

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5663

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2010

Mr. GEORGE MILLER of California (for himself, Ms. WOOLSEY, Mr. RAHALL, Mr. COURTNEY, Mr. MOLLOHAN, Ms. HIRONO, Mr. SESTAK, Mr. ANDREWS, Mr. HARE, Ms. SHEA-PORTER, Mr. GRIJALVA, Mr. BISHOP of New York, Ms. SUTTON, Ms. CLARKE, Mr. SHULER, Mr. PIERLUISI, Mr. KILDEE, and Mr. HOLT) introduced the following bill; which was referred to the Committee on Education and Labor

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## 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       “Miner Safety and 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 and investigations.

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.  
 Sec. 403. Underground coal miner employment standard.

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.

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  
 21 standards, or other requirements, and if such

1 violations are found, issue citations and pen-  
2 alties, and in cases involving possible criminal  
3 actions, refer such matters to the Attorney  
4 General; and

5 “(C) make recommendations to avoid any  
6 recurrence.

7 “(2) INDEPENDENT ACCIDENT INVESTIGA-  
8 TIONS.—

9 “(A) IN GENERAL.—There shall be, in ad-  
10 dition to an accident investigation under para-  
11 graph (1), an independent investigation by an  
12 independent investigation panel (referred to in  
13 this subsection as the ‘Panel’) appointed under  
14 subparagraph (B) for—

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

17 “(ii) any accident that is of such se-  
18 verity or scale for potential or actual harm  
19 that, in the opinion of the Secretary of  
20 Health and Human Services, the accident  
21 merits an independent investigation.

22 “(B) APPOINTMENT.—

23 “(i) IN GENERAL.—As soon as prac-  
24 ticable after an accident described in sub-  
25 paragraph (A), the Secretary of Health

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

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

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

21 “(iv) COMPOSITION.—The Secretary  
22 of Health and Human Services shall ap-  
23 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 representative of a labor  
5                   organization that represents miners,  
6                   and may not appoint more than 1 of either  
7                   such individuals as members of the Panel.

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

23                  “(vi) COMPENSATION AND TRAVEL.—  
24                  All members of the Panel who are officers  
25                  or employees of the United States shall

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

21 “(C) DUTIES.—The Panel shall—

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

1 tices or guidelines, or organizational fail-  
2 ures;

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

5 “(I) the operator;

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

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

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

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

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

18 “(iv) prepare a report that—

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

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



1           “(III) includes recommendations,  
2           including interim recommendations  
3           where appropriate, to industry, labor  
4           organizations, State and Federal  
5           agencies, or Congress, regarding pol-  
6           icy, regulatory, enforcement, adminis-  
7           trative, or other changes, which in the  
8           judgment of the Panel, would prevent  
9           a recurrence at other mines; and

10           “(v) publish such findings and rec-  
11           ommendations (excluding any portions  
12           which the Attorney General requests that  
13           the Secretary withhold in relation to a  
14           criminal referral) and hold public meetings  
15           to inform the mining community and fami-  
16           lies of affected miners of the Panel’s find-  
17           ings and recommendations.

18           “(D) HEARINGS; APPLICABILITY OF CER-  
19           TAIN FEDERAL LAW.—The Panel shall have the  
20           authority to conduct public hearings or meet-  
21           ings, but shall not be subject to the Federal Ad-  
22           visory Committee Act. All public hearings of the  
23           Panel shall be subject to the requirements  
24           under section 552b of title 5, United States  
25           Code.

1           “(E) MEMORANDUM OF UNDER-  
2           STANDING.—Not later than 90 days after the  
3           date of enactment of the Miner Safety and  
4           Health Act of 2010, the Secretary of Labor and  
5           the Secretary of Health and Human Services  
6           shall conclude and publically issue a memo-  
7           randum of understanding that—

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

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

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

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

8 “(F) PROCEDURES.—Not later than 90  
9 days after the date of enactment of the Miner  
10 Safety and Health Act of 2010, the Secretary  
11 of Health and Human Services shall establish  
12 procedures to ensure the consistency and effec-  
13 tiveness of Panel investigations. In establishing  
14 such procedures, such Secretary shall consult  
15 with independent safety investigation agencies,  
16 sectors of the mining industry, representatives  
17 of miners, families of miners involved in fatal  
18 accidents, State mine safety agencies, and mine  
19 rescue organizations. Such procedures shall in-  
20 clude—

21 “(i) authority for the Panel to use evi-  
22 dence, samples, interviews, data, analyses,  
23 findings, or other information gathered by  
24 the Secretary of Labor, as the Panel deter-  
25 mines valid;

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

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

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

14           “(3) POWERS AND PROCESSES.—For the pur-  
15           pose”.

16           (b) REPORTING REQUIREMENTS.—Section 511(a)  
17           (30 U.S.C. 958(a)) is amended by inserting after “501,”  
18           the following: “the status of implementation of rec-  
19           ommendations from each independent investigation panel  
20           under section 103(b) received in the preceding 5 years.”.

21           **SEC. 102. SUBPOENA AUTHORITY AND MINER RIGHTS DUR-**  
22           **ING INSPECTIONS AND INVESTIGATIONS.**

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

1           “(4) ADDITIONAL POWERS.—For the purpose  
2 of enabling the Secretary to perform any of the  
3 functions under this Act, the Secretary or the Sec-  
4 retary’s designee, may sign and issue subpoenas for  
5 the attendance and testimony of witnesses and the  
6 production of information, including all relevant  
7 data, papers, books, documents, and items of phys-  
8 ical evidence, and administer oaths. Witnesses sum-  
9 moned shall be paid the same fees that are paid wit-  
10 nesses in the courts of the United States. In car-  
11 rying out inspections and investigations under this  
12 subsection, authorized representatives of the Sec-  
13 retary and attorneys representing the Secretary are  
14 authorized to question any individual privately.  
15 Under this section, any individual who is willing to  
16 speak with or provide a statement to such author-  
17 ized representatives or attorneys representing the  
18 Secretary may do so without the presence, involve-  
19 ment, or knowledge of the operator or the operator’s  
20 agents or attorneys. The Secretary shall keep the  
21 identity of an individual providing such a statement  
22 confidential to the extent permitted by law. Nothing  
23 in this paragraph prevents any individual from being  
24 represented by that individual’s personal attorney.”.

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

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

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

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

21 (b) INJURY AND ILLNESS REPORTING.—Section  
22 103(d) (30 U.S.C. 813(d)) is amended by striking the last  
23 sentence and inserting the following: “The records to be  
24 kept and made available by the operator of the mine shall  
25 include man-hours worked and occupational injuries and  
26 illnesses, and shall be maintained separately for each mine

1 and be reported at a frequency determined by the Sec-  
2 retary, but at least annually. Operators shall be respon-  
3 sible for reporting on all miners working at such mine re-  
4 gardless of their employer, except that independent con-  
5 tractors (within the meaning of section 3(d)) shall only  
6 be responsible for reporting on miners in their employ or  
7 under their direction or authority.”.

8 (c) ORDERS FOLLOWING AN ACCIDENT.—Section  
9 103(k) (30 U.S.C. 813(k)) is amended by striking “, when  
10 present,”.

11 (d) CONFLICT OF INTEREST IN THE REPRESENTA-  
12 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) is  
13 amended by adding at the end the following: “During in-  
14 spections and investigations under this section, and during  
15 any litigation under this Act, no attorney shall represent  
16 or purport to represent both the operator of a coal or other  
17 mine and any other individual, unless such individual has  
18 knowingly and voluntarily waived all actual and reasonably  
19 foreseeable conflicts of interest resulting from such rep-  
20 resentation. The Secretary is authorized to take such ac-  
21 tions as the Secretary considers appropriate to ascertain  
22 whether such individual has knowingly and voluntarily  
23 waived all such conflicts of interest. If the Secretary finds  
24 that such an individual cannot be represented adequately  
25 by such an attorney due to such conflicts of interest, the

1 Secretary may petition the appropriate United States Dis-  
2 trict Court which shall have jurisdiction to disqualify such  
3 attorney as counsel to such individual in the matter. The  
4 Secretary may make such a motion as part of an ongoing  
5 related civil action or as a miscellaneous action.”.

