

Union Calendar No. 334

111TH CONGRESS
2^D SESSION

H. R. 5663

[Report No. 111-579, Part I]

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

IN THE 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

JULY 29, 2010

Additional sponsors: Mr. KUCINICH, Ms. CHU, Mr. COSTELLO, Mr. BACA, Mr. SCHIFF, Ms. SLAUGHTER, Mr. MICHAUD, Mr. TIERNEY, Mr. ARCURI, Mr. TOWNS, Ms. VELÁZQUEZ, Mr. BRADY of Pennsylvania, Mr. POLIS of Colorado, Ms. ZOE LOFGREN of California, Mr. HINCHEY, Ms. PINGREE of Maine, Mr. SPACE, Mr. FILNER, Mr. TONKO, Mr. STARK, Ms. LINDA T. SÁNCHEZ of California, Mr. KAGEN, Ms. LORETTA SANCHEZ of California, Mr. NADLER of New York, Mr. BLUMENAUER, Mr. HONDA, Mr. CHANDLER, Mrs. MALONEY, Mr. GENE GREEN of Texas, Ms. BERKLEY, Mr. LARSEN of Washington, Ms. MCCOLLUM, Mr. JACKSON of Illinois, Ms. HARMAN, Mr. SHERMAN, Mr. VISCLOSKY, Mr. LANGEVIN, and Mr. PATRICK J. MURPHY of Pennsylvania

JULY 29, 2010

Reported with an amendment, referred to the Committee on the Judiciary for a period ending not later than July 29, 2010, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 29, 2010

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on July 1, 2010]

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 *“Robert C. Byrd Miner Safety and Health Act of 2010”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 7 *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 investiga-
tions.

Sec. 103. Designation of miner representative.

Sec. 104. Additional amendments relating to inspections and investigations.

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

Sec. 201. Technical amendment.

Sec. 202. A pattern of recurring noncompliance or accidents.

Sec. 203. Injunctive authority.

Sec. 204. Revocation of approval of plans.

Sec. 205. Challenging a decision to approve, modify, or revoke a coal or other
mine plan.

Sec. 206. GAO Study on MSHA Mine Plan Approval.

TITLE III—PENALTIES

Sec. 301. Civil penalties.

Sec. 302. Civil and criminal liability of officers, directors, and agents.

Sec. 303. Criminal penalties.

Sec. 304. Commission review of penalty assessments.

Sec. 305. Delinquent payments and prejudgment interest.

TITLE IV—WORKER RIGHTS AND PROTECTIONS

Sec. 401. Protection from retaliation.

Sec. 402. Protection from loss of pay.

Sec. 403. Underground coal miner employment standard for mines placed in pat-
tern status.

TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

Sec. 501. Pre-shift review of mine conditions.

Sec. 502. Rock dust standards.

Sec. 503. Atmospheric monitoring systems.

- Sec. 504. Technology related to respirable dust.*
Sec. 505. Refresher training on miner rights and responsibilities.
Sec. 506. Authority to mandate additional training.
Sec. 507. Certification of personnel.

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

- Sec. 601. Definitions.*
Sec. 602. Assistance to States.
Sec. 603. Black lung medical reports.
Sec. 604. Rules of application to certain mines.

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. Pre-final order interest.
Sec. 708. Review of State Occupational Safety and Health Plans.
Sec. 709. Health Hazard Evaluations by the National Institute for Occupational Safety and Health.
Sec. 710. Authorization of cooperative agreements by NIOSH Office of Mine Safety and Health.
Sec. 711. 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 as*
4 *an amendment to a section or other provision, the reference*
5 *shall be considered to be made to a section or other provi-*
6 *sion of the Federal Mine Safety and Health Act of 1977*
7 *(30 U.S.C. 801 et seq.).*

1 **TITLE I—ADDITIONAL INSPEC-**
2 **TION AND INVESTIGATION**
3 **AUTHORITY**

4 **SEC. 101. INDEPENDENT ACCIDENT INVESTIGATIONS.**

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

8 “(b) *ACCIDENT INVESTIGATIONS.*—

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

11 “(A) determine why the accident occurred;

12 “(B) determine whether there were viola-
13 tions of law, mandatory health and safety stand-
14 ards, or other requirements, and if such viola-
15 tions are found, issue citations and penalties,
16 and in cases involving possible criminal actions,
17 the Secretary may refer such matters to the At-
18 torney General; and

19 “(C) make recommendations to avoid any
20 recurrence.

21 “(2) *INDEPENDENT ACCIDENT INVESTIGA-*
22 *TIONS.*—

23 “(A) *IN GENERAL.*—There shall be, in addi-
24 tion to an accident investigation under para-
25 graph (1), an independent investigation by an

1 *independent investigation panel (referred to in*
2 *this subsection as the ‘Panel’) appointed under*
3 *subparagraph (B) for—*

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

6 “(ii) *any accident that is of such sever-*
7 *ity or scale for potential or actual harm*
8 *that, in the opinion of the Secretary of*
9 *Health and Human Services, the accident*
10 *merits an independent investigation.*

11 “(B) *APPOINTMENT.—*

12 “(i) *IN GENERAL.—As soon as prac-*
13 *ticable after an accident described in sub-*
14 *paragraph (A), the Secretary of Health and*
15 *Human Services shall appoint 5 members*
16 *for the Panel required under this paragraph*
17 *from among individuals who have expertise*
18 *in accident investigations, mine engineer-*
19 *ing, or mine safety and health that is rel-*
20 *evant to the particular investigation.*

21 “(ii) *CHAIRPERSON.—The Panel shall*
22 *include, and be chaired by, a representative*
23 *from the Office of Mine Safety and Health*
24 *Research, of the National Institute for Occu-*

1 *pational Safety and Health (referred to in*
2 *this subsection as NIOSH).*

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

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

13 “(I) *1 operator of a mine or indi-*
14 *vidual representing mine operators,*
15 *and*

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

20 “(v) *STAFF AND EXPENSES.—The Di-*
21 *rector of NIOSH shall designate NIOSH*
22 *staff to facilitate the work of the Panel. The*
23 *Director may accept as staff personnel on*
24 *detail from other Federal agencies or re-em-*
25 *ploy annuitants. The detail of personnel*

1 under this paragraph may be on a non-re-
2 imbursable basis, and such detail shall be
3 without interruption or loss of civil service
4 status or privilege. The Director of NIOSH
5 shall have the authority to procure on behalf
6 of the Panel such materials, supplies or
7 services, including technical experts, as re-
8 quested in writing by a majority of the
9 Panel.

10 “(vi) COMPENSATION AND TRAVEL.—
11 All members of the Panel who are officers or
12 employees of the United States shall serve
13 without compensation in addition to that
14 received for their services as officers or em-
15 ployees of the United States. Each Panel
16 member who is not an officer or employee of
17 the United States shall be compensated at a
18 rate equal to the daily equivalent of the an-
19 nual rate of basic pay prescribed for level
20 IV of the Executive Schedule under section
21 5315 of title 5, United States Code, for each
22 day (including travel time) during which
23 such member is engaged in the performance
24 of duties of the Panel. The members of the
25 Panel shall be allowed travel expenses, in-

1 *cluding per diem in lieu of subsistence, at*
2 *rates authorized for employees of agencies*
3 *under subchapter 1 of chapter 57 of title 5,*
4 *United States Code, while away from their*
5 *homes or regular places of business in the*
6 *performance of services for the Panel.*

7 *“(C) DUTIES.—The Panel shall—*

8 *“(i) assess and identify any factors*
9 *that caused the accident, including defi-*
10 *ciencies in safety management systems, reg-*
11 *ulations, enforcement, industry practices or*
12 *guidelines, or organizational failures;*

13 *“(ii) identify and evaluate any con-*
14 *tributing actions or inactions of—*

15 *“(I) the operator;*

16 *“(II) any contractors or other per-*
17 *sons engaged in mining-related func-*
18 *tions at the site;*

19 *“(III) any State agency with*
20 *oversight responsibilities;*

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

23 *“(V) any other person or entity*
24 *(including equipment manufacturers);*

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

4 “(iv) prepare a report that—

5 “(I) includes the findings regard-
6 ing the causal factors described in
7 clauses (i) and (ii);

8 “(II) identifies any strengths and
9 weaknesses in the Secretary’s investiga-
10 tion; and

11 “(III) includes recommendations,
12 including interim recommendations
13 where appropriate, to industry, labor
14 organizations, State and Federal agen-
15 cies, or Congress, regarding policy, reg-
16 ulatory, enforcement, administrative,
17 or other changes, which in the judg-
18 ment of the Panel, would prevent a re-
19 currence at other mines; and

20 “(v) publish such findings and rec-
21 ommendations (excluding any portions
22 which the Attorney General requests that the
23 Secretary withhold in relation to a criminal
24 referral) and hold public meetings to inform
25 the mining community and families of af-

1 *fected miners of the Panel’s findings and*
2 *recommendations.*

3 “(D) *HEARINGS; APPLICABILITY OF CER-*
4 *TAIN FEDERAL LAW.—The Panel shall have the*
5 *authority to conduct public hearings or meetings,*
6 *but shall not be subject to the Federal Advisory*
7 *Committee Act. All public hearings of the Panel*
8 *shall be subject to the requirements under section*
9 *552b of title 5, United States Code.*

10 “(E) *MEMORANDUM OF UNDERSTANDING.—*
11 *Not later than 90 days after the date of enact-*
12 *ment of the Robert C. Byrd Miner Safety and*
13 *Health Act of 2010, the Secretary of Labor and*
14 *the Secretary of Health and Human Services*
15 *shall conclude and publically issue a memo-*
16 *randum of understanding that—*

17 “(i) *outlines administrative arrange-*
18 *ments which will facilitate a coordination*
19 *of efforts between the Secretary of Labor*
20 *and the Panel, ensures that the Secretary’s*
21 *investigation under paragraph (1) is not*
22 *delayed or otherwise compromised by the*
23 *activities of the Panel, and establishes a*
24 *process to resolve any conflicts between such*
25 *investigations;*

1 “(ii) ensures that Panel members or
2 staff will be able to participate in investiga-
3 tion activities (such as mine inspections
4 and interviews) related to the Secretary of
5 Labor’s investigation and will have full ac-
6 cess to documents that are assembled or pro-
7 duced in such investigation, and ensures
8 that the Secretary of Labor will make all of
9 the authority available to such Secretary
10 under this section, including subpoena au-
11 thority, to obtain information and witnesses
12 which may be requested by such Panel; and

13 “(iii) establishes such other arrange-
14 ments as are necessary to implement this
15 paragraph.

16 “(F) PROCEDURES.—Not later than 90
17 days after the date of enactment of the Robert C.
18 Byrd Miner Safety and Health Act of 2010, the
19 Secretary of Health and Human Services shall
20 establish procedures to ensure the consistency
21 and effectiveness of Panel investigations. In es-
22 tablishing such procedures, such Secretary shall
23 consult with independent safety investigation
24 agencies, sectors of the mining industry, rep-
25 resentatives of miners, families of miners in-

1 *involved in fatal accidents, State mine safety agen-*
2 *cies, and mine rescue organizations. Such proce-*
3 *dures shall include—*

4 *“(i) authority for the Panel to use evi-*
5 *dence, samples, interviews, data, analyses,*
6 *findings, or other information gathered by*
7 *the Secretary of Labor, as the Panel deter-*
8 *mines valid;*

9 *“(ii) provisions to ensure confiden-*
10 *tiality if requested by any witness, to the*
11 *extent permitted by law, and prevent con-*
12 *flicts of interest in witness representation;*
13 *and*

14 *“(iii) provisions for preservation of*
15 *public access to the Panel’s records through*
16 *the Secretary of Health and Human Serv-*
17 *ices.*

18 “(G) *AUTHORIZATION OF APPROPRIA-*
19 *TIONS.—There is authorized to be appropriated*
20 *to carry out this subsection such sums as may be*
21 *necessary.*

22 “(3) *POWERS AND PROCESSES.—For the pur-*
23 *pose”.*

24 “(b) *REPORTING REQUIREMENTS.—Section 511(a) (30*
25 *U.S.C. 958(a)) is amended by inserting after “501,” the fol-*

1 *lowing: “the status of implementation of recommendations*
2 *from each independent investigation panel under section*
3 *103(b) received in the preceding 5 years”.*

4 **SEC. 102. SUBPOENA AUTHORITY AND MINER RIGHTS DUR-**
5 **ING INSPECTIONS AND INVESTIGATIONS.**

6 *Section 103(b) (as amended by section 101) (30 U.S.C.*
7 *813(b)) is further amended by adding at the end the fol-*
8 *lowing:*

