

111TH CONGRESS
2D SESSION

H. R. 5788

To honor the Nation's fallen miners by requiring improved mine safety practices and compliance in order to prevent future mine accidents.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2010

Mrs. CAPITO introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To honor the Nation's fallen miners by requiring improved mine safety practices and compliance in order to prevent future mine accidents.

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 “Mine Safety Accountability and Improved Protection
6 Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. References.

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION
AUTHORITY

- Sec. 101. Establishment of National Mine Safety Board for certain investigations.
- Sec. 102. Subpoena authority and miner rights during investigations.
- Sec. 103. Designation of miner representative.
- Sec. 104. Additional amendments relating to inspections and investigations.

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

- Sec. 201. Significant and substantial violations.
- Sec. 202. A pattern of recurring noncompliance or accidents.
- Sec. 203. Injunctive Authority.
- Sec. 204. Revocation of approval of plans.
- Sec. 205. Challenging decisions related to the approval of a coal or other mine plan.

TITLE III—PENALTIES

- Sec. 301. Civil penalties.
- Sec. 302. Civil and criminal liability of officers, directors, and agents.
- Sec. 303. Criminal penalties.
- Sec. 304. Conference process for appealing penalties; delinquent payments and prejudgment interest.

TITLE IV—WORKER RIGHTS AND PROTECTIONS

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

TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

- Sec. 501. Pre-shift review of mine conditions.
- Sec. 502. Rock dust standards.
- Sec. 503. Atmospheric monitoring systems.
- Sec. 504. Technology related to respirable dust.
- Sec. 505. Refresher training on miner rights and responsibilities.
- Sec. 506. Authority to mandate additional training.
- Sec. 507. Certification of personnel.

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

- Sec. 601. Definitions.
- Sec. 602. Assistance to States.
- Sec. 603. Amendments relating to eligibility for scholarship program.
- Sec. 604. Additional training of mine inspectors.
- Sec. 605. Report on staffing needs of the Mine Safety and Health Administration.

1 SEC. 2. REFERENCES.

2 Except as otherwise expressly provided, whenever in
3 this Act an amendment is expressed as an amendment to
4 a section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the Fed-
2 eral Mine Safety and Health Act of 1977 (30 U.S.C. 801
3 et seq.).

4 **TITLE I—ADDITIONAL INSPEC-**
5 **TION AND INVESTIGATION**
6 **AUTHORITY**

7 **SEC. 101. ESTABLISHMENT OF NATIONAL MINE SAFETY**
8 **BOARD FOR CERTAIN INVESTIGATIONS.**

9 Section 103(b) (30 U.S.C. 813(b)) is amended—

10 (1) by striking “(b) For the purpose” and in-
11 sserting the following:

12 “(b) ACCIDENT INVESTIGATIONS.—

13 “(1) IN GENERAL.—For the purpose”; and

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

15 “(2) ESTABLISHMENT OF NATIONAL MINE
16 SAFETY BOARD FOR CERTAIN ACCIDENT INVESTIGA-
17 TIONS.—

18 “(A) ESTABLISHMENT.—There is estab-
19 lished an independent board to be known as the
20 National Mine Safety Board (in this paragraph
21 referred to as the ‘Board’) consisting of 5 mem-
22 bers, including a Chairperson, who shall be ap-
23 pointed by the President, by and with the ad-
24 vice and consent of the Senate. Members of the
25 Board shall be appointed on the basis of tech-

1 nical qualification, professional standing, and
2 demonstrated knowledge of mine safety, acci-
3 dent reconstruction, safety engineering, and
4 human factors. The terms of office of members
5 of the Board shall be 5 years. Any member of
6 the Board, including the Chairperson, may be
7 removed for inefficiency, neglect of duty, or
8 malfeasance in office. The Chairperson shall be
9 the Chief Executive Officer of the Board and
10 shall exercise the executive and administrative
11 functions of the Board.

12 “(B) INVESTIGATION OF CERTAIN ACCI-
13 DENTS.—For any accident involving 3 or more
14 deaths, the Board shall conduct an independent
15 investigation to—

16 “(i) assess and identify any factors
17 that caused the accident, including defi-
18 ciencies in safety management systems,
19 regulations, enforcement, industry prac-
20 tices or guidelines, or organizational fail-
21 ures;

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

24 “(I) the operator;

1 “(II) any contractors or other
2 persons engaged in mining-related
3 functions at the site;

4 “(III) any State agency with
5 oversight responsibilities;

6 “(IV) any agency or office within
7 the Department of Labor; or

8 “(V) any other person or entity
9 (including equipment manufacturers);

10 “(iii) review the findings and conclu-
11 sions of the investigation conducted by the
12 Secretary under paragraph (1);

13 “(iv) prepare a report that—

14 “(I) includes the findings regard-
15 ing the causal factors described in
16 clauses (i) and (ii);

17 “(II) identifies any strengths and
18 weaknesses in the Secretary’s inves-
19 tigation; and

20 “(III) includes recommendations,
21 including interim recommendations
22 where appropriate, to industry, labor
23 organizations, State and Federal
24 agencies, or Congress, regarding pol-
25 icy, regulatory, enforcement, adminis-

1 trative, or other changes, which in the
2 judgment of the Panel, would prevent
3 a recurrence at other mines; and

4 “(v) publish such findings and rec-
5 ommendations (excluding any portions
6 which the Attorney General requests that
7 the Board withhold in relation to a crimi-
8 nal referral) and hold public meetings to
9 inform the mining community and families
10 of affected miners of the Board’s findings
11 and recommendations.

12 “(C) HEARINGS; APPLICABILITY OF CER-
13 TAIN FEDERAL LAW.—The Board shall have the
14 authority to conduct public hearings or meet-
15 ings, but shall not be subject to the Federal Ad-
16 visory Committee Act. All public hearings of the
17 Board shall be subject to the requirements
18 under section 552b of title 5, United States
19 Code.