6 **TITLE II—ENHANCED**  
7 **ENFORCEMENT AUTHORITY**

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

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

11 (1) in the first sentence—

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

17 (B) by striking “such mandatory health or  
18 safety standards” and inserting “such provi-  
19 sions, regulations, or mandatory health or safe-  
20 ty standards”;

21 (2) in the second sentence, by striking “any  
22 mandatory health or safety standard” and inserting  
23 “any provision of this Act, including any mandatory  
24 health or safety standard or regulation promulgated  
25 under this Act,”; and



1           (3) by inserting after the first sentence the fol-  
 2           lowing: “For purposes of this Act, a violation of a  
 3           provision of this Act, including any mandatory  
 4           health or safety standard or regulation promulgated  
 5           under this Act, is of such nature as could signifi-  
 6           cantly and substantially contribute to the cause and  
 7           effect of a safety or health hazard if there is a rea-  
 8           sonable possibility that such violation could result in  
 9           injury, illness, or death.”.

10 **SEC. 202. A PATTERN OF RECURRING NONCOMPLIANCE OR**  
 11 **ACCIDENTS.**

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

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

16           “(1) PATTERN STATUS.—

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

22           “(i) a pattern of—

23           “(I) citations for significant and  
 24           substantial violations;

1                   “(II) citations and withdrawal or-  
2                   ders issued for unwarrantable failure  
3                   to comply with mandatory health and  
4                   safety standards under section 104(d);

5                   “(III) citations for flagrant viola-  
6                   tions within the meaning of section  
7                   110(b);

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

10                   “(V) accidents, injuries, or ill-  
11                   nesses; or

12                   “(ii) a pattern consisting of any com-  
13                   bination of citations, orders, accidents, in-  
14                   juries, or illnesses described in subclauses  
15                   (I) through (V).

16                   “(B) MITIGATING CIRCUMSTANCES.—Not-  
17                   withstanding subparagraph (A), if the Sec-  
18                   retary, after conducting an assessment of a coal  
19                   or other mine that otherwise qualifies for pat-  
20                   tern status, certifies that there are mitigating  
21                   circumstances wherein the operator has elimi-  
22                   nated any elevated risk to the health or safety  
23                   of miners and has taken sufficient measures to  
24                   ensure such elevated risk will not recur, the  
25                   Secretary may deem such mine to not be in pat-

1           tern status under this subsection. The Sec-  
2           retary shall issue any such certification of such  
3           mitigating circumstances that would preclude  
4           the placement of a mine in pattern status as a  
5           written finding, which shall, not later than 10  
6           days after the certification is made, be—

7                   “(i) published in the Federal Register;

8                   and

9                   “(ii) transmitted to the Committee on  
10                  Education and Labor of the House of Rep-  
11                  resentatives and the Committee on Health,  
12                  Education, Labor, and Pensions of the  
13                  Senate.

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

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

19                   “(B) issue an order requiring such oper-  
20                  ator to cause all persons to be withdrawn from  
21                  such mine, except those persons referred to in  
22                  subsection (c) or authorized by an order of the  
23                  Secretary issued under this subsection;

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

1           “(D) require that the number of regular  
2           inspections of such mine required under section  
3           103 be increased to 8 per year for an under-  
4           ground mine and 4 per year for a surface mine  
5           while the mine is in pattern status.

6           Notice advising operators that they face potential  
7           placement in pattern status shall not be a require-  
8           ment for issuing a withdrawal order to operators  
9           under this subsection.

10           “(3) REMEDIATION ORDER.—

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

18                   “(i) Provide specified training, includ-  
19                   ing training not otherwise required under  
20                   this Act.

21                   “(ii) Institute and implement an effec-  
22                   tive health and safety management pro-  
23                   gram approved by the Secretary, includ-  
24                   ing—

1           “(I) the employment of safety  
2           professionals, certified persons, and  
3           adequate numbers of personnel for the  
4           mine, as may be required by the Sec-  
5           retary;

6           “(II) specific inspection, record-  
7           keeping, reporting and other require-  
8           ments for the mine as the Secretary  
9           may establish; and

10           “(III) other requirements to en-  
11           sure compliance and to protect the  
12           health and safety of miners or prevent  
13           accidents or injuries as the Secretary  
14           may determine are necessary.

15           “(iii) Facilitate any effort by the Sec-  
16           retary to communicate directly with miners  
17           employed at the mine outside the presence  
18           of the mine operators or its agents, for the  
19           purpose of obtaining information about  
20           mine conditions, health and safety prac-  
21           tices, and advising miners of their rights  
22           under this Act.

23           “(B) MODIFICATION OF AND FAILURE TO  
24           COMPLY WITH REMEDIATION ORDER.—The Sec-  
25           retary may modify the remediation order, as

1 necessary, to protect the health and safety of  
2 miners. If the mine operator fails to fully com-  
3 ply with the remediation order during the time  
4 a mine is in pattern status, the Secretary shall  
5 reinstate the withdrawal order under paragraph  
6 (2)(B).

7 “(C) EXTENSION OF DEADLINES.—An ex-  
8 tension of a deadline under the remediation  
9 order may be granted on a temporary basis and  
10 only upon a showing that the operator took all  
11 feasible measures to comply with the order and  
12 only to the extent that the operator’s failure to  
13 comply is beyond the control of the operator.

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

18 “(A) any and all violations or other condi-  
19 tions in the mine identified in the remediation  
20 order have been or are being fully abated or  
21 corrected as outlined in the remediation order;  
22 and

23 “(B) the operator has completed any other  
24 actions under the remediation order that are re-  
25 quired for reopening the mine.

1           “(5) PERFORMANCE EVALUATION.—

2                   “(A) PERFORMANCE BENCHMARKS.—The  
3           Secretary shall evaluate the performance of  
4           each operator whose mine is in pattern status  
5           every 90 days during which the mine is pro-  
6           ducing and determine if, for such 90-day pe-  
7           riod—

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

10                                   “(I) are, on average, in the top  
11                                   performing 35th percentile of such  
12                                   rates, respectively, for all mines of  
13                                   similar size and type; or

14                                   “(II) have been reduced by 70  
15                                   percent since such mine was placed on  
16                                   pattern status;

17                                   “(ii) the operator’s accident and in-  
18                                   jury rates are, on average, in the top per-  
19                                   forming 35th percentile of such rates, re-  
20                                   spectively, for all mines of similar size and  
21                                   type; and

22                                   “(iii) no citation or withdrawal order  
23                                   for a violation under section 104(d), no  
24                                   withdrawal order for imminent danger  
25                                   under section 107 arising from a signifi-

1           cant and substantial violation, and no fla-  
2           grant violations within the meaning of sec-  
3           tion 110(b), were issued for such mine.

4           “(B) REISSUANCE OF WITHDRAWAL OR-  
5           DERS.—If an operator being evaluated fails to  
6           achieve the performance benchmarks described  
7           in subparagraph (A), the Secretary may reissue  
8           a withdrawal order under paragraph (2)(B) to  
9           remedy any recurring conditions that led to pat-  
10          tern status under this subsection, and may  
11          modify the remediation order, as necessary, to  
12          protect the health and safety of miners.

13          “(6) TERMINATION OF PATTERN STATUS.—

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

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

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



1                   “(II) have been reduced by 80  
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 25th percentile of such rates, re-  
7                   spectively, for all mines of similar size and  
8                   type; and

9                   “(iii) no citation or withdrawal orders  
10                  for violations under section 104(d), no  
11                  withdrawal orders 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) CONTINUATION OF PATTERN STA-  
17                  TUS.—Should the mine operator fail to meet  
18                  the performance benchmarks described in sub-  
19                  paragraph (A), the Secretary shall extend the  
20                  mine’s placement in pattern status until such  
21                  benchmarks are achieved.