9 *“(4) ADDITIONAL POWERS.—For purposes of*
10 *making inspections and investigations, the Secretary*
11 *or the Secretary’s designee, may sign and issue sub-*
12 *poenas for the attendance and testimony of witnesses*
13 *and the production of information, including all rel-*
14 *evant data, papers, books, documents, and items of*
15 *physical evidence, and administer oaths. Witnesses*
16 *summoned shall be paid the same fees that are paid*
17 *witnesses in the courts of the United States. In car-*
18 *rying out inspections and investigations under this*
19 *subsection, authorized representatives of the Secretary*
20 *and attorneys representing the Secretary are author-*
21 *ized to question any individual privately. Under this*
22 *section, any individual who is willing to speak with*
23 *or provide a statement to such authorized representa-*
24 *tives or attorneys representing the Secretary may do*
25 *so without the presence, involvement, or knowledge of*

1 *the operator or the operator’s agents or attorneys. The*
2 *Secretary shall keep the identity of an individual pro-*
3 *viding such a statement confidential to the extent per-*
4 *mitted by law. Nothing in this paragraph prevents*
5 *any individual from being represented by that indi-*
6 *vidual’s personal attorney.”.*

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

8 *Section 103(f) (30 U.S.C. 813(f)) is amended by in-*
9 *serting before the last sentence the following: “If any miner*
10 *is entrapped or otherwise prevented as the result of an acci-*
11 *dent in such mine from designating such a representative*
12 *directly, such miner’s closest relative may act on behalf of*
13 *such miner in designating such a representative. If any*
14 *miner is not currently working in such mine as the result*
15 *of an accident in such mine, but would be currently work-*
16 *ing in such mine but for such accident, such miner may*
17 *designate such a representative. A representative of miners*
18 *shall have the right to participate in any accident inves-*
19 *tigation the Secretary initiates pursuant to subsection (b),*
20 *including the right to participate in investigative inter-*
21 *views and to review all relevant papers, books, documents*
22 *and records produced in connection with the accident inves-*
23 *tigation, unless the Secretary in consultation with the At-*
24 *torney General excludes such representatives from the inves-*
25 *tigation on the grounds that inclusion would interfere with*

1 *or adversely impact a criminal investigation that is pend-*
2 *ing or under consideration.”.*

3 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO INSPEC-**
4 **TIONS AND INVESTIGATIONS.**

5 (a) *HOURS OF INSPECTIONS.*—Section 103(a) (30
6 U.S.C. 813(a)) is amended by inserting after the third sen-
7 tence the following: “Such inspections shall be conducted
8 during the various shifts and days of the week during which
9 miners are normally present in the mine to ensure that the
10 protections of this Act are afforded to all miners working
11 all shifts.”.

12 (b) *REVIEW OF MINE PATTERN STATUS.*—Section
13 103(a) is further amended by inserting before the last sen-
14 tence the following: “The Secretary shall, upon request by
15 an operator, review with the appropriate mine officials the
16 Secretary’s most recent evaluation for pattern status (as
17 provided in section 104(e)) for that mine during the course
18 of a mine’s regular quarterly inspection of an underground
19 mine or a biannual inspection of a surface mine, or, at
20 the discretion of the Secretary, during the pre-inspection
21 conference.”.

22 (c) *INJURY AND ILLNESS REPORTING.*—Section 103(d)
23 (30 U.S.C. 813(d)) is amended by striking the last sentence
24 and inserting the following: “The records to be kept and
25 made available by the operator of the mine shall include

1 *man-hours worked and occupational injuries and illnesses*
2 *with respect to the miners in their employ or under their*
3 *direction or authority, and shall be maintained separately*
4 *for each mine and be reported at a frequency determined*
5 *by the Secretary, but at least annually. Independent con-*
6 *tractors (within the meaning of section 3(d)) shall be re-*
7 *sponsible for reporting accidents, occupational injuries and*
8 *illnesses, and man-hours worked for each mine with respect*
9 *to the miners in their employ or under their direction or*
10 *authority, and shall be reported at a frequency determined*
11 *by the Secretary, but not less than annually. Reports or*
12 *records of operators and contractors required and submitted*
13 *to the Secretary under this subsection shall be signed and*
14 *certified as accurate and complete by a knowledgeable and*
15 *responsible person possessing a certification, registration,*
16 *qualification, or other approval, as provided for under sec-*
17 *tion 118. Knowingly falsifying such records or reports shall*
18 *be grounds for revoking such certification, registration,*
19 *qualification, or other approval under the standards estab-*
20 *lished under subsection (b)(1) of such section.”.*

21 *(d) ORDERS FOLLOWING AN ACCIDENT.—Section*
22 *103(k) (30 U.S.C. 813(k)) is amended by striking “, when*
23 *present,”.*

24 *(e) CONFLICT OF INTEREST IN THE REPRESENTATION*
25 *OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) is amend-*

1 *ed by adding at the end the following: “During inspections*
 2 *and investigations under this section, and during any liti-*
 3 *gation under this Act, no attorney shall represent or pur-*
 4 *port to represent both the operator of a coal or other mine*
 5 *and any other individual, unless such individual has know-*
 6 *ingly and voluntarily waived all actual and reasonably*
 7 *foreseeable conflicts of interest resulting from such represen-*
 8 *tation. The Secretary is authorized to take such actions as*
 9 *the Secretary considers appropriate to ascertain whether*
 10 *such individual has knowingly and voluntarily waived all*
 11 *such conflicts of interest. If the Secretary finds that such*
 12 *an individual cannot be represented adequately by such an*
 13 *attorney due to such conflicts of interest, the Secretary may*
 14 *petition the appropriate United States District Court which*
 15 *shall have jurisdiction to disqualify such attorney as coun-*
 16 *sel to such individual in the matter. The Secretary may*
 17 *make such a motion as part of an ongoing related civil ac-*
 18 *tion or as a miscellaneous action.”.*

19 **TITLE II—ENHANCED**
 20 **ENFORCEMENT AUTHORITY**

21 **SEC. 201. TECHNICAL AMENDMENT.**

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

23 *(1) in the first sentence—*

24 *(A) by striking “any mandatory health or*
 25 *safety standard” and inserting “any provision of*

1 *this Act, including any mandatory health or*
 2 *safety standard or regulation promulgated under*
 3 *this Act”; and*

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

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

13 **SEC. 202. A PATTERN OF RECURRING NONCOMPLIANCE OR**
 14 **ACCIDENTS.**

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

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

19 *“(1) PATTERN STATUS.—*

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

25 *“(i) a pattern of—*

1 “(I) citations for significant and
2 substantial violations;

3 “(II) citations and withdrawal
4 orders issued for unwarrantable failure
5 to comply with mandatory health and
6 safety standards under section 104(d);

7 “(III) citations for flagrant viola-
8 tions within the meaning of section
9 110(b);

10 “(IV) withdrawal orders issued
11 under any other section of this Act
12 (other than orders issued under sub-
13 sections (j) or (k) of section 103); and

14 “(V) accidents and injuries; or

15 “(ii) a pattern consisting of any com-
16 bination of citations, orders, accidents, or
17 injuries described in subclauses (I) through
18 (V).

19 “(B) *MITIGATING CIRCUMSTANCES*.—Not-
20 withstanding subparagraph (A), if the Secretary,
21 after conducting an assessment of a coal or other
22 mine that otherwise qualifies for pattern status,
23 certifies that there are mitigating circumstances
24 wherein the operator has already implemented
25 remedial measures that have reduced risks to the

1 *health and safety of miners to the point that*
2 *such risks are no longer elevated and has taken*
3 *sufficient measures to ensure such elevated risk*
4 *will not recur, the Secretary may deem such*
5 *mine to not be in pattern status under this sub-*
6 *section. The Secretary shall issue any such cer-*
7 *tification of such mitigating circumstances that*
8 *would preclude the placement of a mine in pat-*
9 *tern status as a written finding, which shall, not*
10 *later than 10 days after the certification is*
11 *made, be—*

12 *“(i) made available on the public*
13 *website of the Mine Safety and Health Ad-*
14 *ministration; and*

15 *“(ii) transmitted to the Committee on*
16 *Education and Labor of the House of Rep-*
17 *resentatives and the Committee on Health,*
18 *Education, Labor, and Pensions of the Sen-*
19 *ate.*

20 *“(C) FREQUENCY.—Not less frequently than*
21 *every 6 months, the Secretary shall identify any*
22 *mines which meet the criteria set forth in para-*
23 *graph (8).*

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

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

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

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

14 “(D) *require that the number of regular in-*
15 *spections of such mine required under section*
16 *103 be increased to 8 per year while the mine is*
17 *in pattern status.*

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

22 “(3) *REMEDICATION ORDER.*—

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

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

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

8 *“(ii) Institute and implement an effec-*
9 *tive health and safety management program*
10 *approved by the Secretary, including—*

11 *“(I) the employment of safety pro-*
12 *essionals, certified persons, and ade-*
13 *quate numbers of personnel for the*
14 *mine, as may be required by the Sec-*
15 *retary;*

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

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

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

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

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

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

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

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

12 “(5) *PERFORMANCE EVALUATION.—*

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

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

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

24 “(II) *has been reduced by 70 per-*
25 *cent from the date on which such mine*

1 *was placed in pattern status, provided*
2 *that the rate of such violations is not*
3 *greater than the mean for all mines of*
4 *similar size and type;*

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

9 *“(iii) no citations or withdrawal or-*
10 *ders for a violation under section 104(d), no*
11 *withdrawal orders for imminent danger*
12 *under section 107 (issued in connection*
13 *with a citation), and no flagrant violations*
14 *within the meaning of section 110(b), were*
15 *issued for such mine.*

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

25 *“(6) TERMINATION OF PATTERN STATUS.—*

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

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

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

11 “(II) *has been reduced by 80 per-*
12 *cent from the date on which such mine*
13 *was placed in pattern status, provided*
14 *that the rate of such violations is not*
15 *greater than the mean for all mines of*
16 *similar size and type;*

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

21 “(iii) *no citations or withdrawal or-*
22 *ders for violations under section 104(d), no*
23 *withdrawal orders for imminent danger*
24 *under section 107 (issued in connection*
25 *with a citation), and no flagrant violations*

1 *within the meaning of section 110(b), were*
2 *issued for such mine.*

3 “(B) *CONTINUATION OF PATTERN STA-*
4 *TUS.—Should the mine operator fail to meet the*
5 *performance benchmarks described in subpara-*
6 *graph (A), the Secretary shall extend the mine’s*
7 *placement in pattern status until such bench-*
8 *marks are achieved.*

9 “(C) *CONSTRUCTION.—A withdrawal order*
10 *issued as the result of a condition that was en-*
11 *tirely beyond the operator’s ability to prevent or*
12 *control shall not preclude the operator from*
13 *being removed from pattern status, provided the*
14 *operator did not cause or allow miners to be ex-*
15 *posed to the condition in violation of any provi-*
16 *sion of this Act or a mandatory health or safety*
17 *standard or regulation promulgated under this*
18 *Act.*

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

23 “(8) *REGULATIONS.—*

24 “(A) *IN GENERAL.—Not later than 120*
25 *days after the date of enactment of the Robert C.*

1 *Byrd Miner Safety and Health Act of 2010, the*
2 *Secretary shall issue interim final regulations*
3 *that shall define—*

4 “(i) *the threshold benchmarks to trigger*
5 *pattern status under paragraph (1) and*
6 *cause a withdrawal order to be issued or re-*
7 *issued; and*

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

10 “(B) *THRESHOLD BENCHMARKS.—In estab-*
11 *lishing threshold benchmarks to trigger pattern*
12 *status for mines with significantly poor compli-*
13 *ance that contributes to unsafe or unhealthy con-*
14 *ditions, the Secretary—*

15 “(i) *shall—*

16 “(I) *consider rates of citations*
17 *and orders described in paragraph*
18 *(1)(A) and rates of reportable accidents*
19 *and injuries within the preceding 180-*
20 *day period; and*

21 “(II) *assign appropriate weight to*
22 *various types of citations, orders, acci-*
23 *dents, injuries, or other factors; and*

24 “(ii) *may include—*

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

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

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

18 “(C) FINAL REGULATION.—Not later than 2
19 years after the date of enactment of the Robert
20 C. Byrd Miner Safety and Health Act of 2010,
21 the Secretary shall promulgate a final regulation
22 implementing this paragraph.

