “(B) the court in the case of a judicial proceed-  
14 ing,

15 shall determine the amount of all costs and expenses (in-  
16 cluding expert witness and attorney's fees) incurred by the  
17 claimant in connection with any such proceeding and shall  
18 assess the operator responsible to the claimant for such  
19 costs and expenses which are reasonable or if there is not  
20 an operator responsible to the claimant, shall assess the  
21 fund for such costs and expenses.

22       “(3) The determination of such costs and expenses  
23 shall be made within 60 days of the date the claimant sub-  
24 mits a petition for the payment of such costs and expenses

1 to a person, the Board, or court which made a determina-  
2 tion on the claimant's claim. The person, Board, or court  
3 receiving such petition shall take such action as may be  
4 necessary to assure that such costs and expenses are paid  
5 within 45 days of the date of the determination of such  
6 costs and expenses unless a motion to reconsider—

7           “(A) the amount of such costs and expenses, or

8           “(B) the person liable for the payment of such  
9           amount,

10 is pending.

11           “(4) If an operator pays costs and expenses assessed  
12 under paragraph (1) and if the claimant for whom such  
13 costs and expenses were paid is determined in a later pro-  
14 ceeding not to be eligible for benefits under this part, the  
15 fund shall pay the operator the amount paid for such costs  
16 and expenses.

17           “(5) Section 28(e) of the Longshore and Harbor  
18 Workers' Compensation Act shall apply with respect to  
19 any person who receives costs and expenses which are paid  
20 under this subsection on account of services rendered a  
21 claimant.”.

22 **SEC. 7. ADMINISTRATION.**

23           (a) APPEALS TO THE BENEFITS REVIEW BOARD.—

24 No appeal of an order in a proceeding under the Black

1 Lung Benefits Act may be made by a claimant or respond-  
2 ent to the Benefits Review Board unless such order has  
3 been made by an administrative law judge.

4 (b) ACQUIESCENCE.—The Secretary of Labor may  
5 not delegate to the Benefits Review Board the authority  
6 to refuse to acquiesce in a decision of a Federal court.

7 **SEC. 8. REFILING.**

8 Any claim filed under the Black Lung Benefits Act  
9 after January 1, 1982, but before the effective date of this  
10 Act prescribed by section 11(a), may be refiled under such  
11 Act after such effective date for a de novo review on the  
12 merits.

13 **SEC. 9. CONSTRUCTION.**

14 If in any legal proceeding a term in any amendment  
15 made by this Act is considered to be ambiguous, the legis-  
16 lative history accompanying this Act shall be considered  
17 controlling.

18 **SEC. 10. EFFECTIVE DATES.**

19 (a) GENERAL RULE.—Except as provided in sub-  
20 section (b), this Act and the amendments made by this  
21 Act shall take effect October 1, 1997.

22 (b) SECTION 6.—The amendment made by section 6  
23 shall apply only with respect to claims which are filed for  
24 the first time after October 1, 1997, and shall not apply  
25 with respect to any claim which is filed before such date

1 and which is refiled under section 8 of this Act after such  
2 date.

○