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

1           “(8) REGULATIONS; INFORMATION ON PER-  
2           FORMANCE.—

3           “(A) IN GENERAL.—Not later than 120  
4           days after the date of enactment of the Miner  
5           Safety and Health Act of 2010, the Secretary  
6           shall issue interim final regulations that shall  
7           define—

8                   “(i) the threshold criteria to trigger  
9                   pattern status under paragraph (1) and  
10                  cause a withdrawal order to be issued or  
11                  reissued; and

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

14           “(B) THRESHOLD CRITERIA.—In estab-  
15           lishing threshold criteria to trigger pattern sta-  
16           tus for mines with significantly poor compliance  
17           that contributes to unsafe or unhealthy condi-  
18           tions, the Secretary—

19                   “(i) shall consider frequency and rates  
20                   of citations described in paragraph (1)(A)  
21                   and rates of reportable accidents and inju-  
22                   ries within the preceding 180-day period;

23                   “(ii) may include factors such as mine  
24                   type, production levels, number of miners,  
25                   hours worked by miners, number of mecha-

1 nized mining units (or similar production  
2 characteristics), and the designation of a  
3 representative of miners at the mine;

4 “(iii) may include the mine’s history  
5 of citations, violations, orders, and other  
6 enforcement actions, or rates of reportable  
7 accidents and injuries, over any period de-  
8 termined relevant by the Secretary;

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

12 “(v) may include other factors the  
13 Secretary may determine appropriate to  
14 protect the safety and health of miners.

15 “(C) FINAL REGULATION.—Not later than  
16 2 years after the date of enactment of the  
17 Miner Safety and Health Act of 2010, the Sec-  
18 retary shall promulgate a final regulation imple-  
19 menting this paragraph.

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 Miner Safety and Health Act of 2010, the  
16 Secretary shall assess and collect fees, in ac-  
17 cordance with this paragraph, from each coal or  
18 other mine in pattern status for the costs of ad-  
19 ditional inspections under this subsection. The  
20 Secretary shall issue, by rule, a schedule of fees  
21 to be assessed against coal or other mines of  
22 varying types and sizes, and shall collect and  
23 assess amounts under this paragraph based on  
24 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 (e) 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(e), 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 under section 104(e)(5)(A).”.

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-

1 erator rectifies the noncompliance with the payment  
2 plan in the manner specified in such payment  
3 plan.”.

4 (2) APPLICABILITY AND EFFECTIVE DATE.—

5 The amendments made by paragraph (1) shall apply  
6 to all unpaid civil penalty assessments under the  
7 Federal Mine Safety and Health Act of 1977 (30  
8 U.S.C. 801 et seq.), except that, for any unpaid civil  
9 penalty assessment that became a final order of the  
10 Commission or a court before the date of enactment  
11 of this Act, the time periods under section 110(n) of  
12 the Federal Mine Safety and Health Act of 1977 (as  
13 amended) (30 U.S.C. 820(n)) shall be calculated as  
14 beginning on the date of enactment of this Act in-  
15 stead of on the date of the final order.

## 16 **TITLE IV—WORKER RIGHTS AND** 17 **PROTECTIONS**

### 18 **SEC. 401. PROTECTION FROM RETALIATION.**

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

21 “(c) PROTECTION FROM RETALIATION.—

22 “(1) RETALIATION PROHIBITED.—

23 “(A) RETALIATION FOR COMPLAINT OR  
24 TESTIMONY.—No person shall discharge or in  
25 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, or is about to file or make a  
11 complaint, including a complaint noti-  
12 fying the operator or the operator’s  
13 agent, or the representative of the  
14 miners at the coal or other mine of an  
15 alleged danger or safety or health vio-  
16 lation in a coal or other mine;

17 “(II) instituted or caused to be  
18 instituted, or is about to institute or  
19 cause to be instituted, any proceeding  
20 under or related to this Act or has  
21 testified or is about to testify in any  
22 such proceeding or because of the ex-  
23 ercise by such miner or other em-  
24 ployee, representative, or applicant for  
25 employment on behalf of him or her-

1 self or others of any right afforded by  
2 this Act;

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

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

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

13 “(B) RETALIATION FOR REFUSAL TO PER-  
14 FORM DUTIES.—

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

1           “(ii) STANDARD.—For purposes of  
2           clause (i), the circumstances causing the  
3           miner’s or other employee’s good-faith be-  
4           lief that performing such duties would pose  
5           a safety or health hazard shall be of such  
6           a nature that a reasonable person, under  
7           the circumstances confronting the miner or  
8           other employee, would conclude that there  
9           is such a hazard. In order to qualify for  
10          protection under this paragraph, the miner  
11          or other employee, when practicable, shall  
12          have communicated or attempted to com-  
13          municate the safety or health concern to  
14          the operator and have not received from  
15          the operator a response reasonably cal-  
16          culated to allay such concern.

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

1           “(A) the last date on which an alleged vio-  
2           lation of paragraph (1) occurs; or

3           “(B) the date on which the miner or other  
4           employee or representative knows or should rea-  
5           sonably have known that such alleged violation  
6           occurred.

7           “(3) INVESTIGATION AND HEARING.—

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

18          “(B) REINSTATEMENT.—If the Secretary  
19          finds that such complaint was not frivolously  
20          brought, the Commission, on an expedited basis  
21          upon application of the Secretary, shall order  
22          the immediate reinstatement of the miner or  
23          other employee until there has been a final  
24          Commission order disposing of the underlying  
25          complaint of the miner or other employee. If ei-

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

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

21                         “(i) providing the respondent an op-  
22                         portunity to submit to the Secretary a  
23                         written response to the complaint and to  
24                         present statements from witnesses or pro-  
25                         vide evidence; and

1           “(ii) providing the complainant an op-  
2           portunity to receive any statements or evi-  
3           dence provided to the Secretary and rebut  
4           any statements or evidence.

5           “(D) ACTION BY THE SECRETARY.—If,  
6           upon such investigation, the Secretary deter-  
7           mines that the provisions of this subsection  
8           have been violated, the Secretary shall imme-  
9           diately file a complaint with the Commission,  
10          with service upon the alleged violator and the  
11          miner or other employee or representative of  
12          miners alleging such discrimination or inter-  
13          ference and propose an order granting appro-  
14          priate relief.

15          “(E) ACTION OF THE COMMISSION.—The  
16          Commission shall afford an opportunity for a  
17          hearing (in accordance with section 554 of title  
18          5, United States Code, but without regard to  
19          subsection (a)(3) of such section) and there-  
20          after shall issue an order, based upon findings  
21          of fact, affirming, modifying, or vacating the  
22          Secretary’s proposed order, or directing other  
23          appropriate relief. Such order shall become final  
24          30 days after its issuance. The complaining  
25          miner or other employee, representative, or ap-

1           plicant for employment may present additional  
2           evidence on his or her own behalf during any  
3           hearing held pursuant to this paragraph.

4           “(F) RELIEF.—The Commission shall have  
5           authority in such proceedings to require a per-  
6           son committing a violation of this subsection to  
7           take such affirmative action to abate the viola-  
8           tion and prescribe a remedy as the Commission  
9           considers appropriate, including—

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

16           “(ii) any other compensatory and con-  
17           sequential damages sufficient to make the  
18           complainant whole, and exemplary dam-  
19           ages where appropriate; and

20           “(iii) expungement of all warnings,  
21           reprimands, or derogatory references that  
22           have been placed in paper or electronic  
23           records or databases of any type relating  
24           to the actions by the complainant that  
25           gave rise to the unfavorable personnel ac-

1           tion, and, at the complainant's direction,  
2           transmission of a copy of the decision on  
3           the complaint to any person whom the  
4           complainant reasonably believes may have  
5           received such unfavorable information.

6           “(4) NOTICE TO AND ACTION OF COMPLAIN-  
7           ANT.—

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

15          “(B) ACTION OF COMPLAINANT.—If the  
16          Secretary, upon investigation, determines that  
17          the provisions of this subsection have not been  
18          violated, the complainant shall have the right,  
19          within 30 days after receiving notice of the Sec-  
20          retary's determination, to file an action in his  
21          or her own behalf before the Commission,  
22          charging discrimination or interference in viola-  
23          tion of paragraph (1).