23 “(9) PUBLIC DATABASE AND INFORMATION.—The
24 Secretary shall establish and maintain a publically
25 available electronic database containing the data used

1 *to determine pattern status for all coal or other mines*
2 *which shall be updated as frequently as practicable.*
3 *Such database shall be searchable and have the capac-*
4 *ity to provide comparative data about the health and*
5 *safety at mines of similar sizes and types. The Sec-*
6 *retary shall also make publicly available—*

7 *“(A) a list of all mines the Secretary places*
8 *in pattern status, updated within 7 days of plac-*
9 *ing an additional mine in pattern status;*

10 *“(B) the metrics, including percentile infor-*
11 *mation, used for the purposes of the performance*
12 *benchmarks and threshold benchmarks described*
13 *in paragraphs (5), (6), and (8); and*

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

18 *“(10) OPERATOR FEES FOR ADDITIONAL INSPEC-*
19 *TIONS.—*

20 *“(A) ASSESSMENT AND COLLECTION.—Be-*
21 *ginning 120 days after the date of enactment of*
22 *the Robert C. Byrd Miner Safety and Health Act*
23 *of 2010, the Secretary shall assess and collect*
24 *fees, in accordance with this paragraph, from*
25 *each coal or other mine in pattern status for the*

1 *costs of additional inspections under this sub-*
2 *section. The Secretary shall issue, by rule, a*
3 *schedule of fees to be assessed against coal or*
4 *other mines of varying types and sizes, and shall*
5 *collect and assess amounts under this paragraph*
6 *based on the schedule.*

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

12 *“(C) AUTHORIZATION OF APPROPRIA-*
13 *TIONS.—In addition to any other amounts au-*
14 *thorized to be appropriated under this Act, there*
15 *is authorized to be appropriated to the Assistant*
16 *Secretary for Mine Safety and Health for each*
17 *fiscal year in which fees are collected under sub-*
18 *paragraph (A) an amount equal to the total*
19 *amount of fees collected under such subpara-*
20 *graph during that fiscal year. Such amounts are*
21 *authorized to remain available until expended. If*
22 *on the first day of a fiscal year a regular appro-*
23 *priation to the Commission has not been enacted,*
24 *the Commission shall continue to collect fees (as*
25 *offsetting collections) under this subsection at the*

1 *rate in effect during the preceding fiscal year,*
2 *until 5 days after the date such regular appro-*
3 *priation is enacted.*

4 “(D) *COLLECTION AND CREDITING OF*
5 *FEES.—Fees authorized and collected under this*
6 *paragraph shall be deposited and credited as off-*
7 *setting collections to the account providing ap-*
8 *propriations to the Mine Safety and Health Ad-*
9 *ministration and shall not be collected for any*
10 *fiscal year except to the extent and in the*
11 *amount provided in advance in appropriation*
12 *Acts.”.*

13 **SEC. 203. INJUNCTIVE AUTHORITY.**

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

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

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

23 *(1) by redesignating subsection (d) as subsection*
24 *(e); and*

1 (2) *by inserting after subsection (c) the fol-*
2 *lowing:*

3 “(d) *REVOCATION OF APPROVAL OF PLANS.—*

4 “(1) *REVOCATION.—If the Secretary finds that*
5 *any program or plan of an operator, or part thereof,*
6 *that was approved by the Secretary under this Act is*
7 *based on inaccurate information or that cir-*
8 *cumstances that existed when such plan was approved*
9 *have materially changed and that continued oper-*
10 *ation of such mine under such plan constitutes a haz-*
11 *ard to the safety or health of miners, the Secretary*
12 *shall revoke the approval of such program or plan.*

13 “(2) *WITHDRAWAL ORDERS.—Upon revocation*
14 *of the approval of a program or plan under sub-*
15 *section (a), the Secretary may immediately issue an*
16 *order requiring the operator to cause all persons, ex-*
17 *cept those persons referred to in section 104(c), to be*
18 *withdrawn from such mine or an area of such mine,*
19 *and to be prohibited from entering such mine or such*
20 *area, until the operator has submitted and the Sec-*
21 *retary has approved a new plan.”.*

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

24 *Section 105(e) (as redesignated by section 204(1)) (30*
25 *U.S.C. 815(e)) is amended by adding at the end the fol-*

1 *lowing: “In any proceeding in which a party challenges the*
2 *Secretary’s decision to approve, modify, or revoke a coal*
3 *or other mine plan under this Act, the Commission and*
4 *the courts shall affirm the Secretary’s decision unless the*
5 *challenging party establishes that such decision was arbi-*
6 *trary, capricious, an abuse of discretion, or otherwise not*
7 *in accordance with law.”.*

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

9 *Not later than 1 year after the date of enactment of*
10 *this Act, the Comptroller General shall provide a report to*
11 *Congress on the timeliness of the Mine Safety and Health*
12 *Administration’s approval of underground coal mines’ re-*
13 *quired plans and plan amendments, including—*

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

16 *(2) as appropriate, recommendations for improv-*
17 *ing timeliness of plan review and for achieving*
18 *prompt decisions.*

19 **TITLE III—PENALTIES**

20 **SEC. 301. CIVIL PENALTIES.**

21 *(a) TECHNICAL CORRECTION.—Section 110(a)(1) (30*
22 *U.S.C. 820(a)(1)) is amended by inserting “including any*
23 *regulation promulgated under this Act,” after “this Act,”.*

1 **(b) INCREASED CIVIL PENALTIES DURING PATTERN**
2 *STATUS.*—Section 110(b) (30 U.S.C. 820(b)) is amended by
3 *adding at the end the following:*

4 “(3) Notwithstanding any other provision of this Act,
5 *an operator of a coal or other mine that is in pattern status*
6 *under section 104(e) and that fails to meet the performance*
7 *benchmarks set forth by the Secretary under section*
8 *104(e)(5)(A) during any performance review of the mine*
9 *following the first performance review shall be assessed an*
10 *increased civil penalty for any violation of this Act, includ-*
11 *ing any mandatory health or safety standard or regulation*
12 *promulgated under this Act. Such increased penalty shall*
13 *be twice the amount that would otherwise be assessed for*
14 *the violation under this Act, including the regulations pro-*
15 *mulgated under this Act, subject to the maximum civil pen-*
16 *alty established for the violation under this Act. This para-*
17 *graph shall apply to violations at such mine that occur dur-*
18 *ing the time period after the operator fails to meet the per-*
19 *formance benchmarks in this paragraph, and ending when*
20 *the Secretary determines at a subsequent performance re-*
21 *view that the mine meets the performance benchmarks*
22 *under section 104(e)(5)(A).”.*

23 **(c) CIVIL PENALTY FOR RETALIATION.**—Section
24 *110(a) (30 U.S.C. 820(a)) is further amended—*

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

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

5 “(4) If any person violates section 105(c), the Sec-
6 retary shall propose, and the Commission shall assess, a
7 civil penalty of not less than \$10,000 or more than \$100,000
8 for the first occurrence of such violation, and not less than
9 \$20,000 or more than \$200,000 for any subsequent viola-
10 tion, during any 3-year period.”.

11 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**
12 **RECTORS, AND AGENTS.**

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

15 “(c) *CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-*
16 *RECTORS, AND AGENTS.*—Whenever an operator violates a
17 provision of this Act, including any mandatory health or
18 safety standard or regulation promulgated under this Act,
19 or knowingly violates or fails or refuses to comply with any
20 order issued under this Act or any order incorporated in
21 a final decision issued under this Act, any director, officer,
22 or agent of such operator who knowingly authorized, or-
23 dered, or carried out such violation, failure, or refusal, or
24 any policy or practice that resulted in such violation, fail-
25 ure, or refusal, shall be subject to the same civil penalties,

1 *finer, and imprisonment that may be imposed upon a per-*
2 *son under this section.”.*

3 **SEC. 303. CRIMINAL PENALTIES.**

4 *(a) IN GENERAL.—Section 110(d) (30 U.S.C. 820(d))*
5 *is amended—*

6 *(1) by inserting “(1)” before “Any operator”;*

7 *(2) by striking “willfully” and inserting “know-*
8 *ingly”; and*

9 *(3) by striking “by a fine of not more than” and*
10 *all that follows and inserting “as follows:*

11 *“(A) By a fine of not more than \$250,000, or by*
12 *imprisonment for not more than 1 year, or both.*

13 *“(B) If the conviction is for a violation com-*
14 *mitted after a previous conviction of such operator for*
15 *a violation of the same mandatory health or safety*
16 *standard, by a fine of not more than \$1,000,000, or*
17 *by imprisonment for not more than 5 years, or both.*

18 *“(C) If the conviction is for a violation com-*
19 *mitted after a previous conviction of such operator for*
20 *a violation of an order, by a fine of not more than*
21 *\$1,000,000, or by imprisonment for not more than 5*
22 *years, or both.*

23 *“(D) If the operator’s actions knowingly exposed*
24 *miners to a significant risk of serious injury or ill-*
25 *ness or death, by a fine of not more than \$1,000,000,*

1 or by imprisonment for not more than 5 years, or
2 both.

3 “(E) If the operator knowingly tampered with or
4 disabled a required safety device which exposed min-
5 ers to a significant risk of serious injury or illness or
6 death, or if the conviction is for a violation described
7 in subparagraph (D) committed after a previous con-
8 viction of such operator for a such a violation, by a
9 fine of not more than \$2,000,000, or by imprisonment
10 for not more than 10 years, or both.”.

11 (b) *CRIMINAL PENALTY FOR RETALIATION.*—Section
12 110(d) (as amended by subsection (a)) is further amended
13 by adding at the end the following:

14 “(2) Whoever knowingly takes any action that is di-
15 rectly or indirectly harmful to any person, including action
16 that interferes with the lawful employment or livelihood of
17 any person, because such person has provided an authorized
18 representative of the Secretary, a State or local mine safety
19 or health officer or official, or any other law enforcement
20 officer with any information related to the existence of a
21 health or safety violation or an unhealthful or unsafe condi-
22 tion, policy, or practice under this Act shall be fined under
23 title 18, United States Code, imprisoned for not more than
24 10 years, or both.”.

25 (c) *ADVANCE NOTICE OF INSPECTIONS.*—

1 (1) *IN GENERAL.*—Section 110(e) (30 U.S.C.
2 820(e)) is amended to read as follows:

3 “(e) Unless otherwise authorized by this Act, any per-
4 son that knowingly gives, causes to give, or attempts to give
5 or cause to give, advance notice of any inspection conducted
6 under this Act with the intention of impeding, interfering
7 with, or adversely affecting the results of such inspection,
8 shall be fined under title 18, United States Code, impris-
9 oned for not more than 5 years, or both.”.

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

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

19 “(1) that giving, causing to give, or attempting
20 to give or cause to give advance notice of any inspec-
21 tion to be conducted under this Act with the intention
22 of impeding, interfering with, or adversely affecting
23 the results of such inspection is unlawful pursuant to
24 section 110(e); and

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

3 **SEC. 304. COMMISSION REVIEW OF PENALTY ASSESSMENTS.**

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

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

21 (a) *PRE-FINAL ORDER INTEREST.*—Section 110(j) (30
22 U.S.C. 820(j)) is amended by striking the second and third
23 sentences and inserting the following: “Pre-final order in-
24 terest on such penalties shall begin to accrue on the date
25 the operator contests a citation issued under this Act, in-

1 *cluding any mandatory health or safety standard or regula-*
 2 *tion promulgated under this Act, and shall end upon the*
 3 *issuance of the final order. Such pre-final order interest*
 4 *shall be calculated at the current underpayment rate deter-*
 5 *mined by the Secretary of the Treasury pursuant to section*
 6 *6621 of the Internal Revenue Code of 1986, and shall be*
 7 *compounded daily. Post-final order interest shall begin to*
 8 *accrue 30 days after the date a final order of the Commis-*
 9 *sion or the court is issued, and shall be charged at the rate*
 10 *of 8 percent per annum.”.*

11 *(b) ENSURING PAYMENT OF PENALTIES.—*

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

14 *(A) by redesignating subsection (l) as sub-*
 15 *section (m); and*

16 *(B) by inserting after subsection (k) the fol-*
 17 *lowing:*

18 *“(l) ENSURING PAYMENT OF PENALTIES.—*

19 *“(1) DELINQUENT PAYMENT LETTER.—If the op-*
 20 *erator of a coal or other mine fails to pay any civil*
 21 *penalty assessment that has become a final order of*
 22 *the Commission or a court within 45 days after such*
 23 *assessment became a final order, the Secretary shall*
 24 *send the operator a letter advising the operator of the*
 25 *consequences under this subsection of such failure to*

1 *pay. The letter shall also advise the operator of the*
2 *opportunity to enter into or modify a payment plan*
3 *with the Secretary based upon a demonstrated inabil-*
4 *ity to pay, the procedure for entering into such plan,*
5 *and the consequences of not entering into or not com-*
6 *plying with such plan.*