20 “(D) MEMORANDUM OF UNDER-
21 STANDING.—Not later than 90 days after the
22 appointment of the Board under subparagraph
23 (A), the Secretary and the Board shall conclude
24 and publically issue a memorandum of under-
25 standing that—

1 “(i) outlines administrative arrange-
2 ments which will facilitate a coordination
3 of efforts between the Secretary and the
4 Board, ensures that the Secretary’s inves-
5 tigation under paragraph (1) is not de-
6 layed or otherwise compromised by the ac-
7 tivities of the Board, and establishes a
8 process to resolve any conflicts between
9 such investigations;

10 “(ii) ensures that Board members or
11 staff will be able to participate in inves-
12 tigation activities (such as mine inspections
13 and interviews) related to the Secretary’s
14 investigation and will have full access to
15 documents that are assembled or produced
16 in such investigation, and ensures that the
17 Secretary will make all of the authority
18 available to such Secretary under this sec-
19 tion, including subpoena authority, to ob-
20 tain information and witnesses which may
21 be requested by such Board; and

22 “(iii) establishes such other arrange-
23 ments as are necessary to implement this
24 paragraph.”.

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

3 Section 103(b)(1) (as amended by section 101) (30
4 U.S.C. 813(b)) is further amended—

5 (1) in the first sentence, by striking “the Sec-
6 retary may” and all that follows through “oaths.”
7 and inserting: “the Secretary may sign and issue
8 subpoenas for the attendance and testimony of wit-
9 nesses and the production of information, including
10 all relevant data, papers, books, documents, and
11 items of physical evidence, and administer oaths,
12 and, after notice, hold public hearings.”; and

13 (2) in the last sentence by striking “docu-
14 ments” and inserting “information, including data,
15 papers, books, documents, and items of physical evi-
16 dence”.

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

18 Section 103(f) (30 U.S.C. 813(f)) is amended by in-
19 serting before the last sentence the following: “If any
20 miner is entrapped or otherwise prevented as the result
21 of an accident in such mine from designating such a rep-
22 resentative directly, such miner’s closest relative may act
23 on behalf of such miner in designating such a representa-
24 tive. If any miner is not currently working in such mine
25 as the result of an accident in such mine, but would be

1 currently working in such mine but for such accident, such
2 miner may designate such a representative.”.

3 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**
4 **SPECTIONS AND INVESTIGATIONS.**

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

12 (b) INJURY AND ILLNESS REPORTING.—Section
13 103(d) (30 U.S.C. 813(d)) is amended by striking the last
14 sentence and inserting the following: “The records to be
15 kept and made available by the operator of the mine shall
16 include man-hours worked and occupational injuries and
17 illnesses, and shall be maintained separately for each mine
18 and be reported at a frequency determined by the Sec-
19 retary, but at least annually. Operators shall be respon-
20 sible for reporting all miners working at such mine under
21 their direct supervision.”.

22 (c) CONFLICT OF INTEREST IN THE REPRESENTA-
23 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) is
24 amended by adding at the end the following: “During in-
25 spections and investigations under this section, and during

1 any litigation under this Act, no attorney shall represent
2 or purport to represent both the operator of a coal or other
3 mine and any other individual, unless such individual has
4 willfully and voluntarily waived all actual and reasonably
5 foreseeable conflicts of interest resulting from such rep-
6 resentation. The Secretary is authorized to take such ac-
7 tions as the Secretary considers appropriate to ascertain
8 whether such individual has willfully and voluntarily
9 waived all such conflicts of interest. If the Secretary finds
10 that such an individual cannot be represented adequately
11 by such an attorney due to such conflicts of interest, the
12 Secretary may petition the appropriate United States Dis-
13 trict Court which shall have jurisdiction to disqualify such
14 attorney as counsel to such individual in the matter. The
15 Secretary may make such a motion as part of an ongoing
16 related civil action or as a miscellaneous action.”.

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

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

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

22 (1) in the first sentence—

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

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

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

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

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

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

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

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

3 “(1) DETERMINATION OF PATTERN STATUS.—

4 “(A) IN GENERAL.—Each operator of a
5 coal or other mine shall be evaluated based on
6 the regulations promulgated under subpara-
7 graph (B) to determine whether it meets the
8 criteria for placement in pattern status set
9 forth in such regulations.

10 “(B) REGULATIONS ESTABLISHING CRI-
11 TERIA FOR PLACEMENT IN PATTERN STATUS.—

12 The Secretary shall issue regulations estab-
13 lishing criteria for determining whether to place
14 a mine on pattern status under this subsection.
15 Such criteria shall be based on a numerical
16 Safe Performance Index shall evaluate mines
17 according the following factors, each assigned
18 appropriate weight as determined by the Sec-
19 retary:

20 “(i) The incidence rate of accidents
21 resulting in no work days lost.

22 “(ii) The incidence rate of nonfatal
23 accidents resulting in work days lost.

24 “(iii) A severity measure for all acci-
25 dents.

1 “(iv) The number of citations for vio-
2 lations issued per 100 inspection hours.

3 “(v) The number of citations issued
4 for significant and substantial violations
5 per 100 inspection hours.

6 “(vi) The number of orders issued per
7 1,000 inspection hours.

8 “(C) MINE CATEGORIES.—A Safe Per-
9 formance Index shall be determined and main-
10 tained for each mine, according to the following
11 classifications of mine type:

12 “(i) underground coal mines;

13 “(ii) surface coal mines;

14 “(iii) underground metal mines;

15 “(iv) surface metal mines; and

16 “(v) non-metal mines.

17 “(D) MITIGATING CIRCUMSTANCES.—Not-
18 withstanding the criteria established under sub-
19 paragraph (B), if, after conducting an assess-
20 ment of a coal or other mine that otherwise
21 qualifies for pattern status, the Secretary cer-
22 tifies that there are mitigating circumstances
23 wherein the operator is in the process of reduc-
24 ing elevated risks to the health or safety of
25 miners and is implementing sufficient measures

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

9 “(i) published in the Federal Register;

10 and

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

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

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

21 “(B) issue an order requiring such oper-
22 ator to cause all persons to be withdrawn from
23 such mine while the Secretary conducts a com-
24 plete inspection of the mine to identify any haz-

1 ards or violations that could be immediately
2 harmful to the safety or health of the miners;

3 “(C) require, as a condition of reopening
4 the mine, that—

5 “(i) all violations or other conditions
6 in the mine identified by the Secretary
7 have been or are being fully abated or cor-
8 rected; and

9 “(ii) the operator file a remediation
10 plan as described in paragraph (3); and

11 “(D) require that the number of regular
12 inspections of such mine required under section
13 103 be increased by an amount determined by
14 the Secretary to be sufficient to ensure that all
15 hazardous conditions have been addressed and
16 that a program is in place to prevent a reoccur-
17 rence of such conditions.