24          “(C) HEARING AND DECISION.—The Com-  
25          mission shall afford an opportunity for a hear-



1           ing (in accordance with section 554 of title 5,  
2           United States Code, but without regard to sub-  
3           section (a)(3) of such section), and thereafter  
4           shall issue an order, based upon findings of  
5           fact, dismissing or sustaining the complainant’s  
6           charges and, if the charges are sustained,  
7           granting such relief as it deems appropriate as  
8           described in paragraph (3)(D). Such order shall  
9           become final 30 days after its issuance.

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

22           “(6) ATTORNEYS’ FEES.—Whenever an order is  
23           issued sustaining the complainant’s charges under  
24           this subsection, a sum equal to the aggregate  
25           amount of all costs and expenses, including attor-

1       ney’s fees, as determined by the Commission to have  
2       been reasonably incurred by the complainant for, or  
3       in connection with, the institution and prosecution of  
4       such proceedings shall be assessed against the per-  
5       son committing such violation. The Commission  
6       shall determine whether such costs and expenses  
7       were reasonably incurred by the complainant without  
8       reference to whether the Secretary also participated  
9       in the proceeding.

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

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

23       “(9) SAVINGS.—Nothing in this subsection shall  
24       be construed to diminish the rights, privileges, or  
25       remedies of any employee who exercises rights under

1 any Federal or State law or common law, or under  
2 any collective bargaining agreement.”.

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

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

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

7 “(a) PROTECTION FROM LOSS OF PAY.—

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

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

1 as the Secretary authorizes reopening of such mine  
2 or such area of the mine.

3 “(3) REFUSAL TO COMPLY.—Whenever an op-  
4 erator violates or fails or refuses to comply with any  
5 order issued under section 103, 104, 107, 108, or  
6 110, all miners employed at the affected mine who  
7 would have been withdrawn from, or prevented from  
8 entering, such mine or area thereof as a result of  
9 such order shall be entitled to full compensation by  
10 the operator at their regular rates of pay, in addi-  
11 tion to pay received for work performed after such  
12 order was issued, for the period beginning when  
13 such order was issued and ending when such order  
14 is complied with, vacated, or terminated.

15 “(b) ENFORCEMENT.—

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



1 where the miner has completed the employer's proba-  
2 tionary period, not to exceed 6 months.

3       “(b) CAUSE OF ACTION.—A miner aggrieved by a  
4 violation of subsection (a) may file a complaint in Federal  
5 district court in the district where the mine is located  
6 within 1 year of such violation.

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

13       “(d) PRE-DISPUTE WAIVER PROHIBITED.—A min-  
14 er's right to a cause of action under this section may not  
15 be waived with respect to disputes that have not arisen  
16 as of the time of the waiver.

17       “(e) CONSTRUCTION.—Nothing in this section shall  
18 be construed to limit the availability of rights and rem-  
19 edies of miners under any other State or Federal law or  
20 a collective bargaining agreement.”.

1 **TITLE** **V—MODERNIZING**  
2 **HEALTH AND SAFETY STAND-**  
3 **ARDS**

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

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

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

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

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

19 “(B) In an effort to facilitate the communications de-  
20 scribed in subparagraph (A), each agent of the operator  
21 who is responsible for ensuring the safe and healthful  
22 working conditions at the mine, including mine foremen,  
23 assistant mine foremen, and mine examiners, shall, upon  
24 exiting the mine or workplace, verbally communicate with  
25 any oncoming agent replacing the exiting agent on duty

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

13 “(C) Not later than 90 days after the date of enact-  
14 ment of the Miner Safety and Health Act of 2010, the  
15 Secretary shall promulgate interim final rules imple-  
16 menting the requirements of subparagraphs (A) and  
17 (B).”.

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

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

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

23 “(1) IN GENERAL.—Where rock”;

24 (2) by striking “65 per centum” and all that  
25 follows and inserting “80 percent. Where methane is



1 present in any ventilating current, the percentage of  
2 incombustible content of such combined dusts shall  
3 be increased 0.4 percent for each 0.1 percent of  
4 methane.”; and

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

6 “(2) METHODS OF MEASUREMENT.—

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

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

1           tors to take coal dust samples using direct  
2           reading monitors.

3           “(C) REGULATIONS.—The Secretary shall,  
4           not later than 180 days after the date of enact-  
5           ment of the Miner Safety and Health Act of  
6           2010, promulgate an interim final rule that pre-  
7           scribes methods for sampling of total incombust-  
8           tible content of coal dust using direct reading  
9           monitors and includes requirements for loca-  
10          tions, methods, and intervals for mandatory op-  
11          erator sampling.

12          “(D) RECOMMENDATIONS.—Not later than  
13          1 year after the date of enactment of the Miner  
14          Safety and Health Act of 2010, the Secretary  
15          of Health and Human Services shall, based  
16          upon the latest research, recommend to the  
17          Secretary of Labor any revisions to the manda-  
18          tory operator sampling locations, methods, and  
19          intervals included in the interim final rule de-  
20          scribed in subparagraph (B) that may be war-  
21          ranted in light of such research.”.

22          (b) REPORT.—Not later than 2 years after the date  
23          of enactment of this Act, the Secretary of Health and  
24          Human Services, in consultation with the Secretary of  
25          Labor, shall prepare and submit, to the Committee on

1 Education and Labor of the House of Representatives and  
2 the Committee on Health, Education, Labor, and Pen-  
3 sions of the Senate, a report—

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

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

16 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

19           “(u) ATMOSPHERIC MONITORING SYSTEMS.—

20           “(1) NIOSH RECOMMENDATIONS.—Not later  
21 than 6 months after the date of enactment of the  
22 Miner Safety and Health Act of 2010, the Director  
23 of the National Institute for Occupational Safety  
24 and Health, acting through the Office of Mine Safe-

1 ty and Health Research, shall issue recommenda-  
2 tions to the Secretary regarding—

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

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

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

19 “(A) protect miners where the miners nor-  
20 mally work and travel;

21 “(B) provide real-time information regard-  
22 ing methane and carbon monoxide levels, and  
23 airflow direction, as appropriate, with sensing,  
24 annunciating, and recording capabilities; and

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

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

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

5                   (1) by striking “of Health and Human Serv-  
6                   ices”; and

7                   (2) by striking the second sentence and insert-  
8                   ing the following: “Not later than 2 years after the  
9                   date of enactment of the Miner Safety and Health  
10                  Act of 2010, the Secretary shall promulgate final  
11                  regulations that require operators, beginning on the  
12                  date such regulations are issued, to provide coal  
13                  miners with the maximum feasible protection from  
14                  respirable dust, including coal and silica dust, that  
15                  is achievable through environmental controls.”.

16 **SEC. 505. REFRESHER TRAINING ON MINER RIGHTS AND**  
17 **RESPONSIBILITIES.**

18                  (a) IN GENERAL.—Section 115(a)(3) (30 U.S.C.  
19 825(a)(3)) is amended to read as follows:

20                  “(3) all miners shall receive not less than 9  
21                  hours of refresher training not less frequently than  
22                  once every 12 months, and such training shall in-  
23                  clude one hour of training on the statutory rights  
24                  and responsibilities of miners and their representa-  
25                  tives under this Act and other applicable Federal

1 and State law, pursuant to a program of instruction  
2 developed by the Secretary and delivered by an em-  
3 ployee of the Administration or by a trainer ap-  
4 proved by the Administration that is a party inde-  
5 pendent from the operator;”.