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

1 *such final order, and to be prohibited from entering*
 2 *such mine, until the operator rectifies the noncompli-*
 3 *ance with the payment plan in the manner specified*
 4 *in such payment plan.”.*

5 (2) *APPLICABILITY AND EFFECTIVE DATE.—The*
 6 *amendments made by paragraph (1) shall apply to*
 7 *all unpaid civil penalty assessments under the Fed-*
 8 *eral Mine Safety and Health Act of 1977 (30 U.S.C.*
 9 *801 et seq.), except that, for any unpaid civil penalty*
 10 *assessment that became a final order of the Commis-*
 11 *sion or a court before the date of enactment of this*
 12 *Act, the time periods under section 110(n) of the Fed-*
 13 *eral Mine Safety and Health Act of 1977 (as amend-*
 14 *ed) (30 U.S.C. 820(n)) shall be calculated as begin-*
 15 *ning on the date of enactment of this Act instead of*
 16 *on the date of the final order.*

17 **TITLE IV—WORKER RIGHTS AND** 18 **PROTECTIONS**

19 **SEC. 401. PROTECTION FROM RETALIATION.**

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

22 *“(c) PROTECTION FROM RETALIATION.—*

23 *“(1) RETALIATION PROHIBITED.—*

24 *“(A) RETALIATION FOR COMPLAINT OR TES-*

25 *TIMONY.—No person shall discharge or in any*

1 *manner discriminate against or cause to be dis-*
2 *charged or cause discrimination against or oth-*
3 *erwise interfere with the exercise of the statutory*
4 *rights of any miner or other employee of an op-*
5 *erator, representative of miners, or applicant for*
6 *employment, because—*

7 *“(i) such miner or other employee, rep-*
8 *resentative, or applicant for employment—*

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 min-*
14 *ers at the coal or other mine of an al-*
15 *leged danger or safety or health viola-*
16 *tion in a coal or other mine;*

17 *“(II) instituted or caused to be in-*
18 *stituted, or is about to institute or*
19 *cause to be instituted, any proceeding*
20 *under or related to this Act or has tes-*
21 *tified or is about to testify in any such*
22 *proceeding or because of the exercise by*
23 *such miner or other employee, rep-*
24 *resentative, or applicant for employ-*
25 *ment on behalf of him or herself or oth-*

1 *ers of any right afforded by this Act, or*
2 *has reported any injury or illness to*
3 *an operator or agent;*

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

8 *“(IV) refused to violate any provi-*
9 *sion of this Act, including any manda-*
10 *tory health and safety standard or reg-*
11 *ulation; or*

12 *“(ii) such miner is the subject of med-*
13 *ical evaluations and potential transfer*
14 *under a standard published pursuant to sec-*
15 *tion 101.*

16 *“(B) RETALIATION FOR REFUSAL TO PER-*
17 *FORM DUTIES.—*

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

1 or other employee or to any other miner or
2 employee.

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

19 “(2) *COMPLAINT.*—Any miner or other employee
20 or representative of miners or applicant for employ-
21 ment who believes that he or she has been discharged,
22 disciplined, or otherwise discriminated against by
23 any person in violation of paragraph (1) may file a
24 complaint with the Secretary alleging such discrimi-
25 nation not later than 180 days after 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 of*
10 *such complaint, the Secretary shall forward a*
11 *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 in-*
15 *vestigation, make the determination required*
16 *under subparagraph (B) regarding the reinstatement*
17 *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 the*
22 *immediate reinstatement of the miner or other*
23 *employee until there has been a final Commis-*
24 *sion order disposing of the underlying complaint*
25 *of the miner or other employee. If either the Sec-*

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

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

20 *“(i) providing the respondent an op-*
21 *portunity to submit to the Secretary a writ-*
22 *ten response to the complaint and to present*
23 *statements from witnesses or provide evi-*
24 *dence; 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, upon
6 such investigation, the Secretary determines that
7 the provisions of this subsection have been vio-
8 lated, the Secretary shall immediately file a com-
9 plaint with the Commission, with service upon
10 the alleged violator and the miner or other em-
11 ployee or representative of miners alleging such
12 discrimination or interference and propose an
13 order granting appropriate relief.

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

1 *his or her own behalf during any hearing held*
2 *pursuant to this paragraph.*

3 *“(F) RELIEF.—The Commission shall have*
4 *authority in such proceedings to require a person*
5 *committing a violation of this subsection to take*
6 *such affirmative action to abate the violation*
7 *and prescribe a remedy as the Commission con-*
8 *siders appropriate, including—*

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

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

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

1 *mission of a copy of the decision on the*
2 *complaint to any person whom the com-*
3 *plainant reasonably believes may have re-*
4 *ceived such unfavorable information.*

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

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

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

23 “(C) *HEARING AND DECISION.—The Com-*
24 *mission shall afford an opportunity for a hear-*
25 *ing (in accordance with section 554 of title 5,*

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

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

21 “(6) *ATTORNEYS’ FEES.*—*Whenever an order is*
22 *issued sustaining the complainant’s charges under*
23 *this subsection, a sum equal to the aggregate amount*
24 *of all costs and expenses, including attorney’s fees, as*
25 *determined by the Commission to have been reason-*

1 *ably incurred by the complainant for, or in connec-*
2 *tion with, the institution and prosecution of such pro-*
3 *ceedings shall be assessed against the person commit-*
4 *ting such violation. The Commission shall determine*
5 *whether such costs and expenses were reasonably in-*
6 *curring by the complainant without reference to wheth-*
7 *er the Secretary also participated in the proceeding.*

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

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

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

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

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

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

5 *“(a) PROTECTION FROM LOSS OF PAY.—*

6 *“(1) WITHDRAWAL ORDERS.—If a coal or other*
7 *mine or area of such mine is closed by an order*
8 *issued under section 103, 104, 107, 108, or 110, all*
9 *miners working during the shift when such order was*
10 *issued who are idled by such order shall be entitled,*
11 *regardless of the result of any review of such order,*
12 *to full compensation by the operator at their regular*
13 *rates of pay for the period they are idled, but for not*
14 *more than the balance of such shift. If such order is*
15 *not terminated prior to the next working shift, all*
16 *miners on that shift who are idled by such order shall*
17 *be entitled to full compensation by the operator at*
18 *their regular rates of pay for the period they are*
19 *idled, but for not more than four hours of such shift.*
20 *If a coal or other mine or area of such mine is closed*
21 *by an order issued under section 104, 107 (in connec-*
22 *tion with a citation), 108, or 110, all miners who are*
23 *idled by such order shall be entitled, regardless of the*
24 *result of any review of such order, to full compensa-*
25 *tion by the operator at their regular rates of pay and*
26 *in accordance with their regular schedules of pay for*

1 *the entire period for which they are idled, not to ex-*
2 *ceed 60 days.*

3 “(2) *CLOSURE IN ADVANCE OF ORDER.—If the*
4 *Secretary finds that such mine or such area of a mine*
5 *was closed by the operator in anticipation of the*
6 *issuance of such an order, all miners who are idled*
7 *by such closure shall be entitled to full compensation*
8 *by the operator at their regular rates of pay and in*
9 *accordance with their regular schedules of pay, from*
10 *the time of such closure until such time as the Sec-*
11 *retary authorizes reopening of such mine or such area*
12 *of the mine, not to exceed 60 days, except where an*
13 *operator promptly withdraws miners upon discovery*
14 *of a hazard, and notifies the Secretary where re-*
15 *quired, and within the prescribed time period.*

16 “(3) *REFUSAL TO COMPLY.—Whenever an oper-*
17 *ator violates or fails or refuses to comply with any*
18 *order issued under section 103, 104, 107, 108, or 110,*
19 *all miners employed at the affected mine who would*
20 *have been withdrawn from, or prevented from enter-*
21 *ing, such mine or area thereof as a result of such*
22 *order shall be entitled to full compensation by the op-*
23 *erator at their regular rates of pay, in addition to*
24 *pay received for work performed after such order was*
25 *issued, for the period beginning when such order was*

1 *issued and ending when such order is complied with,*
2 *vacated, or terminated.*

3 “(b) *ENFORCEMENT.*—

4 “(1) *COMMISSION ORDERS.*—*The Commission*
5 *shall have authority to order compensation due under*
6 *this section upon the filing of a complaint by a miner*
7 *or his representative and after opportunity for hear-*
8 *ing subject to section 554 of title 5, United States*
9 *Code. Whenever the Commission issues an order sus-*
10 *taining the complaint under this subsection in whole*
11 *or in part, the Commission shall award the complain-*
12 *ant reasonable attorneys’ fees and costs.*

13 “(2) *FAILURE TO PAY COMPENSATION DUE.*—
14 *Consistent with the authority of the Secretary to*
15 *order miners withdrawn from a mine under this Act,*
16 *the Secretary shall order a mine that has been subject*
17 *to a withdrawal order under section 103, 104, 107,*
18 *108, or 110, and has reopened, to be closed again if*
19 *compensation in accordance with the provisions of*
20 *this section is not paid by the end of the next regu-*
21 *larly scheduled payroll period following the lifting of*
22 *a withdrawal order.*

23 “(c) *EXPEDITED REVIEW.*—*If an order is issued which*
24 *results in payments to miners under subsection (a), the op-*
25 *erators shall have the right to an expedited review before*

1 *the Commission using timelines and procedures established*
2 *pursuant to section 316(b)(2)(G)(ii).”.*

3 **SEC. 403. UNDERGROUND COAL MINER EMPLOYMENT**
4 **STANDARD FOR MINES PLACED IN PATTERN**
5 **STATUS.**

6 *The Federal Mine Safety and Health Act of 1977 is*
7 *further amended by adding at the end of title I the fol-*
8 *lowing:*

9 **“SEC. 117. UNDERGROUND COAL MINER EMPLOYMENT**
10 **STANDARD FOR MINES PLACED IN PATTERN**
11 **STATUS.**

12 *“(a) IN GENERAL.—For purposes of ensuring miners’*
13 *health and safety and miners’ right to raise concerns there-*
14 *of, when an underground coal mine is placed in pattern*
15 *status pursuant to section 104(e), and for 3 years after such*
16 *placement, the operator of such mine may not discharge or*
17 *constructively discharge a miner who is paid on an hourly*
18 *basis and employed at such underground coal mine without*
19 *reasonable job-related grounds based on a failure to satisfac-*
20 *torily perform job duties, including compliance with this*
21 *Act and with mandatory health and safety standards or*
22 *other regulations issued under this Act, or other legitimate*
23 *business reason, where the miner has completed the employ-*
24 *er’s probationary period, not to exceed 6 months.*

1 “(b) *CAUSE OF ACTION.*—A miner aggrieved by a vio-
2 lation of subsection (a) may file a complaint in Federal
3 district court in the district where the mine is located with-
4 in 1 year of such violation.

5 “(c) *REMEDIES.*—In an action under subsection (b),
6 for any prevailing miner the court shall take affirmative
7 action to further the purposes of the Act, which may include
8 reinstatement with backpay and compensatory damages.
9 Reasonable attorneys’ fees and costs shall be awarded to any
10 prevailing miner under this section.

11 “(d) *PRE-DISPUTE WAIVER PROHIBITED.*—A miner’s
12 right to a cause of action under this section may not be
13 waived with respect to disputes that have not arisen as of
14 the time of the waiver.

15 “(e) *CONSTRUCTION.*—Nothing in this section shall be
16 construed to limit the availability of rights and remedies
17 of miners under any other State or Federal law or a collec-
18 tive bargaining agreement.”.

19 **TITLE V—MODERNIZING HEALTH** 20 **AND SAFETY STANDARDS**

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

22 Section 303(d) (30 U.S.C. 863(d)) is amended by add-
23 ing at the end the following:

24 “(3)(A) Not later than 30 days after the issuance of
25 the interim final rules promulgated under subparagraph

1 (C), each operator of an underground coal mine shall imple-
2 ment a communication program at the underground coal
3 mine to ensure that each miner is orally briefed on and
4 made aware of, prior to traveling to or arriving at the min-
5 er's work area and commencing the miner's assigned
6 tasks—

7 “(i) any conditions that are hazardous, or that
8 violate a mandatory health or safety standard or a
9 plan approved under this Act, where the miner is ex-
10 pected to work or travel; and

11 “(ii) the general conditions of that miner's as-
12 signed working section or other area where the miner
13 is expected to work or travel.

14 “(B) Not later than 180 days after the date of enact-
15 ment of the Robert C. Byrd Miner Safety and Health Act
16 of 2010, the Secretary shall promulgate interim final rules
17 implementing the requirements of subparagraph (A). The
18 Secretary shall issue a final rule not later than 2 years
19 after such date.”.