18 “(3) REMEDIATION PLAN.—

19 “(A) IN GENERAL.—An operator of a mine
20 placed in pattern status shall submit to the Sec-
21 retary a remediation plan for approval by the
22 Secretary to—

23 “(i) institute and implement an effec-
24 tive health and safety management pro-
25 gram that specifically addresses the issues

1 that gave rise to the placement of the mine
2 in pattern status; and

3 “(ii) facilitate any effort by the Sec-
4 retary to communicate directly with miners
5 employed at the mine outside the presence
6 of the mine operators or its agents, for the
7 purpose of obtaining information about
8 mine conditions, health and safety prac-
9 tices, advising miners of their rights under
10 this Act, and to assist the efforts of the
11 operator in developing or implementing the
12 remediation plan.

13 “(B) EXPEDITED REVIEW.—The opera-
14 tor’s remediation plan shall be evaluated for ap-
15 proval by the Secretary on an expedited basis,
16 in accordance with section 105(d).

17 “(C) PLAN DISPUTE RESOLUTION.—

18 “(i) IN GENERAL.—Any dispute be-
19 tween the Secretary and an operator with
20 respect to the content of the operator’s
21 plan under paragraph (3) or any refusal by
22 the Secretary to approve such plan shall be
23 resolved on an expedited basis.

24 “(ii) DISPUTES.—In the event of a
25 dispute or refusal to approve a plan, the

1 Secretary shall issue a citation which shall
2 be immediately referred to a Commission.
3 The Secretary and the operator shall sub-
4 mit all relevant material regarding the dis-
5 pute to the Commission within 15 days of
6 the date of the referral. The Commission
7 shall render his or her decision with re-
8 spect to the plan content dispute within 15
9 days of the receipt of the submission.

10 “(iii) FURTHER APPEALS.—Any party
11 adversely affected by a decision under this
12 subparagraph may pursue all further avail-
13 able appeal rights with respect to the situ-
14 ation involved, except that inclusion of the
15 disputed provision in the plan will not be
16 limited by such appeal unless such relief is
17 requested by the operator and permitted by
18 the Commission.

19 “(4) PERFORMANCE EVALUATION.—

20 “(A) PERFORMANCE BENCHMARKS.—The
21 Secretary shall evaluate the performance of
22 each operator whose mine is in pattern status
23 every 90 days during which the mine is pro-
24 ducing and determine if, for such 90-day pe-
25 riod—

1 “(i) the rate of citations for such mine
2 for significant and substantial violations—

3 “(I) is, on average, in the top
4 performing 35th percentile of such
5 rates, respectively, for all mines of
6 similar size and type; and

7 “(II) has been reduced by 70
8 percent since such mine was placed on
9 pattern status; and

10 “(ii) the accident and injury rates at
11 such mine are, on average, in the top per-
12 forming 35th percentile of such rates, re-
13 spectively, for all mines of similar size and
14 type.

15 “(B) REISSUANCE OF PRODUCTION LIM-
16 TATION.—If an operator being evaluated fails
17 to achieve the performance benchmarks de-
18 scribed in subparagraph (A), the Secretary may
19 re-impose the conditions under paragraph
20 (2)(B) to remedy any recurring conditions that
21 led to pattern status under this subsection, and
22 may require modification of the remediation
23 plan, as necessary, to protect the health and
24 safety of miners.

25 “(5) TERMINATION OF PATTERN STATUS.—

1 “(A) PERFORMANCE BENCHMARKS.—The
2 Secretary shall remove an operator of a coal or
3 other mine from pattern status if, for a period
4 of 180 days during which the mine is pro-
5 ducing—

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

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

12 “(II) has been reduced by 70
13 percent since such mine was placed on
14 pattern status; and

15 “(ii) the accident and injury rates at
16 such mine are, on average, in the top per-
17 forming 25th percentile of such rates, re-
18 spectively, for all mines of similar size and
19 type.

20 “(B) CONTINUATION OF PATTERN STA-
21 TUS.—Should the mine operator fail to meet
22 the performance benchmarks described in sub-
23 paragraph (A), the Secretary shall extend the
24 mine’s placement in pattern status until such
25 benchmarks are achieved.

1 “(6) EXPEDITED HEARING.—The operator of a
2 mine whose mine exceeds the safe performance index
3 threshold under this section shall have the right to
4 an expedited hearing, within 10 days of providing
5 notice to the Commission to contest the validity of
6 any enforcement action that has contributed to the
7 mine being identified under this section, notwith-
8 standing whether the enforcement action was pre-
9 viously the subject of a notice of contest pursuant to
10 section 105 or has been deemed a final order of the
11 Commission.

12 “(7) LIMITATION ON APPLICATION.—The provi-
13 sions of this subsection shall not apply, for a period
14 of 12 months, following the acquisition of a mine by
15 a purchaser.

16 “(8) REGULATIONS.—Not later than 180 days
17 after the date of enactment of the Mine Safety Ac-
18 countability and Improved Protection Act, the Sec-
19 retary shall issue proposed regulations to implement
20 the provisions of this subsection. Not later than 1
21 year after the date of enactment of such Act, the
22 Secretary shall issue final regulations to implement
23 this subsection.

24 “(9) PUBLIC DATABASE AND INFORMATION.—
25 The Secretary shall establish and maintain a pub-

1 lically available electronic database containing the
2 data used to determine pattern status for all coal or
3 other mines. Such database shall be searchable, shall
4 have the capacity to provide comparative data about
5 the health and safety at mines of similar sizes and
6 types. The Secretary shall also make publicly avail-
7 able—

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

11 “(B) the metrics, including percentile in-
12 formation, used for the purposes of the per-
13 formance benchmarks and threshold criteria de-
14 scribed in paragraphs (4) and (5).

15 “(10) OPERATOR FEES FOR ADDITIONAL IN-
16 SPECTIONS.—

17 “(A) ASSESSMENT AND COLLECTION.—Be-
18 ginning 120 days after the date of enactment of
19 the Mine Safety Accountability and Improved
20 Protection Act, the Secretary shall assess and
21 collect fees, in accordance with this paragraph,
22 from each coal or other mine in pattern status
23 for the costs of additional inspections under
24 this subsection. The Secretary shall issue, by
25 rule, a schedule of fees to be assessed against

1 coal or other mines of varying types and sizes,
2 and shall collect and assess amounts under this
3 paragraph based on the schedule.

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

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

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

1 lected during the previous fiscal year from fees
2 assessed pursuant to this paragraph. Such
3 amounts are authorized to remain available
4 until expended.