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

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

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

20 “(e) **AUTHORITY TO MANDATE ADDITIONAL TRAIN-**  
21 **ING.**—

22 “(1) **IN GENERAL.**—The Secretary is authorized  
23 to issue an order requiring that an operator of a  
24 coal or other mine provide additional training be-  
25 yond what is otherwise required by law, and speci-

1       fying the time within which such training shall be  
2       provided, if the Secretary finds that—

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

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

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

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

23              (b) CONFORMING AMENDMENTS.—Section 104(g)(2)  
24              (30 U.S.C. 814(g)(2)) is amended by striking “under

1 paragraph (1)” both places it appears and inserting  
2 “under paragraph (1) or under section 115(e)”.

3 **SEC. 507. CERTIFICATION OF PERSONNEL.**

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

6 **“SEC. 118. CERTIFICATION OF PERSONNEL.**

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

19 “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-  
20 MENTS AND PROCEDURES.—

21 “(1) IN GENERAL.—Not later than 1 year after  
22 the date of enactment of the Miner Safety and  
23 Health Act of 2010, the Secretary shall issue man-  
24 datory standards to establish—



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

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

9           “(C) procedures and criteria for revoking  
10 such certification, registration, qualification, or  
11 other approval, including procedures that en-  
12 sure that the Secretary responds to requests for  
13 revocation.

14           “(2) COORDINATION WITH STATES.—In devel-  
15 oping such standards, the Secretary shall consult  
16 with States that have miner certification programs  
17 to ensure effective coordination with existing State  
18 standards and requirements for certification. The  
19 standards required under paragraph (1) may provide  
20 that the certification, registration, qualification, or  
21 other approval of the State in which the coal or  
22 other mine is located satisfies the requirement of  
23 subsection (a) if the State’s program of certification,  
24 registration, qualification, or other approval is no

1 less stringent than the standards established by the  
2 Secretary under paragraph (1).

3 “(c) OPERATOR FEES FOR CERTIFICATION.—

4 “(1) ASSESSMENT AND COLLECTION.—Begin-  
5 ning 180 days after the date of enactment of the  
6 Miner Safety and Health Act of 2010, the Secretary  
7 shall assess and collect fees, in accordance with this  
8 subsection, from each operator for each person cer-  
9 tified under this section. Fees shall be assessed and  
10 collected in amounts determined by the Secretary as  
11 necessary to fund the certification programs estab-  
12 lished under this section.

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

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

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

11          “(5) CREDITING AND AVAILABILITY OF FEES.—  
12          Fees authorized and collected under this subsection  
13          shall be available for obligation only to the extent  
14          and in the amount provided in advance in appropria-  
15          tions Acts.

16          “(d) CITATION; WITHDRAWAL ORDER.—Any oper-  
17          ator who permits a person to perform any of the health  
18          or safety related functions described in subsection (a)  
19          without a current certification which meets the require-  
20          ments of this section shall be considered to have com-  
21          mitted an unwarrantable failure under section 104(d)(1),  
22          and the Secretary shall issue an order requiring that the  
23          miner be withdrawn or reassigned to duties that do not  
24          require such certification.”.

1 (b) CONFORMING AMENDMENTS.—Section 318 (30  
2 U.S.C. 878) is amended—

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

4 (2) in subsection (c), by redesignating para-  
5 graphs (1) through (3) as subparagraphs (A)  
6 through (C), respectively;

7 (3) in subsection (g), by redesignating para-  
8 graphs (1) through (4) as subparagraphs (A)  
9 through (D), respectively; and

10 (4) by redesignating subsections (c) through (j)  
11 as paragraphs (1) through (8), respectively.

## 12 **TITLE VI—ADDITIONAL MINE** 13 **SAFETY PROVISIONS**

### 14 **SEC. 601. DEFINITIONS.**

15 (a) DEFINITION OF OPERATOR.—Section 3(d) is  
16 amended to read as follows:

17 “(d) ‘operator’ means—

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

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

21 “(B) controls such mine by making or hav-  
22 ing the authority to make management or oper-  
23 ational decisions that affect, directly or indi-  
24 rectly, the health or safety at such mine; or

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

3           (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.  
4 802(e)) is amended by striking “the miners” and inserting  
5 “any miner”.

6           (c) DEFINITION OF MINER.—Section 3(g) (30 U.S.C.  
7 802(g)) is amended by inserting after “or other mine” the  
8 following: “, and includes any individual who is not cur-  
9 rently working in a coal or other mine but would be cur-  
10 rently working in such mine, but for an accident in such  
11 mine”.

12          (d) DEFINITION OF SIGNIFICANT AND SUBSTANTIAL  
13 VIOLATIONS.—Section 3 (30 U.S.C. 802) is further  
14 amended—

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

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

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

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

22           “(p) ‘significant and substantial violation’ means a  
23 violation of this Act, including any mandatory health or  
24 safety standard or regulation promulgated under this Act,  
25 that is of such nature as could significantly and substan-

1 tially contribute to the cause and effect of a coal or other  
2 mine safety or health hazard as described in section  
3 104(d).”.

4 **SEC. 602. ASSISTANCE TO STATES.**

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

6 (1) in subsection (a)—

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

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

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

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

16 “(4) to assist such State in developing and im-  
17 plementing any certification program for coal or  
18 other mines required for compliance with section  
19 118.”; and

20 (2) in subsection (h), by striking “\$3,000,000  
21 for fiscal year 1970, and \$10,000,000 in each suc-  
22 ceeding fiscal year” and inserting “\$20,000,000 for  
23 each fiscal year”.

1 **SEC. 603. BLACK LUNG MEDICAL REPORTS.**

2 Title IV of the Black Lung Benefits Act (30 U.S.C.  
3 901 et seq.) is amended by adding at the end the fol-  
4 lowing:

5 **“SEC. 435. MEDICAL REPORTS.**

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

17 **TITLE VII—AMENDMENTS TO**  
18 **THE OCCUPATIONAL SAFETY**  
19 **AND HEALTH ACT**

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

21 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the  
22 Occupational Safety and Health Act of 1970 (29 U.S.C.  
23 660(c)(1)) is amended—

24 (1) by striking “discharge” and all that follows  
25 through “because such” and inserting the following:  
26 “discharge or cause to be discharged, or in any man-

1 ner discriminate against or cause to be discriminated  
2 against, any employee because—

3 “(A) such”;

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

6 “(B) such employee has”;

7 (3) by striking “such proceeding or because of  
8 the exercise” and inserting the following: “before  
9 Congress or in any Federal or State proceeding re-  
10 lated to safety or health;

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

13 “(D) of the exercise”; and

14 (4) by inserting before the period at the end the  
15 following: “, including the reporting of any injury,  
16 illness, or unsafe condition to the employer, agent of  
17 the employer, safety and health committee involved,  
18 or employee safety and health representative in-  
19 volved”.

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

23 “(2)(A) No person shall discharge, or cause to be dis-  
24 charged, or in any manner discriminate against, or cause  
25 to be discriminated against, an employee for refusing to



1 perform the employee’s duties if the employee has a rea-  
2 sonable apprehension that performing such duties would  
3 result in serious injury to, or serious impairment of the  
4 health of, the employee or other employees.

5 “(B) For purposes of subparagraph (A), the cir-  
6 cumstances causing the employee’s good-faith belief that  
7 performing such duties would pose a safety or health haz-  
8 ard shall be of such a nature that a reasonable person,  
9 under the circumstances confronting the employee, would  
10 conclude that there is such a hazard. In order to qualify  
11 for protection under this paragraph, the employee, when  
12 practicable, shall have communicated or attempted to com-  
13 municate the safety or health concern to the employer and  
14 have not received from the employer a response reasonably  
15 calculated to allay such concern.”

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

19 “(3) COMPLAINT.—Any employee who believes  
20 that the employee has been discharged, disciplined,  
21 or otherwise discriminated against by any person in  
22 violation of paragraph (1) or (2) may seek relief for  
23 such violation by filing a complaint with the Sec-  
24 retary under paragraph (5).

25 “(4) STATUTE OF LIMITATIONS.—

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

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

6           “(ii) the date on which the employee  
7 knows or should reasonably have known  
8 that such alleged violation occurred.