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

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

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

25 “(1) *IN GENERAL.*—Where rock”;

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

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

8 “(2) *METHODS OF MEASUREMENT.—*

9 “(A) *IN GENERAL.—Each operator of an*
10 *underground coal mine shall take accurate and*
11 *representative samples which shall measure the*
12 *total incombustible content of combined coal*
13 *dust, rock dust, and other dust in such mine to*
14 *ensure that the coal dust is kept below explosive*
15 *levels through the appropriate application of*
16 *rock dust.*

17 “(B) *DIRECT READING MONITORS.—By the*
18 *later of June 15, 2011, or the date that is 30*
19 *days after the Secretary of Health and Human*
20 *Services has certified in writing that direct read-*
21 *ing monitors are commercially available to*
22 *measure total incombustible content in samples*
23 *of combined coal dust, rock dust, and other dust*
24 *and the Department of Labor has approved such*
25 *monitors for use in underground coal mines, the*

1 *Secretary shall require operators to take such*
2 *dust samples using direct reading monitors.*

3 “(C) *REGULATIONS.*—*The Secretary shall,*
4 *not later than 180 days after the date of enact-*
5 *ment of the Robert C. Byrd Miner Safety and*
6 *Health Act of 2010, promulgate an interim final*
7 *rule that prescribes methods for operator sam-*
8 *pling of total incombustible content in samples of*
9 *combined coal dust, rock dust, and other dust*
10 *using direct reading monitors and includes re-*
11 *quirements for locations, methods, and intervals*
12 *for mandatory operator sampling.*

13 “(D) *RECOMMENDATIONS.*—*Not later than*
14 *1 year after the date of enactment of the Robert*
15 *C. Byrd Miner Safety and Health Act of 2010,*
16 *the Secretary of Health and Human Services*
17 *shall, based upon the latest research, recommend*
18 *to the Secretary of Labor any revisions to the*
19 *mandatory operator sampling locations, meth-*
20 *ods, and intervals included in the interim final*
21 *rule described in subparagraph (B) that may be*
22 *warranted in light of such research.*

23 “(3) *LIMITATION.*—*Until a final rule is issued*
24 *by the Secretary under section 502(b)(2) of the Robert*
25 *C. Byrd Miner Safety and Health Act of 2010, any*

1 *measurement taken by a direct reading monitor de-*
2 *scribed in paragraph (2) shall not be admissible to es-*
3 *tablish a violation in an enforcement action under*
4 *this Act.”.*

5 *(b) REPORT AND RULEMAKING AUTHORITY.—*

6 *(1) REPORT.—Not later than 2 years after the*
7 *date of enactment of this Act, the Secretary of Health*
8 *and Human Services, in consultation with the Sec-*
9 *retary of Labor, shall prepare and submit, to the*
10 *Committee on Education and Labor of the House of*
11 *Representatives and the Committee on Health, Edu-*
12 *cation, Labor, and Pensions of the Senate, a report—*

13 *(A) regarding whether any direct reading*
14 *monitor described in section 304(d)(2)(B) of the*
15 *Federal Mine Safety and Health Act of 1977 (30*
16 *U.S.C. 864(d)(2)(B)) is sufficiently reliable and*
17 *accurate for the enforcement of the mandatory*
18 *health or safety standards by the Secretary of*
19 *Labor under such Act, and whether additional*
20 *improvement to such direct reading monitor, or*
21 *additional verification regarding reliability and*
22 *accuracy, would be needed for enforcement pur-*
23 *poses; and*

24 *(B) identifying any limitations or impedi-*
25 *ments for such use in underground coal mines.*

1 (2) *AUTHORITY.*—*If the Secretary determines*
2 *that such direct reading monitor is sufficiently reli-*
3 *able and accurate for the enforcement of mandatory*
4 *health and safety standards under the Federal Mines*
5 *Safety and Health Act of 1977 following such report*
6 *or any update thereto, the Secretary shall promulgate*
7 *a final rule authorizing the use of such direct reading*
8 *monitor for purposes of compliance and enforcement,*
9 *in addition to other methods for determining total in-*
10 *combustible content. Such rule shall specify manda-*
11 *tory operator sampling locations, methods, and inter-*
12 *vals.*

13 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

16 “(u) *ATMOSPHERIC MONITORING SYSTEMS.*—

17 “(1) *NIOSH RECOMMENDATIONS.*—*Not later*
18 *than 1 year after the date of enactment of the Robert*
19 *C. Byrd Miner Safety and Health Act of 2010, the*
20 *Director of the National Institute for Occupational*
21 *Safety and Health, acting through the Office of Mine*
22 *Safety and Health Research, in consultation, includ-*
23 *ing through technical working groups, with operators,*
24 *vendors, State mine safety agencies, the Secretary,*

1 *and labor representatives of miners, shall issue rec-*
2 *ommendations 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 and*
6 *safety of underground coal miners;*

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

12 “(C) *other technologies available to conduct*
13 *continuous atmospheric monitoring.*

14 “(2) *ATMOSPHERIC MONITORING SYSTEM REGU-*
15 *LATIONS.—Not later than 1 year following the receipt*
16 *of the recommendations described in paragraph (1),*
17 *the Secretary shall promulgate regulations requiring*
18 *that each operator of an underground coal mine in-*
19 *stall atmospheric monitoring systems, consistent with*
20 *such recommendations, that—*

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

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

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

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

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

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

7 (1) *by striking “of Health, Education, and Wel-*
8 *fare”;* and

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

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

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

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

1 *one hour of training on the statutory rights and re-*
2 *responsibilities of miners and their representatives*
3 *under this Act and other applicable Federal and State*
4 *law, pursuant to a program of instruction developed*
5 *by the Secretary and delivered by an employee of the*
6 *Administration or by a trainer approved by the Ad-*
7 *ministration that is a party independent from the op-*
8 *erator;”.*

9 **(b) NATIONAL HAZARD REPORTING HOTLINE.**—*Sec-*
10 *tion 115 (30 U.S.C. 825) is further amended—*

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

13 *(2) by inserting after subsection (b) the fol-*
14 *lowing:*

15 *“(c) Any health and safety training program of in-*
16 *struction provided under this section shall include distribu-*
17 *tion to miners of information regarding miners’ rights*
18 *under the Act, as well as a toll-free hotline telephone num-*
19 *ber, which the Secretary shall maintain to receive com-*
20 *plaints from miners and the public regarding hazardous*
21 *conditions, discrimination, safety or health violations, or*
22 *other mine safety or health concerns. Information regarding*
23 *the hotline shall be provided in a portable, convenient for-*
24 *mat, such as a durable wallet card, to enable miners to keep*
25 *the information on their person.”.*

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

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

12 (a) *IN GENERAL.*—Section 115 (30 U.S.C. 825) is fur-
 13 *ther amended by redesignating subsections (e) and (f) (as*
 14 *redesignated) as subsections (f) and (g) and inserting after*
 15 *subsection (d) (as redesignated) the following:*

16 “(e) *AUTHORITY TO MANDATE ADDITIONAL TRAIN-*
 17 *ING.*—

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

24 “(A)(i) *a serious or fatal accident has oc-*
 25 *curred at such mine; or*

1 “(i) such mine has experienced accident
2 and injury rates, citations for violations of this
3 Act (including mandatory health or safety stand-
4 ards or regulations promulgated under this Act),
5 citations for significant and substantial viola-
6 tions, or withdrawal orders issued under this Act
7 at a rate above the average for mines of similar
8 size and type; and

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

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

19 (b) CONFORMING AMENDMENTS.—Section 104(g)(2)
20 (30 U.S.C. 814(g)(2)) is amended by striking “under para-
21 graph (1)” both places it appears and inserting “under
22 paragraph (1) or under section 115(e)”.

23 **SEC. 507. CERTIFICATION OF PERSONNEL.**

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

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

2 “(a) *CERTIFICATION REQUIRED.*—Any person who is
3 authorized or designated by the operator of a coal or other
4 mine to perform any duties or provide any training that
5 this Act, including a mandatory health or safety standard
6 or regulation promulgated pursuant to this Act, requires
7 to be performed or provided by a certified, registered, quali-
8 fied, or otherwise approved person, shall be permitted to
9 perform such duties or provide such training only if such
10 person has a current certification, registration, qualifica-
11 tion, or approval to perform such duties or provide such
12 training consistent with the requirements of this section.

13 “(b) *ESTABLISHMENT OF CERTIFICATION REQUIRE-*
14 *MENTS AND PROCEDURES.*—

15 “(1) *IN GENERAL.*—Not later than 1 year after
16 the date of enactment of the Robert C. Byrd Miner
17 Safety and Health Act of 2010, the Secretary shall
18 issue mandatory standards to establish—

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

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

1 “(C) procedures and criteria for revoking
2 such certification, registration, qualification, or
3 other approval, including procedures that ensure
4 that the Secretary (or a State agency, as appli-
5 cable) responds to requests for revocation and
6 that the names of individuals whose certification
7 or other approval has been revoked are provided
8 to and maintained by the Secretary, and are
9 made available to appropriate State agencies
10 through an electronic database.

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

24 “(c) OPERATOR FEES FOR CERTIFICATION.—

1 “(1) *ASSESSMENT AND COLLECTION.*—Beginning
2 180 days after the date of enactment of the Robert C.
3 Byrd Miner Safety and Health Act of 2010, the Sec-
4 retary shall assess and collect fees, in accordance with
5 this subsection, from each operator for each person
6 certified under this section. Fees shall be assessed and
7 collected in amounts determined by the Secretary as
8 necessary to fund the certification programs estab-
9 lished under this section.

10 “(2) *USE.*—Amounts collected as provided in
11 paragraph (1) shall only be available to the Sec-
12 retary, as provided in paragraph (3), for making ex-
13 penditures to carry out the certification programs es-
14 tablished under this subsection.

15 “(3) *AUTHORIZATION OF APPROPRIATIONS.*—In
16 addition to funds authorized to be appropriated
17 under section 114, there is authorized to be appro-
18 priated to the Assistant Secretary for Mine Safety
19 and Health for each fiscal year in which fees are col-
20 lected under paragraph (1) an amount equal to the
21 total amount of fees collected under paragraph (1)
22 during that fiscal year. Such amounts are authorized
23 to remain available until expended. If on the first day
24 of a fiscal year a regular appropriation to the Com-
25 mission has not been enacted, the Commission shall

1 *continue to collect fees (as offsetting collections) under*
2 *this subsection at the rate in effect during the pre-*
3 *ceding fiscal year, until 5 days after the date such*
4 *regular appropriation is enacted.*

5 “(4) *COLLECTING AND CREDITING OF FEES.—*
6 *Fees authorized and collected under this subsection*
7 *shall be deposited and credited as offsetting collections*
8 *to the account providing appropriations to the Mine*
9 *Safety and Health Administration and shall not be*
10 *collected for any fiscal year except to the extent and*
11 *in the amount provided in advance in appropriation*
12 *Acts.*

13 “(d) *CITATION; WITHDRAWAL ORDER.—Any operator*
14 *who permits a person to perform any of the health or safety*
15 *related functions described in subsection (a) without a cur-*
16 *rent certification which meets the requirements of this sec-*
17 *tion shall be considered to have committed an unwarrant-*
18 *able failure under section 104(d)(1), and the Secretary shall*
19 *issue an order requiring that the miner be withdrawn or*
20 *reassigned to duties that do not require such certification.”.*

21 “(b) *CONFORMING AMENDMENTS.—Section 318 (30*
22 *U.S.C. 878) is amended—*

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

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

4 (3) *in subsection (g), by redesignating para-*
5 *graphs (1) through (4) as subparagraphs (A) through*
6 *(D), respectively; and*

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

9 **TITLE VI—ADDITIONAL MINE**
10 **SAFETY PROVISIONS**

11 **SEC. 601. DEFINITIONS.**

12 (a) *DEFINITION OF OPERATOR.*—Section 3(d) is
13 *amended to read as follows:*

14 “(d) ‘operator’ means—

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

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

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

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

1 (b) *DEFINITION OF AGENT.*—Section 3(e) (30 U.S.C.
2 802(e)) is amended by striking “the miners” and inserting
3 “any miner”.

4 (c) *DEFINITION OF MINER.*—Section 3(g) (30 U.S.C.
5 802(g)) is amended by inserting after “or other mine” the
6 following: “, and includes any individual who is not cur-
7 rently working in a coal or other mine but would be cur-
8 rently working in such mine, but for an accident in such
9 mine”.