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

10 **SEC. 203. INJUNCTIVE AUTHORITY.**

11 Section 108(a)(2) is amended to read as follows:

12 “(2) The Secretary may institute a civil action for
13 relief, including permanent or temporary injunction, re-
14 straining order, or any other appropriate order in the dis-
15 trict court of the United States for the district in which
16 the coal or other mine is located or in which the operator
17 of such mine has his principal office whenever the Sec-
18 retary believes that the operator of a coal or other mine
19 is engaged in a pattern of violation of this Act, or of any
20 mandatory health or safety standards of this Act, or regu-
21 lation promulgated under this Act, which constitutes a
22 continuing hazard to the health or safety of miners.”.

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

24 Section 105 (30 U.S.C. 815) is amended by adding
25 at the end the following:

1 “(e) REVOCATION OF APPROVAL OF PLANS.—If the
2 Secretary finds that any program or plan of an operator,
3 or part thereof, that was approved by the Secretary under
4 this Act is based on inaccurate information or that cir-
5 cumstances that existed when such plan was approved
6 have materially changed and that continued operation of
7 such mine under such plan constitutes a hazard to the
8 safety or health of miners, the Secretary shall revoke the
9 approval of such program or plan and provide the operator
10 with a detailed explanation containing the specific reasons
11 that approval was revoked.”.

12 **SEC. 205. CHALLENGING DECISIONS RELATED TO THE AP-**
13 **PROVAL OF A COAL OR OTHER MINE PLAN.**

14 Section 105 (30 U.S.C. 815) is further amended by
15 adding at the end the following:

16 “(f) PROCESS FOR APPROVAL OF AND CHALLENGING
17 DECISIONS RELATED TO THE APPROVAL OF A COAL OR
18 OTHER MINE PLAN.—

19 “(1) PROPOSED PROGRAMS, PLANS, AND PLAN
20 REVISION PROCESS.—

21 “(A) SUBMISSION FOR APPROVAL.—Any
22 operator’s proposed program, plan, or plan revi-
23 sion, which is subject to approval by the Sec-
24 retary under this Act, and implementing stand-
25 ards and regulations, shall be submitted in writ-

1 ing to the appropriate district manager of the
2 Mine Safety and Health Administration (in this
3 subsection referred to as the ‘district man-
4 ager’). When revisions to a previously approved
5 plan are proposed by a mine operator, only pro-
6 posed revised pages, maps, and sketches are re-
7 quired to be submitted, unless otherwise speci-
8 fied by the district manager. Written comments
9 may be submitted by representatives of the
10 miners relative to plan or revisions submitted.
11 Such program, plan, or plan revision shall be
12 reviewed and either approved or denied ap-
13 proval by the district manager, pursuant to the
14 following provisions:

15 “(B) NOTIFICATION OF APPROVAL OR DE-
16 NIAL OF PROPOSED PROGRAM, PLAN OR PLAN
17 REVISION.—The district manager shall notify
18 the mine operator, in writing, of the approval or
19 denial of the proposed program, plan or plan
20 revision. A copy of the district manager’s writ-
21 ten notification shall be mailed to the represent-
22 ative of miners by the district manager.

23 “(C) FAILURE OF THE DISTRICT MANAGER
24 TO PROVIDE WRITTEN NOTIFICATION.—If the
25 district manager fails to notify a mine operator,

1 in writing, of the approval or denial of any pro-
2 posed program or plan within 30 days of the
3 mine operator’s submission, such proposed pro-
4 gram or plan shall be deemed approved. If a
5 district manager fails to notify a mine operator,
6 in writing, of the approval or denial of approval
7 of any proposed plan revision within 7 days of
8 the mine operator’s submission, such proposed
9 program or plan shall be deemed approved.

10 “(D) SPECIFICATION OF DEFICIENCIES
11 AND RECOMMENDED CHANGES.—When ap-
12 proval of any proposed program, plan or plan
13 revision is denied, the district manager’s writ-
14 ten notification shall—

15 “(i) specify the deficiencies in the
16 mine operator’s proposed program, plan, or
17 plan revision;

18 “(ii) recommend changes to eliminate
19 the specified deficiencies in the proposed
20 program, plan, or plan revision; and

21 “(iii) provide an opportunity for the
22 operator to schedule a meeting with the
23 district manager to discuss any specified
24 deficiencies in the proposed program, plan,
25 or plan revision.

1 “(E) PROCESS FOLLOWING MEETING.—

2 Following any meeting between the operator
3 and the district manager regarding any pro-
4 posed program, plan, or plan revision, the dis-
5 trict manager shall provide the mine operator
6 with a reasonable time period to resubmit the
7 proposed program, plan, or plan revision.

8 “(2) PLAN DISPUTE RESOLUTION.—

9 “(A) CONTEST.—In the event a district
10 manager denies approval of an operator’s pro-
11 posed program, plan, or plan revision, the oper-
12 ator may contest the decision of the district
13 manager to the Secretary. Any dispute between
14 the Secretary and an operator with respect to
15 the content of any program, plan or plan revi-
16 sion of the mine operator shall be resolved on
17 an expedited basis.

18 “(B) DISPUTES.—In the event of a dispute
19 described in subparagraph (A), any technical ci-
20 tation issued by the Secretary shall be imme-
21 diately referred to a Commission. The Secretary
22 and the mine operator shall submit all relevant
23 material regarding the dispute to the Commis-
24 sion within 15 days of the date of the referral.
25 The Commission shall render its decision with

1 respect to the plan content dispute within 15
2 days of the receipt of the submission.

3 “(C) FURTHER APPEALS.—A party ad-
4 versely affected by a decision under subpara-
5 graph (B) may pursue all further available ap-
6 peal rights with respect to the citation involved,
7 except that inclusion of the disputed provision
8 of the plan shall not be limited by such appeal
9 unless such relief is requested by the operator
10 and permitted by the Commission.”.