9           “(B) REPEAT VIOLATION.—Except in  
10 cases when the employee has been discharged,  
11 a violation of paragraph (1) or (2) shall be con-  
12 sidered to have occurred on the last date an al-  
13 leged repeat violation occurred.

14           “(5) INVESTIGATION.—

15           “(A) IN GENERAL.—An employee may,  
16 within the time period required under para-  
17 graph (4)(B), file a complaint with the Sec-  
18 retary alleging a violation of paragraph (1) or  
19 (2). If the complaint alleges a prima facie case,  
20 the Secretary shall conduct an investigation of  
21 the allegations in the complaint, which—

22           “(i) shall include—

23           “(I) interviewing the complain-  
24 ant;

1 “(II) providing the respondent an  
2 opportunity to—

3 “(aa) submit to the Sec-  
4 retary a written response to the  
5 complaint; and

6 “(bb) meet with the Sec-  
7 retary to present statements from  
8 witnesses or provide evidence;  
9 and

10 “(III) providing the complainant  
11 an opportunity to—

12 “(aa) receive any statements  
13 or evidence provided to the Sec-  
14 retary;

15 “(bb) meet with the Sec-  
16 retary; and

17 “(cc) rebut any statements  
18 or evidence; and

19 “(ii) may include issuing subpoenas  
20 for the purposes of such investigation.

21 “(B) DECISION.—Not later than 90 days  
22 after the filing of the complaint, the Secretary  
23 shall—

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

4                   “(ii) issue a decision granting or de-  
5                   nying relief.

6                   “(6) PRELIMINARY ORDER FOLLOWING INVES-  
7                   TIGATION.—If, after completion of an investigation  
8                   under paragraph (5)(A), the Secretary finds reason-  
9                   able cause to believe that a violation of paragraph  
10                  (1) or (2) has occurred, the Secretary shall issue a  
11                  preliminary order providing relief authorized under  
12                  paragraph (14) at the same time the Secretary  
13                  issues a decision under paragraph (5)(B). If a de  
14                  novo hearing is not requested within the time period  
15                  required under paragraph (7)(A)(i), such prelimi-  
16                  nary order shall be deemed a final order of the Sec-  
17                  retary and is not subject to judicial review.

18                  “(7) HEARING.—

19                         “(A) REQUEST FOR HEARING.—

20                                 “(i) IN GENERAL.—A de novo hearing  
21                                 on the record before an administrative law  
22                                 judge may be requested—

23   “(I) by the complainant or re-  
24   spondent within 30 days after receiv-  
25   ing notification of a decision granting

1 or denying relief issued under para-  
2 graph 5(D) or paragraph (6) respec-  
3 tively;

4 “(II) by the complainant within  
5 30 days after the date the complaint  
6 is dismissed without investigation by  
7 the Secretary under paragraph (5)(A);  
8 or

9 “(III) by the complainant within  
10 120 days after the date of filing the  
11 complaint, if the Secretary has not  
12 issued a decision under paragraph  
13 (5)(B).

14 “(ii) REINSTATEMENT ORDER.—The  
15 request for a hearing shall not operate to  
16 stay any preliminary reinstatement order  
17 issued under paragraph (6).

18 “(B) PROCEDURES.—

19 “(i) IN GENERAL.—A hearing re-  
20 quested under this paragraph shall be con-  
21 ducted expeditiously and in accordance  
22 with rules established by the Secretary for  
23 hearings conducted by administrative law  
24 judges.

1           “(ii) SUBPOENAS; PRODUCTION OF  
2 EVIDENCE.—In conducting any such hear-  
3 ing, the administrative law judge may issue  
4 subpoenas. The respondent or complainant  
5 may request the issuance of subpoenas  
6 that require the deposition of, or the at-  
7 tendance and testimony of, witnesses and  
8 the production of any evidence (including  
9 any books, papers, documents, or record-  
10 ings) relating to the matter under consid-  
11 eration.

12           “(iii) DECISION.—The administrative  
13 law judge shall issue a decision not later  
14 than 90 days after the date on which a  
15 hearing was requested under this para-  
16 graph and promptly notify, in writing, the  
17 parties and the Secretary of such decision,  
18 including the findings of fact and conclu-  
19 sions of law. If the administrative law  
20 judge finds that a violation of paragraph  
21 (1) or (2) has occurred, the judge shall  
22 issue an order for relief under paragraph  
23 (14). If review under paragraph (8) is not  
24 timely requested, such order shall be

1           deemed a final order of the Secretary that  
2           is not subject to judicial review.

3           “(8) ADMINISTRATIVE APPEAL.—

4           “(A) IN GENERAL.—Not later than 30  
5           days after the date of notification of a decision  
6           and order issued by an administrative law judge  
7           under paragraph (7), the complainant or re-  
8           spondent may file, with objections, an adminis-  
9           trative appeal with an administrative review  
10          body designated by the Secretary (referred to in  
11          this paragraph as the ‘review board’).

12          “(B) STANDARD OF REVIEW.—In review-  
13          ing the decision and order of the administrative  
14          law judge, the review board shall affirm the de-  
15          cision and order if it is determined that the fac-  
16          tual findings set forth therein are supported by  
17          substantial evidence and the decision and order  
18          are made in accordance with applicable law.

19          “(C) DECISIONS.—If the review board  
20          grants an administrative appeal, the review  
21          board shall issue a final decision and order af-  
22          firming or reversing, in whole or in part, the  
23          decision under review by not later than 90 days  
24          after receipt of the administrative appeal. If it  
25          is determined that a violation of paragraph (1)

1 or (2) has occurred, the review board shall issue  
2 a final decision and order providing relief au-  
3 thorized under paragraph (14). Such decision  
4 and order shall constitute final agency action  
5 with respect to the matter appealed.

6 “(9) SETTLEMENT IN THE ADMINISTRATIVE  
7 PROCESS.—

8 “(A) IN GENERAL.—At any time before  
9 issuance of a final order, an investigation or  
10 proceeding under this subsection may be termi-  
11 nated on the basis of a settlement agreement  
12 entered into by the parties.

13 “(B) PUBLIC POLICY CONSIDERATIONS.—  
14 Neither the Secretary, an administrative law  
15 judge, nor the review board conducting a hear-  
16 ing under this subsection shall accept a settle-  
17 ment that contains conditions conflicting with  
18 the rights protected under this Act or that are  
19 contrary to public policy, including a restriction  
20 on a complainant’s right to future employment  
21 with employers other than the specific employ-  
22 ers named in a complaint.

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



1           “(A) IN GENERAL.—The complainant may  
2 bring a de novo action described in subpara-  
3 graph (B) if—

4           “(i) an administrative law judge has  
5 not issued a decision and order within the  
6 90-day time period required under para-  
7 graph (7)(B)(iii); or

8           “(ii) the review board has not issued  
9 a decision and order within the 90-day  
10 time period required under paragraph  
11 (8)(C).

12           “(B) DE NOVO ACTION.—Such de novo ac-  
13 tion may be brought at law or equity in the  
14 United States district court for the district  
15 where a violation of paragraph (1) or (2) alleg-  
16 edly occurred or where the complainant resided  
17 on the date of such alleged violation. The court  
18 shall have jurisdiction over such action without  
19 regard to the amount in controversy and to  
20 order appropriate relief under paragraph (14).  
21 Such action shall, at the request of either party  
22 to such action, be tried by the court with a  
23 jury.

24           “(11) JUDICIAL REVIEW.—

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

18           “(B) LIMITATION ON COLLATERAL AT-  
19 TACK.—An order and decision with respect to  
20 which review may be obtained under subpara-  
21 graph (A) shall not be subject to judicial review  
22 in any criminal or other civil proceeding.

23           “(12) ENFORCEMENT OF ORDER.—If a re-  
24 spondent fails to comply with an order issued under  
25 this subsection, the Secretary or the complainant on

1 whose behalf the order was issued may file a civil ac-  
2 tion for enforcement in the United States district  
3 court for the district in which the violation was  
4 found to occur to enforce such order. If both the  
5 Secretary and the complainant file such action, the  
6 action of the Secretary shall take precedence. The  
7 district court shall have jurisdiction to grant all ap-  
8 appropriate relief described in paragraph (14).