10 (d) *DEFINITION OF SIGNIFICANT AND SUBSTANTIAL*
11 *VIOLATIONS.*—Section 3 (30 U.S.C. 802) is further amend-
12 ed—

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

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

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

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

20 “(p) ‘significant and substantial violation’
21 means a violation of this Act, including any manda-
22 tory health or safety standard or regulation promul-
23 gated under this Act, that is of such nature as could
24 significantly and substantially contribute to the cause

1 *and effect of a coal or other mine safety or health haz-*
2 *ard as described in section 104(d).”.*

3 **SEC. 602. ASSISTANCE TO STATES.**

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

5 *(1) in subsection (a)—*

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

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

12 *(C) in paragraph (3), by striking the period*
13 *and inserting “; and”; and*

14 *(D) by adding at the end the following:*

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

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

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

24 *Title IV of the Black Lung Benefits Act (30 U.S.C.*
25 *901 et seq.) is amended by adding at the end the following:*

1 **“SEC. 435. MEDICAL REPORTS.**

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

13 **SEC. 604. RULES OF APPLICATION TO CERTAIN MINES.**

14 (a) *INAPPLICABILITY OF AMENDMENTS TO CERTAIN*
15 *MINES.—*

16 (1) *SPECIAL RULE.—The amendments made by*
17 *this Act shall not apply to—*

18 (A) *surface mines, except for surface facili-*
19 *ties or impoundments physically connected to—*

20 (i) *underground coal mines; or*

21 (ii) *other underground mines which*
22 *are gassy mines; or*

23 (B) *underground mines which are neither*
24 *coal mines nor gassy mines.*

25 (2) *DEFINITION.—For purposes of this section,*
26 *the term “gassy mine” means a mine, tunnel, or other*

1 *underground workings in which a flammable mixture*
2 *has been ignited, or has been found with a permissible*
3 *flame safety lamp, or has been determined by air*
4 *analysis to contain 0.25 percent or more (by volume)*
5 *of methane in any open workings when tested at a*
6 *point not less than 12 inches from the roof, face of*
7 *rib.*

8 *(b) RULE OF CONSTRUCTION RELATING TO APPLICA-*
9 *BILITY OF CERTAIN PROVISIONS TO SURFACE MINES.—*
10 *Title I is further amended by adding at the end the fol-*
11 *lowing:*

12 **“SEC. 119. APPLICABILITY OF CERTAIN PROVISIONS TO**
13 **CERTAIN MINES.**

14 *“(a) RULE OF CONSTRUCTION.—With respect to the*
15 *mines described in subsection (b), this Act as in effect on*
16 *the date before the date of enactment of the Robert C. Byrd*
17 *Miner Safety and Health Act of 2010, shall continue to*
18 *apply to such mines as then in effect.*

19 *“(b) APPLICABLE MINES.—*

20 *“(1) IN GENERAL.—The mines referred to in sub-*
21 *section (a) are—*

22 *“(A) surface mines, except for surface facili-*
23 *ties or impoundments physically connected to—*

24 *“(i) underground coal mines; or*

1 “(ii) other underground mines which
2 are gassy mines; and

3 “(B) underground mines which are neither
4 coal mines nor gassy mines.

5 “(2) DEFINITION.—As used in paragraph (1),
6 the term ‘gassy mine’ means a mine, tunnel, or other
7 underground workings in which a flammable mixture
8 has been ignited, or has been found with a permissible
9 flame safety lamp, or has been determined by air
10 analysis to contain 0.25 percent or more (by volume)
11 of methane in any open workings when tested at a
12 point not less than 12 inches from the roof, face of
13 rib.

14 “(c) SAVINGS PROVISION.—Nothing in this section
15 shall impact the authority of the Secretary to promulgate
16 or modify regulations pursuant to the authority under any
17 such provisions as in effect on the date before the date of
18 enactment of the Robert C. Byrd Miner Safety and Health
19 Act of 2010, or shall be construed to alter or modify prece-
20 dent with regards to the Commission or courts.”.

1 **TITLE VII—AMENDMENTS TO**
2 **THE OCCUPATIONAL SAFETY**
3 **AND HEALTH ACT**

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

5 (a) *EMPLOYEE ACTIONS.*—Section 11(c)(1) of the Oc-
6 *cupational Safety and Health Act of 1970 (29 U.S.C.*
7 *660(c)(1)) is amended—*

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

13 *“(A) such”;*

14 (2) *by striking “this Act or has” and inserting*
15 *the following: “this Act;*

16 *“(B) such employee has”;*

17 (3) *by striking “in any such proceeding or be-*
18 *cause of the exercise” and inserting the following: “be-*
19 *fore Congress or in any Federal or State proceeding*
20 *related to safety or health;*

21 *“(C) such employee has refused to violate any*
22 *provision of this Act; or*

23 *“(D) of the exercise”; and*

24 (4) *by inserting before the period at the end the*
25 *following: “, including the reporting of any injury,*

1 *illness, or unsafe condition to the employer, agent of*
2 *the employer, safety and health committee involved, or*
3 *employee safety and health representative involved”.*

4 *(b) PROHIBITION OF RETALIATION.—Section 11(c) of*
5 *such Act (29 U.S.C. 660(c)) is amended by striking para-*
6 *graph (2) and inserting the following:*

7 *“(2) PROHIBITION OF RETALIATION.—(A) No*
8 *person shall discharge, or cause to be discharged, or*
9 *in any manner discriminate against, or cause to be*
10 *discriminated against, an employee for refusing to*
11 *perform the employee’s duties if the employee has a*
12 *reasonable apprehension that performing such duties*
13 *would result in serious injury to, or serious impair-*
14 *ment of the health of, the employee or other employees.*

15 *“(B) For purposes of subparagraph (A), the cir-*
16 *cumstances causing the employee’s good-faith belief*
17 *that performing such duties would pose a safety or*
18 *health hazard shall be of such a nature that a reason-*
19 *able person, under the circumstances confronting the*
20 *employee, would conclude that there is such a hazard.*
21 *In order to qualify for protection under this para-*
22 *graph, the employee, when practicable, shall have*
23 *communicated or attempted to communicate the safe-*
24 *ty or health concern to the employer and have not re-*

1 *ceived from the employer a response reasonably cal-*
2 *culated to allay such concern.”.*

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

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

12 *“(4) STATUTE OF LIMITATIONS.—*

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

16 *“(i) the date on which an alleged viola-*
17 *tion of paragraph (1) or (2) occurs; or*

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

21 *“(B) REPEAT VIOLATION.—Except in cases*
22 *when the employee has been discharged, a viola-*
23 *tion of paragraph (1) or (2) shall be considered*
24 *to have occurred on the last date an alleged re-*
25 *peat violation occurred.*

1 “(5) *INVESTIGATION.*—

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

9 “(i) *shall include—*

10 “(I) *interviewing the complain-*
11 *ant;*

12 “(II) *providing the respondent an*
13 *opportunity to—*

14 “(aa) *submit to the Secretary*
15 *a written response to the com-*
16 *plaint; and*

17 “(bb) *meet with the Secretary*
18 *to present statements from wit-*
19 *nesses or provide evidence; and*

20 “(III) *providing the complainant*
21 *an opportunity to—*

22 “(aa) *receive any statements*
23 *or evidence provided to the Sec-*
24 *retary;*

1 “(bb) meet with the Sec-
2 retary; and

3 “(cc) rebut any statements or
4 evidence; and

5 “(ii) may include issuing subpoenas
6 for the purposes of such investigation.

7 “(B) DECISION.—Not later than 90 days
8 after the filing of the complaint, the Secretary
9 shall—

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

13 “(ii) issue a decision granting or deny-
14 ing relief.

15 “(6) PRELIMINARY ORDER FOLLOWING INVES-
16 TIGATION.—If, after completion of an investigation
17 under paragraph (5)(A), the Secretary finds reason-
18 able cause to believe that a violation of paragraph (1)
19 or (2) has occurred, the Secretary shall issue a pre-
20 liminary order providing relief authorized under
21 paragraph (14) at the same time the Secretary issues
22 a decision under paragraph (5)(B). If a de novo hear-
23 ing is not requested within the time period required
24 under paragraph (7)(A)(i), such preliminary order

1 *shall be deemed a final order of the Secretary and is*
2 *not subject to judicial review.*

3 “(7) *HEARING.*—

4 “(A) *REQUEST FOR HEARING.*—

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

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

14 “(II) *by the complainant within*
15 *30 days after the date the complaint is*
16 *dismissed without investigation by the*
17 *Secretary under paragraph (5)(A); or*

18 “(III) *by the complainant within*
19 *120 days after the date of filing the*
20 *complaint, if the Secretary has not*
21 *issued a decision under paragraph*
22 *(5)(B).*

23 “(ii) *REINSTATEMENT ORDER.*—*The*
24 *request for a hearing shall not operate to*

1 *stay any preliminary reinstatement order*
2 *issued under paragraph (6).*

3 “(B) *PROCEDURES.*—

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

10 “(ii) *SUBPOENAS; PRODUCTION OF EVI-*
11 *DENCE.*—*In conducting any such hearing,*
12 *the administrative law judge may issue sub-*
13 *poenas. The respondent or complainant*
14 *may request the issuance of subpoenas that*
15 *require the deposition of, or the attendance*
16 *and testimony of, witnesses and the produc-*
17 *tion of any evidence (including any books,*
18 *papers, documents, or recordings) relating*
19 *to the matter under consideration.*

20 “(iii) *DECISION.*—*The administrative*
21 *law judge shall issue a decision not later*
22 *than 90 days after the date on which a*
23 *hearing was requested under this paragraph*
24 *and promptly notify, in writing, the parties*
25 *and the Secretary of such decision, includ-*

1 *ing the findings of fact and conclusions of*
2 *law. If the administrative law judge finds*
3 *that a violation of paragraph (1) or (2) has*
4 *occurred, the judge shall issue an order for*
5 *relief under paragraph (14). If review*
6 *under paragraph (8) is not timely re-*
7 *quested, such order shall be deemed a final*
8 *order of the Secretary that is not subject to*
9 *judicial review.*

10 *“(8) ADMINISTRATIVE APPEAL.—*

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

19 *“(B) STANDARD OF REVIEW.—In reviewing*
20 *the decision and order of the administrative law*
21 *judge, the review board shall affirm the decision*
22 *and order if it is determined that the factual*
23 *findings set forth therein are supported by sub-*
24 *stantial evidence and the decision and order are*
25 *made in accordance with applicable law.*

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

13 “(9) *SETTLEMENT IN THE ADMINISTRATIVE*
14 *PROCESS.*—

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

20 “(B) *PUBLIC POLICY CONSIDERATIONS.*—
21 *Neither the Secretary, an administrative law*
22 *judge, nor the review board conducting a hearing*
23 *under this subsection shall accept a settlement*
24 *that contains conditions conflicting with the*
25 *rights protected under this Act or that are con-*

1 *trary to public policy, including a restriction on*
2 *a complainant's right to future employment with*
3 *employers other than the specific employers*
4 *named in a complaint.*

5 *“(10) INACTION BY THE REVIEW BOARD OR AD-*
6 *MINISTRATIVE LAW JUDGE.—*

7 *“(A) IN GENERAL.—The complainant may*
8 *bring a de novo action described in subpara-*
9 *graph (B) if—*

10 *“(i) an administrative law judge has*
11 *not issued a decision and order within the*
12 *90-day time period required under para-*
13 *graph (7)(B)(iii); or*

14 *“(ii) the review board has not issued a*
15 *decision and order within the 90-day time*
16 *period required under paragraph (8)(C).*

17 *“(B) DE NOVO ACTION.—Such de novo ac-*
18 *tion may be brought at law or equity in the*
19 *United States district court for the district where*
20 *a violation of paragraph (1) or (2) allegedly oc-*
21 *curred or where the complainant resided on the*
22 *date of such alleged violation. The court shall*
23 *have jurisdiction over such action without regard*
24 *to the amount in controversy and to order ap-*
25 *propriate relief under paragraph (14). Such ac-*

1 *tion shall, at the request of either party to such*
2 *action, be tried by the court with a jury.*

3 *“(11) JUDICIAL REVIEW.—*

4 *“(A) TIMELY APPEAL TO THE COURT OF AP-*
5 *PEALS.—Any party adversely affected or ag-*
6 *grieved by a final decision and order issued*
7 *under this subsection may obtain review of such*
8 *decision and order in the United States Court of*
9 *Appeals for the circuit where the violation, with*
10 *respect to which such final decision and order*
11 *was issued, allegedly occurred or where the com-*
12 *plainant resided on the date of such alleged vio-*
13 *lation. To obtain such review, a party shall file*
14 *a petition for review not later than 60 days after*
15 *the final decision and order was issued. Such re-*
16 *view shall conform to chapter 7 of title 5, United*
17 *States Code. The commencement of proceedings*
18 *under this subparagraph shall not, unless or-*
19 *dered by the court, operate as a stay of the final*
20 *decision and order.*