11 **TITLE III—PENALTIES**

12 **SEC. 301. CIVIL PENALTIES.**

13 (a) MAXIMUM CIVIL PENALTIES.—Section 110(a)(1)
14 (30 U.S.C. 820(a)(1)) is amended—

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

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

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

24 “(3) Notwithstanding any other provision of this Act,
25 an operator of a coal or other mine that is in pattern sta-

1 tus under section 104(e) and that fails to meet the per-
2 formance benchmarks set forth by the Secretary under
3 section 104(e)(5)(A) during any performance review of the
4 mine following the first performance review shall be as-
5 sessed an increased civil penalty for any violation of this
6 Act, including any mandatory health or safety standard
7 or regulation promulgated under this Act. Such increased
8 penalty shall be twice the amount that would otherwise
9 be assessed for the violation under this Act, including the
10 regulations promulgated under this Act, subject to the
11 maximum civil penalty established for the violation under
12 this Act. This paragraph shall apply to violations at such
13 mine that occur during the period beginning after the
14 failed performance review following the first performance
15 review, and ending when the Secretary determines at a
16 subsequent performance review that the mine meets the
17 performance benchmarks under section 104(e)(5)(A).”.

18 (c) CIVIL PENALTY FOR RETALIATION.—Section
19 110(a) (30 U.S.C. 820(a)) is further amended—

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

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

24 “(4) If any person violates section 105(c), the Sec-
25 retary shall propose, and the Commission shall assess, a

1 civil penalty of not less than \$10,000 or more than
2 \$100,000 for the first occurrence of such violation, and
3 not less than \$20,000 or more than \$200,000 for any sub-
4 sequent violation, during any 3-year period.”.

5 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**
6 **RECTORS, AND AGENTS.**

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

9 “(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS,
10 DIRECTORS, AND AGENTS.—Whenever an operator vio-
11 lates a provision of this Act, including any mandatory
12 health or safety standard or regulation promulgated under
13 this Act, or willfully violates or fails or refuses to comply
14 with any order issued under this Act or any order incor-
15 porated in a final decision issued under this Act, any di-
16 rector, officer, or agent of such operator who willfully au-
17 thorized, ordered, or carried out such violation, failure, or
18 refusal, or any policy or practice that contributed to the
19 occurrence of a fatality shall be subject to the same civil
20 penalties, fines, and imprisonment that may be imposed
21 upon a person under this section.”.

22 **SEC. 303. CRIMINAL PENALTIES.**

23 (a) INTENT REQUIREMENTS FOR CRIMINAL PEN-
24 ALTY STANDARDS.—Section 110(d) (30 U.S.C. 820(d)) is
25 amended—

1 (1) by striking “\$250,000, or by imprisonment
2 for not more than one year” and inserting
3 “\$1,000,000, or by imprisonment for not more than
4 5 years”; and

5 (2) by striking “\$500,000, or by imprisonment
6 for not more than five years” and inserting
7 “\$2,000,000, or by imprisonment for not more than
8 10 years”.

9 (b) CRIMINAL PENALTY FOR RETALIATION.—Section
10 110(d) is further amended—

11 (1) by inserting “(1)” before “Any operator”;
12 and

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

14 “(2) Whoever willfully 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
17 of any person, because such person has provided an au-
18 thorized representative of the Secretary or another law en-
19 forcement officer with any information related to the exist-
20 ence of a health or safety violation or an unhealthful or
21 unsafe condition, policy, or practice under this Act shall
22 be fined under title 18, United States Code, imprisoned
23 for not more than 10 years, or both.”.

24 (c) ADVANCE NOTICE OF INSPECTIONS.—

1 (1) IN GENERAL.—Section 110(e) (30 U.S.C.
2 820(e)) is amended—

3 (A) by striking “Unless” and inserting
4 “(1) Unless”; and

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

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

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

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

23 “(1) that giving, causing to give, or attempting
24 to give or cause to give advance notice of any inspec-

1 tion to be conducted under this Act is unlawful pur-
2 suant to section 110(e); and

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

5 **SEC. 304. CONFERENCE PROCESS FOR APPEALING PEN-**
6 **ALTIES; DELINQUENT PAYMENTS AND PRE-**
7 **JUDGMENT INTEREST.**

8 (a) CONFERENCE PROCESS.—Section 110 (30 U.S.C.
9 820) is amended by—

10 (1) redesignating subsection (l) as subsection
11 (m); and

12 (2) by inserting after subsection (k) the fol-
13 lowing:

14 “(1) OPERATOR CONFERENCE PROCESS.—

15 “(1) RIGHT TO REVIEW.—Prior to the assess-
16 ment of any penalty assessed under this section, the
17 operator shall be afforded the opportunity to review
18 with a designated Conference Litigation Representa-
19 tive of the Secretary each citation and order issued
20 during an inspection.

21 “(2) REQUEST FOR CONFERENCE; TIMBER-
22 LINE.—Upon receipt of a citation or order issued
23 under this Act the operator shall have 15 days to re-
24 quest the review described in paragraph (1) of any
25 citation or order issues during an inspection. The

1 conference request must include a brief statement of
2 the reason why each citation or order should be af-
3 farded a conference. Within 15 days following re-
4 ceipt of a request by the operator the Conference
5 Litigation Representative shall schedule a meeting to
6 review the citations or orders subject to the request.
7 The Conference Litigation Representative shall con-
8 sider all relevant information submitted in a timely
9 manner with respect to the violations or orders.

10 “(3) DECISION OF CONFERENCE LITIGATION
11 REPRESENTATIVE.—Within 15 days following the
12 conduct of conference, the Conference Litigation
13 Representative shall issue a decision affirming,
14 modifying, or vacating the citations or orders that
15 were the subject of the conference. The decision
16 shall be communicated to the operator, the issuing
17 inspector, and the district manager responsible for
18 the district within which the mine is located. In
19 making a decision, the Conference Litigation Rep-
20 resentative shall consult, as needed, with the Direc-
21 tor of the Mine Safety and Health Administration,
22 Office of Accountability, to which each Conference
23 Litigation Representative shall report.”.

24 (b) PRE-FINAL ORDER INTEREST.—Section 110(j)
25 (30 U.S.C. 820(j)) is amended by striking the second and

1 third sentences and inserting the following: “Pre-final
2 order interest on such penalties shall begin to accrue on
3 the date the operator contests a citation issued under this
4 Act, including any mandatory health or safety standard
5 or regulation promulgated under this Act, and shall end
6 upon the issuance of the final order. Such pre-final order
7 interest shall be calculated at the current underpayment
8 rate determined by the Secretary of the Treasury pursu-
9 ant to section 6621 of the Internal Revenue Code of 1986,
10 and shall be compounded daily. Post-final order interest
11 shall begin to accrue 30 days after the date a final order
12 of the Commission or the court is issued, and shall be
13 charged at the rate of 8 percent per annum.”.