9 “(13) BURDENS OF PROOF.—

10 “(A) CRITERIA FOR DETERMINATION.—In  
11 making a determination or adjudicating a com-  
12 plaint pursuant to this subsection, the Sec-  
13 retary, administrative law judge, review board,  
14 or a court may determine that a violation of  
15 paragraph (1) or (2) has occurred only if the  
16 complainant demonstrates that any conduct de-  
17 scribed in paragraph (1) or (2) with respect to  
18 the complainant was a contributing factor in  
19 the adverse action alleged in the complaint.

20 “(B) PROHIBITION.—Notwithstanding sub-  
21 paragraph (A), a decision or order that is favor-  
22 able to the complainant shall not be issued in  
23 any administrative or judicial action pursuant  
24 to this subsection if the respondent dem-  
25 onstrates by clear and convincing evidence that

1 the respondent would have taken the same ad-  
2 verse action in the absence of such conduct.

3 “(14) RELIEF.—

4 “(A) ORDER FOR RELIEF.—If the Sec-  
5 retary, administrative law judge, review board,  
6 or a court determines that a violation of para-  
7 graph (1) or (2) has occurred, the Secretary or  
8 court, respectively, shall have jurisdiction to  
9 order all appropriate relief, including injunctive  
10 relief, compensatory and exemplary damages,  
11 including—

12 “(i) affirmative action to abate the  
13 violation;

14 “(ii) reinstatement without loss of po-  
15 sition or seniority, and restoration of the  
16 terms, rights, conditions, and privileges as-  
17 sociated with the complainant’s employ-  
18 ment, including opportunities for pro-  
19 motions to positions with equivalent or bet-  
20 ter compensation for which the complain-  
21 ant is qualified;

22 “(iii) compensatory and consequential  
23 damages sufficient to make the complain-  
24 ant whole, (including back pay, prejudg-  
25 ment interest, and other damages); and

1           “(iv) expungement of all warnings,  
2           reprimands, or derogatory references that  
3           have been placed in paper or electronic  
4           records or databases of any type relating  
5           to the actions by the complainant that  
6           gave rise to the unfavorable personnel ac-  
7           tion, and, at the complainant’s direction,  
8           transmission of a copy of the decision on  
9           the complaint to any person whom the  
10          complainant reasonably believes may have  
11          received such unfavorable information.

12          “(B) ATTORNEYS’ FEES AND COSTS.—If  
13          the Secretary or an administrative law judge,  
14          review board, or court grants an order for relief  
15          under subparagraph (A), the Secretary, admin-  
16          istrative law judge, review board, or court, re-  
17          spectively, shall assess, at the request of the  
18          employee against the employer—

19                 “(i) reasonable attorneys’ fees; and

20                 “(ii) costs (including expert witness  
21                 fees) reasonably incurred, as determined  
22                 by the Secretary, administrative law judge,  
23                 review board, or court, respectively, in con-  
24                 nection with bringing the complaint upon  
25                 which the order was issued.

1           “(15) PROCEDURAL RIGHTS.—The rights and  
2 remedies provided for in this subsection may not be  
3 waived by any agreement, policy, form, or condition  
4 of employment, including by any pre-dispute arbitra-  
5 tion agreement or collective bargaining agreement.

6           “(16) SAVINGS.—Nothing in this subsection  
7 shall be construed to diminish the rights, privileges,  
8 or remedies of any employee who exercises rights  
9 under any Federal or State law or common law, or  
10 under any collective bargaining agreement.

11           “(17) ELECTION OF VENUE.—

12           “(A) IN GENERAL.—An employee of an  
13 employer who is located in a State that has a  
14 State plan approved under section 18 may file  
15 a complaint alleging a violation of paragraph  
16 (1) or (2) by such employer with—

17           “(i) the Secretary under paragraph  
18 (5); or

19           “(ii) a State plan administrator in  
20 such State.

21           “(B) REFERRALS.—If—

22           “(i) the Secretary receives a complaint  
23 pursuant to subparagraph (A)(i), the Sec-  
24 retary shall not refer such complaint to a  
25 State plan administrator for resolution; or

1                   “(ii) a State plan administrator re-  
2                   ceives a complaint pursuant to subpara-  
3                   graph (A)(ii), the State plan administrator  
4                   shall not refer such complaint to the Sec-  
5                   retary for resolution.”.

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

10 **SEC. 702. VICTIMS’ RIGHTS.**

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

14 **“SEC. 9A. VICTIMS’ RIGHTS.**

15           “(a) **RIGHTS BEFORE THE SECRETARY.**—A victim or  
16 the representative of a victim, shall be afforded the right,  
17 with respect to an inspection or investigation conducted  
18 under section 8 to—

19                   “(1) meet with the Secretary regarding the in-  
20                   spection or investigation conducted under such sec-  
21                   tion before the Secretary’s decision to issue a cita-  
22                   tion or take no action;

23                   “(2) receive, at no cost, a copy of any citation  
24                   or report, issued as a result of such inspection or in-

1 investigation, at the same time as the employer re-  
2 ceives such citation or report;

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

6 “(4) be provided notification of the date and  
7 time or any proceedings, service of pleadings, and  
8 other relevant documents, and an explanation of the  
9 rights of the employer, employee and employee rep-  
10 resentative, and victim to participate in proceedings  
11 conducted under section 10(c).

12 “(b) RIGHTS BEFORE THE COMMISSION.—Upon re-  
13 quest, a victim or representative of a victim shall be af-  
14 farded the right with respect to a work-related bodily in-  
15 jury or death to—

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

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

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

23 “(c) MODIFICATION OF CITATION.—Before entering  
24 into an agreement to withdraw or modify a citation issued  
25 as a result of an inspection or investigation of an incident



1 under section 8, the Secretary shall notify a victim or rep-  
2 resentative of a victim and provide the victim or represent-  
3 ative of a victim with an opportunity to appear and make  
4 a statement before the parties conducting settlement nego-  
5 tiations. In lieu of an appearance, the victim or represent-  
6 ative of the victim may elect to submit a letter to the Sec-  
7 retary and the parties.

8 “(d) SECRETARY PROCEDURES.—The Secretary shall  
9 establish procedures—

10 “(1) to inform victims of their rights under this  
11 section; and

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

14 “(e) COMMISSION PROCEDURES AND CONSIDER-  
15 ATIONS.—The Commission shall—

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

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

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

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

4           “(2) assist victims in asserting their rights  
5           under this section.

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

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

12          “(2) a family member (as further defined by  
13          the Secretary) of a victim described in paragraph  
14          (1), if—

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

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

1 **SEC. 703. CORRECTION OF SERIOUS, WILLFUL, OR RE-**  
2 **PEATED VIOLATIONS PENDING CONTEST AND**  
3 **PROCEDURES FOR A STAY.**

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

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

10 “(1) PERIOD PERMITTED FOR CORRECTION OF  
11 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—

12 For each violation which the Secretary designates as  
13 serious, willful, or repeated, the period permitted for  
14 the correction of the violation shall begin to run  
15 upon receipt of the citation.

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

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

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

24 “(3) CRITERIA AND RULES OF PROCEDURE FOR  
25 STAYS.—

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

5           “(B) CRITERIA.—In determining whether  
6 a stay should be issued on the basis of a motion  
7 filed under subparagraph (A), the Commission  
8 shall consider whether—

9                   “(i) the employer has demonstrated a  
10 substantial likelihood of success on its con-  
11 test to the citation;

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

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

16           “(C) RULES OF PROCEDURE.—The Com-  
17 mission shall develop rules of procedure for con-  
18 ducting a hearing on a motion filed under sub-  
19 paragraph (A) on an expedited basis. At a min-  
20 imum, such rules shall provide:

21                   “(i) That a hearing before an admin-  
22 istrative law judge shall occur not later  
23 than 15 days following the filing of the  
24 motion for a stay (unless extended at the  
25 request of the employer), and shall provide

1 for a decision on the motion not later than  
2 15 days following the hearing (unless ex-  
3 tended at the request of the employer).