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

1 “(12) *ENFORCEMENT OF ORDER.*—*If a respond-*
2 *ent fails to comply with an order issued under this*
3 *subsection, the Secretary or the complainant on whose*
4 *behalf the order was issued may file a civil action for*
5 *enforcement in the United States district court for the*
6 *district in which the violation was found to occur to*
7 *enforce such order. If both the Secretary and the com-*
8 *plainant file such action, the action of the Secretary*
9 *shall take precedence. The district court shall have ju-*
10 *risdiction to grant all appropriate relief described in*
11 *paragraph (14).*

12 “(13) *BURDENS OF PROOF.*—

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

23 “(B) *PROHIBITION.*—*Notwithstanding sub-*
24 *paragraph (A), a decision or order that is favor-*
25 *able to the complainant shall not be issued in*

1 *any administrative or judicial action pursuant*
2 *to this subsection if the respondent demonstrates*
3 *by clear and convincing evidence that the re-*
4 *spondent would have taken the same adverse ac-*
5 *tion in the absence of such conduct.*

6 “(14) *RELIEF.*—

7 “(A) *ORDER FOR RELIEF.*—*If the Secretary,*
8 *administrative law judge, review board, or a*
9 *court determines that a violation of paragraph*
10 *(1) or (2) has occurred, the Secretary or court,*
11 *respectively, shall have jurisdiction to order all*
12 *appropriate relief, including injunctive relief,*
13 *compensatory and exemplary damages, includ-*
14 *ing—*

15 “(i) *affirmative action to abate the vio-*
16 *lation;*

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

1 “(iii) *compensatory and consequential*
2 *damages sufficient to make the complainant*
3 *whole, (including back pay, prejudgment in-*
4 *terest, and other damages); and*

5 “(iv) *expungement of all warnings,*
6 *reprimands, or derogatory references that*
7 *have been placed in paper or electronic*
8 *records or databases of any type relating to*
9 *the actions by the complainant that gave*
10 *rise to the unfavorable personnel action,*
11 *and, at the complainant’s direction, trans-*
12 *mission of a copy of the decision on the*
13 *complaint to any person whom the com-*
14 *plainant reasonably believes may have re-*
15 *ceived such unfavorable information.*

16 “(B) *ATTORNEYS’ FEES AND COSTS.—If the*
17 *Secretary or an administrative law judge, review*
18 *board, or court grants an order for relief under*
19 *subparagraph (A), the Secretary, administrative*
20 *law judge, review board, or court, respectively,*
21 *shall assess, at the request of the employee*
22 *against the employer—*

23 “(i) *reasonable attorneys’ fees; and*

24 “(ii) *costs (including expert witness*
25 *fees) reasonably incurred, as determined by*

1 *the Secretary, administrative law judge, re-*
2 *view board, or court, respectively, in con-*
3 *nection with bringing the complaint upon*
4 *which the order was issued.*

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

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

15 “(17) *ELECTION OF VENUE.—*

16 “(A) *IN GENERAL.—An employee of an em-*
17 *ployer who is located in a State that has a State*
18 *plan approved under section 18 may file a com-*
19 *plaint alleging a violation of paragraph (1) or*
20 *(2) by such employer with—*

21 “(i) *the Secretary under paragraph*
22 *(5); or*

23 “(ii) *a State plan administrator in*
24 *such State.*

25 “(B) *REFERRALS.—If—*

1 “(i) the Secretary receives a complaint
2 pursuant to subparagraph (A)(i), the Sec-
3 retary shall not refer such complaint to a
4 State plan administrator for resolution; or

5 “(ii) a State plan administrator re-
6 ceives a complaint pursuant to subpara-
7 graph (A)(ii), the State plan administrator
8 shall not refer such complaint to the Sec-
9 retary for resolution.”.

10 (d) *RELATION TO ENFORCEMENT.*—Section 17(j) of
11 such Act (29 U.S.C. 666(j)) is amended by inserting before
12 the period the following: “, including the history of viola-
13 tions under section 11(c)”.

14 **SEC. 702. VICTIMS’ RIGHTS.**

15 *The Occupational Safety and Health Act of 1970 is*
16 *amended by inserting after section 9 (29 U.S.C. 658) the*
17 *following:*

18 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

23 “(1) meet with the Secretary regarding the in-
24 spection or investigation conducted under such section

1 *before the Secretary’s decision to issue a citation or*
2 *take no action;*

3 “(2) *receive, at no cost, a copy of any citation*
4 *or report, issued as a result of such inspection or in-*
5 *vestigation, at the same time as the employer receives*
6 *such citation or report;*

7 “(3) *be informed of any notice of contest or addi-*
8 *tion of parties to the proceedings filed under section*
9 *10(c); and*

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

16 “(b) *RIGHTS BEFORE THE COMMISSION.—Upon re-*
17 *quest, a victim or representative of a victim shall be af-*
18 *forded the right with respect to a work-related bodily injury*
19 *or death to—*

20 “(1) *be notified of the time and date of any pro-*
21 *ceeding before the Commission;*

22 “(2) *receive pleadings and any decisions relating*
23 *to the proceedings; and*

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

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

14 “(d) *SECRETARY PROCEDURES.*—The Secretary shall
15 establish procedures—

16 “(1) to inform victims of their rights under this
17 section; and

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

20 “(e) *COMMISSION PROCEDURES AND CONSIDER-*
21 *ATIONS.*—The Commission shall—

22 “(1) establish procedures relating to the rights of
23 victims to be heard in proceedings before the Commis-
24 sion; and

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

4 “(f) *FAMILY LIAISONS*.—The Secretary shall designate
5 at least 1 employee at each area office of the Occupational
6 Safety and Health Administration to serve as a family liai-
7 son to—

8 “(1) keep victims informed of the status of inves-
9 tigations, enforcement actions, and settlement negotia-
10 tions; and

11 “(2) assist victims in asserting their rights
12 under this section.

13 “(g) *DEFINITION*.—In this section, the term ‘victim’
14 means—

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

19 “(2) a family member (as further defined by the
20 Secretary) of a victim described in paragraph (1),
21 if—

22 “(A) the victim dies as a result of a inci-
23 dent that is the subject of an inspection or inves-
24 tigation conducted under section 8; or

1 “(B) the victim sustains a work-related in-
 2 jury or illness that is the subject of an inspection
 3 or investigation conducted under section 8, and
 4 the victim because of incapacity cannot reason-
 5 ably exercise the rights under this section.”.

6 **SEC. 703. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
 7 **PEATED VIOLATIONS PENDING CONTEST AND**
 8 **PROCEDURES FOR A STAY.**

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

12 “(d) CORRECTION OF SERIOUS, WILLFUL, OR RE-
 13 PEATED VIOLATIONS PENDING CONTEST AND PROCEDURES
 14 FOR A STAY.—

15 “(1) PERIOD PERMITTED FOR CORRECTION OF
 16 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—For
 17 each violation which the Secretary designates as seri-
 18 ous, willful, or repeated, the period permitted for the
 19 correction of the violation shall begin to run upon re-
 20 ceipt of the citation.

21 “(2) FILING OF A MOTION OF CONTEST.—The fil-
 22 ing of a notice of contest by an employer—

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

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

4 “(3) CRITERIA AND RULES OF PROCEDURE FOR
5 STAYS.—

6 “(A) MOTION FOR A STAY.—An employer
7 that receives a citation alleging a violation des-
8 ignated as serious, willful, or repeated and that
9 files a notice of contest to the citation asserting
10 that the time set for abatement of the alleged vio-
11 lation is unreasonable or challenging the exist-
12 ence of the alleged violation may file with the
13 Commission a motion to stay the period for the
14 abatement of the violation.

15 “(B) CRITERIA.—In determining whether a
16 stay should be issued on the basis of a motion
17 filed under subparagraph (A), the Commission
18 may grant a stay only if the employer has dem-
19 onstrated—

20 “(i) a substantial likelihood of success
21 on the areas contested under subparagraph
22 (A); and

23 “(ii) that a stay will not adversely af-
24 fect the health and safety of workers.

1 “(C) *RULES OF PROCEDURE.*—*The Com-*
2 *mission shall develop rules of procedure for con-*
3 *ducting a hearing on a motion filed under sub-*
4 *paragraph (A) on an expedited basis. At a min-*
5 *imum, such rules shall provide:*

6 “(i) *That a hearing before an adminis-*
7 *trative law judge shall occur not later than*
8 *15 days following the filing of the motion*
9 *for a stay (unless extended at the request of*
10 *the employer), and shall provide for a deci-*
11 *sion on the motion not later than 15 days*
12 *following the hearing (unless extended at the*
13 *request of the employer).*

14 “(ii) *That a decision of an administra-*
15 *tive law judge on a motion for stay is ren-*
16 *dered on a timely basis.*

17 “(iii) *That if a party is aggrieved by*
18 *a decision issued by an administrative law*
19 *judge regarding the stay, such party has the*
20 *right to file an objection with the Commis-*
21 *sion not later than 5 days after receipt of*
22 *the administrative law judge’s decision.*
23 *Within 10 days after receipt of the objec-*
24 *tion, a Commissioner, if a quorum is seated*
25 *pursuant to section 12(f), shall decide*

1 *whether to grant review of the objection. If,*
2 *within 10 days after receipt of the objection,*
3 *no decision is made on whether to review*
4 *the decision of the administrative law judge,*
5 *the Commission declines to review such de-*
6 *cision, or no quorum is seated, the decision*
7 *of the administrative law judge shall become*
8 *a final order of the Commission. If the*
9 *Commission grants review of the objection,*
10 *the Commission shall issue a decision re-*
11 *garding the stay not later than 30 days*
12 *after receipt of the objection. If the Commis-*
13 *sion fails to issue such decision within 30*
14 *days, the decision of the administrative law*
15 *judge shall become a final order of the Com-*
16 *mission.*

17 *“(iv) For notification to employees or*
18 *representatives of affected employees of re-*
19 *quests for such hearings and shall provide*
20 *affected employees or representatives of af-*
21 *ected employees an opportunity to partici-*
22 *pate as parties to such hearings.”.*

1 **SEC. 704. CONFORMING AMENDMENTS.**

2 *Section 17(d) of the Occupational Safety and Health*
3 *Act of 1970 (29 U.S.C. 666(d)) is amended to read as fol-*
4 *lows:*

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

22 **SEC. 705. CIVIL PENALTIES.**

23 *(a) IN GENERAL.—Section 17 of the Occupational*
24 *Safety and Health Act of 1970 (29 U.S.C. 666) is amend-*
25 *ed—*

26 *(1) in subsection (a)—*

1 (A) by striking “\$70,000” and inserting
2 “\$120,000”;

3 (B) by striking “\$5,000” and inserting
4 “\$8,000”; and

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

19 (2) in subsection (b)—

20 (A) by striking “\$7,000” and inserting
21 “\$12,000”; and

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

1 *each such violation, but not less than \$20,000 for*
2 *each such violation, except that for an employer*
3 *with 25 or fewer employees such penalty shall*
4 *not be less than \$10,000 for each such viola-*
5 *tion.”;*

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

8 *(4) in subsection (d), as amended, by striking*
9 *“\$7,000” each place it occurs and inserting*
10 *“\$12,000”;*

11 *(5) by redesignating subsections (e) through (i)*
12 *as subsections (f) through (j), and subsections (j)*
13 *through (l) as subsections (l) through (n) respectively;*
14 *and*

15 *(6) in subsection (j) (as so redesignated) by*
16 *striking “\$7,000” and inserting “\$12,000”.*

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

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

1 **SEC. 706. CRIMINAL PENALTIES.**

2 (a) *IN GENERAL.*—Section 17 of the Occupational
3 *Safety and Health Act of 1970 (29 U.S.C. 666) (as amended*
4 *by section 705) is further amended—*

5 (1) *by amending subsection (f) (as redesignated*
6 *by section 705) to read as follows:*

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

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

22 (2) *by amending subsection (g) (as redesignated*
23 *by section 705) to read as follows:*

24 “(g) *Unless otherwise authorized by this Act, any per-*
25 *son that knowingly gives, causes to give, or attempts to give*
26 *or cause to give, advance notice of any inspection conducted*

1 *under this Act with the intention of impeding, interfering*
2 *with, or adversely affecting the results of such inspection,*
3 *shall be fined under title 18, United States Code, impris-*
4 *oned for not more than 5 years, or both.”.*

5 *(3) in subsection (h) (as redesignated by section*
6 *705), by striking “fine of not more than \$10,000, or*
7 *by imprisonment for not more than six months,” and*
8 *inserting “fine in accordance with title 18, United*
9 *States Code, or by imprisonment for not more than*
10 *5 years,”;*

11 *(4) by inserting after subsection (j) (as redesign-*
12 *ated by section 705) the following:*

13 *“(k)(1) Any employer who knowingly violates any*
14 *standard, rule, or order promulgated under section 6, or*
15 *any regulation prescribed under this Act, and that violation*
16 *caused or significantly contributed to serious bodily harm*
17 *to any employee but does not cause death to any employee,*
18 *shall, upon conviction, be punished by a fine in accordance*
19 *with title 18, United States Code, or by imprisonment for*
20 *not more than 5 years, or by both, except that if the convic-*
21 *tion is for a violation committed after a first conviction*
22 *of such person under this subsection or subsection (e), pun-*
23 *ishment shall be by a fine in accordance with title 18,*
24 *United States Code, or by imprisonment for not more than*
25 *10 years, or by both.*

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

4 “(3) For purposes of this subsection, the term ‘serious
5 bodily harm’ means bodily injury or illness that involves—

6 “(A) a substantial risk of death;

7 “(B) protracted unconsciousness;

8 “(C) protracted and obvious physical disfigure-
9 ment; or

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

13 **(b) JURISDICTION FOR PROSECUTION UNDER STATE**
14 **AND LOCAL CRIMINAL LAWS.**—Such section is further
15 amended by adding at the end the following:

16 “(o) Nothing in this Act shall preclude a State or local
17 law enforcement agency from conducting criminal prosecu-
18 tions in accordance with the laws of such State or locality.”.