14 (c) ENSURING PAYMENT OF PENALTIES.—

15 (1) AMENDMENT.—Section 110 (30 U.S.C.
16 820) is further amended by adding after subsection
17 (l) (as added by subsection (a)) the following:

18 “(m) ENSURING PAYMENTS OF PENALTIES.—

19 “(1) DELINQUENT PAYMENT LETTER.—If the
20 operator 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 90 days after such
23 assessment became a final order, the Secretary shall
24 send the operator a letter advising the operator of
25 the consequences under this subsection of such fail-

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

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

1 the mine that is covered by such final order, and to
2 be prohibited from entering such mine, until the op-
3 erator rectifies the noncompliance with the payment
4 plan in the manner specified in such payment
5 plan.”.

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

18 **TITLE IV—WORKER RIGHTS AND** 19 **PROTECTIONS**

20 **SEC. 401. PROTECTION FROM RETALIATION.**

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

23 “(c) PROTECTION FROM RETALIATION.—

24 “(1) RETALIATION PROHIBITED.—

1 “(A) RETALIATION FOR COMPLAINT OR
2 TESTIMONY.—No person shall discharge or in
3 any manner discriminate against or cause to be
4 discharged or cause discrimination against or
5 otherwise interfere with the exercise of the stat-
6 utory rights of any miner or other employee of
7 an operator, representative of miners, or appli-
8 cant for employment, because—

9 “(i) such miner or other employee,
10 representative, or applicant for employ-
11 ment—

12 “(I) has filed or made a com-
13 plaint, or is about to file or make a
14 complaint, including a complaint noti-
15 fying the operator or the operator’s
16 agent, or the representative of the
17 miners at the coal or other mine of an
18 alleged danger or safety or health vio-
19 lation in a coal or other mine;

20 “(II) instituted or caused to be
21 instituted, or is about to institute or
22 cause to be instituted, any proceeding
23 under or related to this Act or has
24 testified or is about to testify in any
25 such proceeding or because of the ex-

1 exercise by such miner or other em-
2 ployee, representative, or applicant for
3 employment on behalf of him or her-
4 self or others of any right afforded by
5 this Act;

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

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

12 “(ii) such miner is the subject of med-
13 ical evaluations and potential transfer
14 under a standard published pursuant to
15 section 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
21 operator for refusing to perform the min-
22 er’s or other employee’s duties if the miner
23 or other employee has a good-faith and
24 reasonable belief that performing such du-
25 ties would pose a safety or health hazard

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

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

19 “(2) COMPLAINT.—Any miner or other em-
20 ployee or representative of miners or applicant for
21 employment who believes that he or she has been
22 discharged, disciplined, or otherwise discriminated
23 against by any person in violation of paragraph (1)
24 may file a complaint with the Secretary alleging

1 such discrimination not later than 90 days after the
2 later of—

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

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

9 “(3) INVESTIGATION AND HEARING.—

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

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

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

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

23 “(i) providing the respondent an op-
24 portunity to submit to the Secretary a
25 written response to the complaint and to

1 present statements from witnesses or pro-
2 vide evidence; and

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

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

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

1 30 days after its issuance. The complaining
2 miner or other employee, representative, or ap-
3 plicant for employment may present additional
4 evidence on his or her own behalf during any
5 hearing held pursuant to this paragraph.

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

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

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

22 “(iii) expungement of all warnings,
23 reprimands, or derogatory references that
24 have been placed in paper or electronic
25 records or databases of any type relating

1 to the actions by the complainant that
2 gave rise to the unfavorable personnel ac-
3 tion, and, at the complainant's direction,
4 transmission of a copy of the decision on
5 the complaint to any person whom the
6 complainant reasonably believes may have
7 received such unfavorable information.

8 “(4) NOTICE TO AND ACTION OF COMPLAIN-
9 ANT.—

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

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

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

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

24 “(6) ATTORNEYS’ FEES.—Whenever an order is
25 issued sustaining the complainant’s charges under

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

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

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

1 “(9) SAVINGS.—Nothing in this subsection shall
2 be construed to diminish the rights, privileges, or
3 remedies of any employee who exercises rights under
4 any Federal or State law or common law, or under
5 any collective bargaining agreement.”.

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

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

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

10 “(a) PROTECTION FROM LOSS OF PAY.—

11 “(1) WITHDRAWAL ORDER.—If a coal or other
12 mine or area of such mine is closed by an order
13 issued under section 103, 104, 107, 108, or 110 all
14 miners who are idled by such order shall be entitled
15 to full compensation by the operator at their regular
16 rates of pay and in accordance with their regular
17 schedules of pay for the remainder of the current
18 shift and the next 8 hour shift for which they are
19 idled. Nothing in this section shall prevent the oper-
20 ator of a coal or other mine from transferring min-
21 ers from the area of the mine effected by the with-
22 drawal order to another area of the mine not under
23 the withdrawal order.

24 “(2) REFUSAL TO COMPLY.—Whenever an op-
25 erator violates or fails or refuses to comply with any

1 order issued under section 103, 104, 107, 108, or
2 110, all miners employed at the affected mine who
3 would have been withdrawn from, or prevented from
4 entering, such mine or area thereof as a result of
5 such order shall be entitled to full compensation by
6 the operator at their regular rates of pay, in addi-
7 tion to pay received for work performed after such
8 order was issued, for the period beginning when
9 such order was issued and ending when such order
10 is complied with, vacated, terminated, or up to 10
11 days.

12 “(b) ENFORCEMENT.—

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

22 “(2) FAILURE TO PAY COMPENSATION DUE.—
23 Consistent with the authority of the Secretary to
24 order miners withdrawn from a mine under this Act,
25 the Secretary shall order a mine that has been sub-

1 ject to a withdrawal order under section 103, 104,
2 107, 108, or 110, and has reopened, to be closed
3 again if compensation in accordance with the provi-
4 sions of this section is not paid by the end of the
5 next regularly scheduled payroll period following the
6 lifting of a withdrawal order.”.

7 **TITLE V—MODERNIZING**
8 **HEALTH AND SAFETY STAND-**
9 **ARDS**

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

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

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

20 “(i) any conditions that are hazardous; and

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

23 “(B) Not later than 90 days after the date of enact-
24 ment of the Mine Safety Accountability and Improved
25 Protection Act, the Secretary shall promulgate interim

1 final rules implementing the requirements of subpara-
2 graphs (A) and (B).”.

3 **SEC. 502. ROCK DUST STANDARDS.**

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

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

8 “(1) IN GENERAL.—Where rock”;

9 (2) by striking “65 per centum” and all that
10 follows and inserting “80 percent.”; and

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

12 “(2) METHODS OF MEASUREMENT.—

13 “(A) REGULATIONS.—The Secretary shall,
14 not later than 180 days after the date of enact-
15 ment of the Mine Safety Accountability and Im-
16 proved Protection Act, promulgate an interim
17 final rule that prescribes methods for sampling
18 of total incombustible content of coal dust using
19 direct reading monitors and includes require-
20 ments for locations, methods, and intervals for
21 mandatory operator sampling.

22 “(B) IN GENERAL.—Each operator of an
23 underground coal mine accurate samples of the
24 combined coal dust, rock dust, and other dust
25 deposited on rock-dusted surfaces, loose coal,

1 and other combustible materials in the active
2 workings of such mines, to ensure that the coal
3 dust is kept below explosive levels through the
4 appropriate application of rock dusting.

5 “(C) RECOMMENDATIONS.—Not later than
6 2 years after the date of enactment of the Mine
7 Safety Accountability and Improved Protection
8 Act, the Secretary of Health and Human Serv-
9 ices shall, based upon the latest research, rec-
10 ommend to the Secretary of Labor any revisions
11 to the mandatory operator sampling locations,
12 methods, and intervals included in the interim
13 final rule described in subparagraph (B) that
14 may be warranted in light of such research.
15 Such recommendations shall include an analysis
16 of the effects of and relationship between meth-
17 ane and the incombustible content of such com-
18 bined dusts, and appropriate recommendations
19 for addressing methane in such context.

20 “(D) DIRECT READING MONITORS.—By
21 the date that is 30 days after the Secretary of
22 Health and Human Services has certified in
23 writing that direct reading monitors are com-
24 mercially available to measure total incombust-
25 ible content in coal dust and the Department

1 of Labor has approved such monitors for use in
2 underground coal mines, the Secretary shall re-
3 quire operators to develop a program to conduct
4 sampling to ensure that sufficient quantities of
5 rock dust have been deposited on take coal dust
6 samples using direct reading monitors.”.

7 (b) REPORT.—Not later than 1 year after the date
8 of enactment of this Act, the Secretary of Health and
9 Human Services, in consultation with the Secretary of
10 Labor, shall prepare and submit, to the Committee on
11 Education and Labor of the House of Representatives and
12 the Committee on Health, Education, Labor, and Pen-
13 sions of the Senate, a report—

14 (1) regarding whether any direct reading device
15 described in section 304(d)(2)(B) of the Federal
16 Mine Safety and Health Act of 1977 (30 U.S.C.
17 864(d)(2)(B)) is sufficiently reliable and accurate
18 for the enforcement of the mandatory health or safe-
19 ty standards by the Secretary of Labor under such
20 Act, and whether additional improvement to such di-
21 rect reading device, or additional verification regard-
22 ing reliability and accuracy, would be needed for en-
23 forcement purposes; and

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

1 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

4 “(u) ATMOSPHERIC MONITORING SYSTEMS.—

5 “(1) NIOSH RECOMMENDATIONS.—Not later
6 than 1 year after the date of enactment of the Mine
7 Safety Accountability and Improved Protection Act,
8 the Director of the National Institute for Occupa-
9 tional Safety and Health, acting through the Office
10 of Mine Safety and Health Research, in consulta-
11 tion, including through technical working groups
12 with operators, vendors, State mine safety agencies,
13 the Secretary, and labor representatives of miners,
14 shall issue recommendations to the Secretary regard-
15 ing—

16 “(A) how to ensure that atmospheric moni-
17 toring systems are utilized in the underground
18 coal mining industry to maximize the health
19 and safety of underground coal miners; and

20 “(B) the implementation of redundant sys-
21 tems, such as the bundle tubing system, that
22 can continuously monitor the mine atmosphere
23 following incidents such as fires, explosions, en-
24 trapments, and inundations.

25 “(2) ATMOSPHERIC MONITORING SYSTEM REG-
26 ULATIONS.—Not later than 1 year following the re-

1 ceipt of the recommendations described in paragraph
2 (1), the Secretary shall promulgate regulations re-
3 quiring that each operator of an underground coal
4 mine install atmospheric monitoring systems, con-
5 sistent with such recommendations, that—

6 “(A) protect miners where the miners nor-
7 mally work and travel;

8 “(B) provide real-time information regard-
9 ing methane and carbon monoxide levels, and
10 airflow direction, as appropriate, with sensing,
11 annunciating, and recording capabilities; and

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

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

15 Section 202(d) (30 U.S.C. 842(d)) is amended by
16 striking “of Health and Human Services”.

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

19 (a) IN GENERAL.—Section 115(a)(3) (30 U.S.C.
20 825(a)(3)) is amended to read as follows:

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

1 tives under this Act and other applicable Federal
2 and State law, pursuant to a program of instruction
3 developed by the Secretary and delivered by the
4 mine operator or by a trainer approved by the Sec-
5 retary;”.

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

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

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

20 “(e) **AUTHORITY TO MANDATE ADDITIONAL TRAIN-**
21 **ING.**—The Secretary is authorized to require that an oper-
22 ator of a coal provide additional training beyond what is
23 otherwise required by law, and specifying the time within
24 which such training shall be provided, if the Secretary
25 finds that—

1 “(1)(A) a serious or fatal accident has occurred
2 at such mine; or

3 “(B) such mine has experienced accident and
4 injury rates, citations for violations of this Act (in-
5 cluding mandatory health or safety standards or reg-
6 ulations promulgated under this Act), citations for
7 significant and substantial violations, or withdrawal
8 orders issued under this Act at a rate above the av-
9 erage for mines of similar size and type; and

10 “(2) additional training would benefit the
11 health and safety of miners at the mine.”.

12 (b) CONFORMING AMENDMENTS.—Section 104(g)(2)
13 (30 U.S.C. 814(g)(2)) is amended by striking “under
14 paragraph (1)” both places it appears and inserting
15 “under paragraph (1) or under section 115(e)”.

16 **SEC. 507. CERTIFICATION OF PERSONNEL.**

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

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

20 “(a) CERTIFICATION REQUIRED.—Any person who is
21 authorized or designated by the operator of a coal mine
22 to perform any duties or provide any training that this
23 Act, including a mandatory health or safety standard or
24 regulation promulgated pursuant to this Act, requires to
25 be performed or provided by a certified, registered, quali-

1 fied, or otherwise approved person, shall be permitted to
2 perform such duties or provide such training only if such
3 person has a current certification, registration, qualifica-
4 tion, or approval to perform such duties or provide such
5 training consistent with the requirements of this section.

6 “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-
7 MENTS AND PROCEDURES.—

8 “(1) IN GENERAL.—Not later than 1 year after
9 the date of enactment of the Mine Safety Account-
10 ability and Improved Protection Act, the Secretary
11 shall issue mandatory standards to establish—

12 “(A) requirements for such certification,
13 registration, qualification, or other approval, in-
14 cluding the experience, examinations, and ref-
15 erences that may be required as appropriate;

16 “(B) time limits for such certifications and
17 procedures for obtaining and renewing such cer-
18 tification, registration, qualification, or other
19 approval; and

20 “(C) procedures and criteria for revoking
21 such certification, registration, qualification, or
22 other approval, including procedures that en-
23 sure that the Secretary responds to requests for
24 revocation.

1 “(2) COORDINATION WITH STATES.—In devel-
2 oping such standards, the Secretary shall consult
3 with States that have miner certification programs
4 to ensure effective coordination with existing State
5 standards and requirements for certification. The
6 standards required under paragraph (1) may provide
7 that the certification, registration, qualification, or
8 other approval of the State in which the coal or
9 other mine is located satisfies the requirement of
10 subsection (a) if the State’s program of certification,
11 registration, qualification, or other approval is no
12 less stringent than the standards established by the
13 Secretary under paragraph (1).

14 “(c) OPERATOR FEES FOR CERTIFICATION.—

15 “(1) ASSESSMENT AND COLLECTION.—Begin-
16 ning 180 days after the date of enactment of the
17 Mine Safety Accountability and Improved Protection
18 Act, the Secretary shall assess and collect fees, in
19 accordance with this subsection, from each operator
20 for each person certified under this section. Fees
21 shall be assessed and collected in amounts deter-
22 mined by the Secretary as necessary to fund the cer-
23 tification programs established under this section.

24 “(2) MINE SAFETY AND HEALTH CERTIFI-
25 CATION FUND.—There is established in the Treasury

1 of the United States a separate account for the de-
2 posit of fees collected under this subsection to be
3 known as the Mine Safety and Health Certification
4 Fund. The Secretary shall deposit any fees collected
5 pursuant to paragraph (1) into the fund.

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

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

21 “(5) CREDITING AND AVAILABILITY OF FEES.—
22 Fees authorized and collected under this subsection
23 shall be available for obligation only to the extent
24 and in the amount provided in advance in appropria-
25 tions Acts.

1 “(d) CITATION; WITHDRAWAL ORDER.—Any oper-
 2 ator who permits a person to perform any of the health
 3 or safety related functions described in subsection (a)
 4 without a current certification which meets the require-
 5 ments of this section shall be considered to have com-
 6 mitted an unwarrantable failure under section 104(d)(1),
 7 and the Secretary shall issue an order requiring that the
 8 miner be withdrawn or reassigned to duties that do not
 9 require such certification.”.

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

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

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

16 (3) in subsection (g), by redesignating para-
 17 graphs (1) through (4) as subparagraphs (A)
 18 through (D), respectively; and

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

21 **TITLE VI—ADDITIONAL MINE**
 22 **SAFETY PROVISIONS**

23 **SEC. 601. DEFINITIONS.**

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

1 “(d) ‘operator’ means—

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

3 “(A) operates or supervises a coal or other
4 mine; or

5 “(B) controls such mine by making or hav-
6 ing the authority to make management or oper-
7 ational decisions that affect, directly or indi-
8 rectly, the health or safety at such mine; or

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

11 (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.
12 802(e)) is amended by striking “the miners” and inserting
13 “any miner”.

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

20 (d) DEFINITION OF SIGNIFICANT AND SUBSTANTIAL
21 VIOLATIONS.—Section 3 (30 U.S.C. 802) is further
22 amended—

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

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

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

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

6 “(p) ‘significant and substantial violation’ means a
7 violation of this Act, including any mandatory health or
8 safety standard or regulation promulgated under this Act,
9 that is of such nature as could significantly and substan-
10 tially contribute to the cause and effect of a coal or other
11 mine safety or health hazard as described in section
12 104(d) and there is a substantial probability that such a
13 violation could result in death.”.

14 **SEC. 602. ASSISTANCE TO STATES.**

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

16 (1) in subsection (a)—

17 (A) in the matter preceding paragraph (1),
18 by striking “, in coordination with the Sec-
19 retary of Health, Education, and Welfare and
20 the Secretary of the Interior,”;

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

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

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

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

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

9 **SEC. 603. AMENDMENTS RELATING TO ELIGIBILITY FOR**
10 **SCHOLARSHIP PROGRAM.**

11 Section 515 (30 U.S.C. 964) is amended—

12 (1) in subsection (b)(3), by striking subpara-
13 graph (B) and redesignating subparagraphs (C) and
14 (D) as subparagraphs (B) and (C), respectively;

15 (2) in subsection (c)(3), by striking subpara-
16 graph (B) and redesignating subparagraphs (C) and
17 (D) as subparagraphs (B) and (C), respectively; and

18 (3) in subsection (d)(3)—

19 (A) in subparagraph (A), by inserting
20 “and” after the semicolon; and

21 (B) by striking subparagraph (B) and re-
22 designating subparagraph (C) as subparagraph
23 (B).

1 **SEC. 604. ADDITIONAL TRAINING OF MINE INSPECTORS.**

2 Beginning during the 1 year period after the date of
3 enactment of this Act, and each year thereafter, the Sec-
4 retary of Labor shall require that each mine inspector con-
5 ducting inspections under the Federal Mines Safety and
6 Health Act of 1977 receive a full additional week of train-
7 ing, in addition to the training that was provided to or
8 required of such inspectors prior to the date of enactment
9 of this Act.

10 **SEC. 605. REPORT ON STAFFING NEEDS OF THE MINE SAFE-**
11 **TY AND HEALTH ADMINISTRATION.**

12 Not later than 90 days after the date of the enact-
13 ment of this Act, the Secretary of Labor shall transmit
14 a report to Congress detailing any specific need for addi-
15 tional inspectors or other employees of the Mine Safety
16 and Health Administration in order for the Administra-
17 tion to carry out and fulfill the purposes of this Act. Such
18 report shall include specific requests for additional appro-
19 priations, if so determined by the Secretary.

○