4 “(ii) That a decision of an administra-  
5 tive law judge on a motion for stay is ren-  
6 dered on a timely basis.

7 “(iii) That if a party is aggrieved by  
8 a decision issued by an administrative law  
9 judge regarding the stay, such party has  
10 the right to file an objection with the Com-  
11 mission not later than 5 days after receipt  
12 of the administrative law judge’s decision.  
13 Within 10 days after receipt of the objec-  
14 tion, a Commissioner, if a quorum is seat-  
15 ed pursuant to section 12(f), shall decide  
16 whether to grant review of the objection.  
17 If, within 10 days after receipt of the ob-  
18 jection, no decision is made on whether to  
19 review the decision of the administrative  
20 law judge, the Commission declines to re-  
21 view such decision, or no quorum is seated,  
22 the decision of the administrative law  
23 judge shall become a final order of the  
24 Commission. If the Commission grants re-  
25 view of the objection, the Commission shall

1 issue a decision regarding the stay not  
2 later than 30 days after receipt of the ob-  
3 jection. If the Commission fails to issue  
4 such decision within 30 days, the decision  
5 of the administrative law judge shall be-  
6 come a final order of the Commission.

7 “(iv) For notification to employees or  
8 representatives of affected employees of re-  
9 quests for such hearings and shall provide  
10 affected employees or representatives of af-  
11 fected employees an opportunity to partici-  
12 pate as parties to such hearings.”.

13 **SEC. 704. CONFORMING AMENDMENTS.**

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

17 “(d) Any employer who fails to correct a violation  
18 designated by the Secretary as serious, willful, or repeated  
19 and for which a citation has been issued under section 9(a)  
20 within the period permitted for its correction (and a stay  
21 has not been issued by the Commission under section  
22 10(d)) may be assessed a civil penalty of not more than  
23 \$7,000 for each day during which such failure or violation  
24 continues. Any employer who fails to correct any other vio-  
25 lation for which a citation has been issued under section

1 9(a) of this title within the period permitted for its correc-  
2 tion (which period shall not begin to run until the date  
3 of the final order of the Commission in the case of any  
4 review proceeding under section 10 initiated by the em-  
5 ployer in good faith and not solely for delay of avoidance  
6 of penalties) may be assessed a civil penalty of not more  
7 than \$7,000 for each day during which such failure or vio-  
8 lation continues.”.

9 **SEC. 705. CIVIL PENALTIES.**

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

13 (1) in subsection (a)—

14 (A) by striking “\$70,000” and inserting  
15 “\$120,000”;

16 (B) by striking “\$5,000” and inserting  
17 “\$8,000”; and

18 (C) by adding at the end the following: “In  
19 determining whether a violation is repeated, the  
20 Secretary shall consider the employer’s history  
21 of violations under this Act and under State oc-  
22 cupational safety and health plans established  
23 under section 18. If such a willful or repeated  
24 violation caused or contributed to the death of  
25 an employee, such civil penalty amounts shall

1 be increased to not more than \$250,000 for  
2 each such violation, but not less than \$50,000  
3 for each such violation, except that for an em-  
4 ployer with 25 or fewer employees such penalty  
5 shall not be less than \$25,000 for each such  
6 violation.”;

7 (2) in subsection (b)—

8 (A) by striking “\$7,000” and inserting  
9 “\$12,000”; and

10 (B) by adding at the end the following: “If  
11 such a violation caused or contributed to the  
12 death of an employee, such civil penalty  
13 amounts shall be increased to not more than  
14 \$50,000 for each such violation, but not less  
15 than \$20,000 for each such violation, except  
16 that for an employer with 25 or fewer employ-  
17 ees such penalty shall not be less than \$10,000  
18 for each such violation.”;

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

21 (4) in subsection (d), as amended, by striking  
22 “\$7,000” each place it occurs and inserting  
23 “\$12,000”;

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



1           (6) in subsection (j) (as redesignated by para-  
2           graph (5)), by striking “\$7,000” and inserting  
3           “\$12,000;”.

4           (b) INFLATION ADJUSTMENT.—Section 17 is further  
5           amended by inserting after subsection (d) the following:  
6           “(e) Amounts provided under this section for civil  
7           penalties shall be adjusted by the Secretary at least once  
8           during each 4-year period beginning January 1, 2015, to  
9           account for the percentage increase or decrease in the  
10          Consumer Price Index for all urban consumers during  
11          such period.”.

12          **SEC. 706. CRIMINAL PENALTIES.**

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

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

17                 “(f)(1) Any employer who knowingly violates any  
18                 standard, rule, or order promulgated under section 6 of  
19                 this Act, or of any regulation prescribed under this Act,  
20                 and that violation caused or contributed to the death of  
21                 any employee, shall, upon conviction, be punished by a fine  
22                 in accordance with title 18, United States Code, or by im-  
23                 prisonment for not more than 10 years, or both, except  
24                 that if the conviction is for a violation committed after  
25                 a first conviction of such person under this subsection or

1 subsection (i), punishment shall be by a fine in accordance  
2 title 18, United States Code, or by imprisonment for not  
3 more than 20 years, or by both.

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

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

12 (3) in subsection (h), by striking “fine of not  
13 more than \$10,000, or by imprisonment for not  
14 more than six months,” and inserting “fine in ac-  
15 cordance with title 18, United States Code, or by  
16 imprisonment for not more than 5 years,”;

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

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

21 “(j)(1) Any employer who knowingly violates any  
22 standard, rule, or order promulgated under section 6, or  
23 any regulation prescribed under this Act, and that viola-  
24 tion causes or contributes to serious bodily harm to any  
25 employee but does not cause death to any employee, shall,

1 upon conviction, be punished by a fine in accordance with  
2 title 18, United States Code, or by imprisonment for not  
3 more than 5 years, or by both, except that if the conviction  
4 is for a violation committed after a first conviction of such  
5 person under this subsection or subsection (e), punishment  
6 shall be by a fine in accordance with title 18, United  
7 States Code, or by imprisonment for not more than 10  
8 years, or by both.

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

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

15 “(A) a substantial risk of death;

16 “(B) protracted unconsciousness;

17 “(C) protracted and obvious physical disfigure-  
18 ment; or

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

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

1 “(o) Nothing in this Act shall preclude a State or  
2 local law enforcement agency from conducting criminal  
3 prosecutions in accordance with the laws of such State or  
4 locality.”.

5 **SEC. 707. PENALTIES.**

6 Section 17(n) (as redesignated by section 706(a)(4))  
7 (29 U.S.C. 666(n)) is amended by adding at the end the  
8 following: “Pre-final order interest on such penalties shall  
9 begin to accrue on the date the party contests a citation  
10 issued under this Act, and shall end upon the issuance  
11 of the final order. Such pre-final order interest shall be  
12 calculated at the current underpayment rate determined  
13 by the Secretary of the Treasury pursuant to section 6621  
14 of the Internal Revenue Code of 1986, and shall be com-  
15 pounded daily. Post-final order interest shall begin to ac-  
16 crue 30 days after the date a final order of the Commis-  
17 sion or the court is issued, and shall be charged at the  
18 rate of 8 percent per year.”.

19 **SEC. 708. EFFECTIVE DATE.**

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

24 (b) EXCEPTION FOR STATES AND POLITICAL SUB-  
25 DIVISIONS.—A State that has a State plan approved under

1 section 18 (29 U.S.C. 667) shall amend its State plan to  
2 conform with the requirements of this Act and the amend-  
3 ments made by this Act not later than 12 months after  
4 the date of the enactment of this Act. The Secretary of  
5 Labor may extend the period for a State to make such  
6 amendments to its State plan by not more than 12  
7 months, if the State's legislature is not in session during  
8 the 12-month period beginning with the date of the enact-  
9 ment of this Act. Such amendments to the State plan shall  
10 take effect not later than 90 days after the adoption of  
11 such amendments by such State.

○