19 **SEC. 707. PRE-FINAL ORDER INTEREST.**

20 Section 17(n) of the Occupational Safety and Health
21 Act of 1970 (29 U.S.C. 666) (as redesignated by section
22 706(a)(4)) (29 U.S.C. 666(n)) is amended by adding at the
23 end the following: “Pre-final order interest on such pen-
24 alties shall begin to accrue on the date the party contests
25 a citation issued under this Act, and shall end upon the

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

9 **SEC. 708. REVIEW OF STATE OCCUPATIONAL SAFETY AND**
10 **HEALTH PLANS.**

11 *Section 18 of the Occupational Safety and Health Act*
12 *of 1970 (29 U.S.C. 668) is amended—*

13 *(1) by amending subsection (f) to read as follows:*

14 *“(f)(1) The Secretary shall, on the basis of reports sub-*
15 *mitted by the State agency and the Secretary’s own inspec-*
16 *tions, make a continuing evaluation of the manner in which*
17 *each State that has a plan approved under this section is*
18 *carrying out such plan. Such evaluation shall include an*
19 *assessment of whether the State continues to meet the re-*
20 *quirements of subsection (c) of this section and any other*
21 *criteria or indices of effectiveness specified by the Secretary*
22 *in regulations. Whenever the Secretary finds, on the basis*
23 *of such evaluation, that in the administration of the State*
24 *plan there is a failure to comply substantially with any*
25 *provision of the State plan (or any assurance contained*

1 *therein), the Secretary shall make an initial determination*
2 *of whether the failure is of such a nature that the plan*
3 *should be withdrawn or whether the failure is of such a*
4 *nature that the State should be given the opportunity to*
5 *remedy the deficiencies, and provide notice of the Sec-*
6 *retary's findings and initial determination.*

7 “(2) *If the Secretary makes an initial determination*
8 *to reassert and exercise concurrent enforcement authority*
9 *while the State is given an opportunity to remedy the defi-*
10 *ciencies, the Secretary shall afford the State an opportunity*
11 *for a public hearing within 15 days of such request, pro-*
12 *vided that such request is made not later than 10 days after*
13 *Secretary's notice to the State. The Secretary shall review*
14 *and consider the testimony, evidence, or written comments,*
15 *and not later than 30 days following such hearing, make*
16 *a determination to affirm, reverse, or modify the Secretary's*
17 *initial determination to reassert and exercise concurrent en-*
18 *forcement authority under sections 8, 9, 10, 13, and 17 with*
19 *respect to standards promulgated under section 6 and obli-*
20 *gations under section 5(a). Following such a determination*
21 *by the Secretary, or in the event that the State does not*
22 *request a hearing within the time frame set forth in this*
23 *paragraph, the Secretary may reassert and exercise such*
24 *concurrent enforcement authority, while a final determina-*
25 *tion is pending under paragraph (3) or until the Secretary*

1 *has determined that the State has remedied the deficiencies*
2 *as provided under paragraph (4). Such determination shall*
3 *be published in the Federal Register. The procedures set*
4 *forth in section 18(g) shall not apply to a determination*
5 *by the Secretary to reassert and exercise such concurrent*
6 *enforcement authority.*

7 “(3) *If the Secretary makes an initial determination*
8 *that the plan should be withdrawn, the Secretary shall pro-*
9 *vide due notice and the opportunity for a hearing. If based*
10 *on the evaluation, comments, and evidence, the Secretary*
11 *makes a final determination that there is a failure to com-*
12 *ply substantially with any provision of the State plan (or*
13 *any assurance contained therein), he shall notify the State*
14 *agency of the withdrawal of approval of such plan and*
15 *upon receipt of such notice such plan shall cease to be in*
16 *effect, but the State may retain jurisdiction in any case*
17 *commenced before the withdrawal of the plan in order to*
18 *enforce standards under the plan whenever the issues in-*
19 *volved do not relate to the reasons for the withdrawal of*
20 *the plan.*

21 “(4) *If the Secretary makes a determination that the*
22 *State should be provided the opportunity to remedy the defi-*
23 *ciencies, the Secretary shall provide the State an oppor-*
24 *tunity to respond to the Secretary’s findings and the oppor-*
25 *tunity to remedy such deficiencies within a time period es-*

1 *established by the Secretary, not to exceed 1 year. The Sec-*
2 *retary may extend and revise the time period to remedy*
3 *such deficiencies, if the State’s legislature is not in session*
4 *during this 1 year time period, or if the State demonstrates*
5 *that it is not feasible to correct the deficiencies in the time*
6 *period set by the Secretary, and the State has a plan to*
7 *correct the deficiencies within a reasonable time period. If*
8 *the Secretary finds that the State agency has failed to rem-*
9 *edy such deficiencies within the time period specified by*
10 *the Secretary and that the State plan continues to fail to*
11 *comply substantially with a provision of the State plan,*
12 *the Secretary shall withdraw the State plan as provided*
13 *for in paragraph (3).”; and*

14 *(2) by adding at the end the following new sub-*
15 *section:*

16 *“(i) Not later than 18 months after the date of enact-*
17 *ment of this subsection, and every 5 years thereafter, the*
18 *Comptroller General shall complete and issue a review of*
19 *the effectiveness of State plans to develop and enforce safety*
20 *and health standards to determine if they are at least as*
21 *effective as the Federal program and to evaluate whether*
22 *the Secretary’s oversight of State plans is effective. The*
23 *Comptroller General’s evaluation shall assess—*

1 “(1) the effectiveness of the Secretary’s oversight
2 of State plans, including the indices of effectiveness
3 used by the Secretary;

4 “(2) whether the Secretary’s investigations in re-
5 sponse to Complaints About State Plan Administra-
6 tion (CASPA) are adequate, whether significant pol-
7 icy issues have been identified by headquarters and
8 corrective actions are fully implemented by each
9 State;

10 “(3) whether the formula for the distribution of
11 funds described in section 23(g) to State programs is
12 fair and adequate; and

13 “(4) whether State plans are as effective as the
14 Federal program in preventing occupational injuries,
15 illnesses and deaths, and investigating discrimination
16 complaints, through an evaluation of at least 20 per-
17 cent of approved State plans, and which shall cover—

18 “(A) enforcement effectiveness, including
19 handling of fatalities, serious incidents and com-
20 plaints, compliance with inspection procedures,
21 hazard recognition, verification of abatement,
22 violation classification, citation and penalty
23 issuance, including appropriate use of willful
24 and repeat citations, and employee involvement;

1 “(B) inspections, the number of pro-
2 grammed health and safety inspections at pri-
3 vate and public sector establishments, and wheth-
4 er the State targets the highest hazard private
5 sector work sites and facilities in that State;

6 “(C) budget and staffing, including whether
7 the State is providing adequate budget resources
8 to hire, train and retain sufficient numbers of
9 qualified staff, including timely filling of vacan-
10 cies;

11 “(D) administrative review, including the
12 quality of decisions, consistency with Federal
13 precedence, transparency of proceedings, deci-
14 sions and records are available to the public,
15 adequacy of State defense, and whether the State
16 appropriately appeals adverse decisions;

17 “(E) anti discrimination, including wheth-
18 er discrimination complaints are processed in a
19 timely manner, whether supervisors and inves-
20 tigators are properly trained to investigate dis-
21 crimination complaints, whether a case file re-
22 view indicates merit cases are properly identified
23 consistent with Federal policy and procedure,
24 whether employees are notified of their rights,

1 *and whether there is an effective process for em-*
2 *ployees to appeal the dismissal of a complaint;*

3 “(F) *program administration, including*
4 *whether the State’s standards and policies are at*
5 *least as effective as the Federal program and are*
6 *updated in a timely manner, and whether Na-*
7 *tional Emphasis Programs that are applicable*
8 *in such States are adopted and implemented in*
9 *a manner that is at least as effective as the Fed-*
10 *eral program;*

11 “(G) *whether the State plan satisfies the re-*
12 *quirements for approval set forth in this section*
13 *and its implementing regulations; and*

14 “(H) *other such factors identified by the*
15 *Comptroller General, or as requested by the Com-*
16 *mittee on Education and Labor of the House of*
17 *Representatives or the Committee on Health,*
18 *Education, Labor and Pensions of the Senate.”.*

19 **SEC. 709. HEALTH HAZARD EVALUATIONS BY THE NA-**
20 **TIONAL INSTITUTE FOR OCCUPATIONAL**
21 **SAFETY AND HEALTH.**

22 *Section 20(a)(6) of the Occupational Safety and*
23 *Health Act of 1970 (29 U.S.C. 669(a)(6)) is amended by*
24 *striking the second sentence and inserting the following:*

25 *“The Secretary shall determine following a written request*

1 *by any employer, authorized representative of current or*
2 *former employees, physician, other Federal agency, or State*
3 *or local health department, specifying with reasonable par-*
4 *ticularity the grounds on which the request is made, wheth-*
5 *er any substance normally found in the place of employ-*
6 *ment has potentially toxic effects in such concentrations as*
7 *used or found or whether any physical agents, equipment,*
8 *or working condition found or used has potentially haz-*
9 *ardous effects; and shall submit such determination both to*
10 *employers and affected employees as soon as possible.”.*

11 **SEC. 710. AUTHORIZATION OF COOPERATIVE AGREEMENTS**

12 **BY NIOSH OFFICE OF MINE SAFETY AND**
13 **HEALTH.**

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

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

18 *(2) by redesignating subparagraph (C) as sub-*
19 *paragraph (D); and*

20 *(3) by inserting after subparagraph (B) the fol-*
21 *lowing:*

22 *“(C) enter into cooperative agreements or*
23 *contracts with international institutions and*
24 *private entities to improve mine safety and*

1 *health through the development and evaluation of*
2 *new interventions; and”.*

3 **SEC. 711. EFFECTIVE DATE.**

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

8 *(b) EXCEPTION FOR STATES AND POLITICAL SUBDIVI-*
9 *SIONS.—A State that has a State plan approved under sec-*
10 *tion 18 (29 U.S.C. 667) shall amend its State plan to con-*
11 *form with the requirements of this Act and the amendments*
12 *made by this Act not later than 12 months after the date*
13 *of the enactment of this Act. The Secretary of Labor may*
14 *extend the period for a State to make such amendments to*
15 *its State plan by not more than 12 months, if the State’s*
16 *legislature is not in session during the 12-month period be-*
17 *ginning with the date of the enactment of this Act. Such*
18 *amendments to the State plan shall take effect not later*
19 *than 90 days after the adoption of such amendments by*
20 *such State.*

Union Calendar No. 334

11TH CONGRESS
2^D SESSION

H. R. 5663

[Report No. 111-579, Part I]

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.

JULY 29, 2010

Reported with an amendment, referred to the Committee on the Judiciary for a period ending not later than July 29, 2010, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause I(k), rule X

JULY 29, 2010

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed