

113TH CONGRESS
1ST SESSION

S. 1416

To protect miners from pneumoconiosis (commonly known as black lung disease), and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2013

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

A BILL

To protect miners from pneumoconiosis (commonly known as black lung disease), 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.**

4 This Act may be cited as the “Black Lung Health
5 Improvements Act of 2013”.

6 **SEC. 2. TECHNOLOGY RELATED TO RESPIRABLE DUST.**

7 Section 202(d) of the Federal Mine Safety and
8 Health Act of 1977 (30 U.S.C. 842(d)) is amended—

9 (1) by striking “of Health, Education, and Wel-
10 fare”; and

1 (2) by striking the second sentence and insert-
2 ing the following: “Not later than 6 months after
3 the date of enactment of the Black Lung Health Im-
4 provements Act of 2013, the Secretary shall issue a
5 final regulation lowering permissible exposure levels
6 to respirable dust and updating sampling and test-
7 ing procedures, in order to provide the maximum
8 feasible protection from respirable dust, including
9 coal and silica dust, that is achievable through envi-
10 ronmental and engineering controls. Not later than
11 5 years after the date of issuance of such final regu-
12 lation, and once every 5 years thereafter, the Sec-
13 retary shall reexamine the incidence of pneumo-
14 coniosis in miners and, unless there is a decline in
15 pneumoconiosis, shall update the regulation.”.

16 **SEC. 3. BLACK LUNG MEDICAL REPORTS.**

17 The Black Lung Benefits Act (30 U.S.C. 901 et seq.)
18 is amended by inserting after section 402 the following:

19 **“SEC. 403. MEDICAL REPORTS.**

20 “In any claim for benefits for a miner under this title,
21 an operator that requires a miner to submit to a medical
22 examination regarding the miner’s respiratory or pul-
23 monary condition shall, not later than 14 days after the
24 miner has been examined, deliver to the claimant a com-
25 plete copy of the examining physician’s report. The exam-

1 ining physician’s report shall be in writing and shall set
2 out in detail the examiner’s findings, including any diag-
3 noses and conclusions and the results of any diagnostic
4 imaging techniques and tests that were performed on the
5 miner.”.

6 **SEC. 4. GAO REPORT ON BLACK LUNG DISEASE.**

7 (a) IN GENERAL.—Not later than 1 year after the
8 date of enactment of this Act, the Comptroller General
9 of the United States shall submit to Congress a report
10 on any barriers to health care faced by people with pneu-
11 moconiosis.

12 (b) CONTENTS.—The report required under sub-
13 section (a) shall include—

14 (1) a review of the application process, includ-
15 ing the appeals process, with respect to the Black
16 Lung Disability Trust Fund established by section
17 9501 of the Internal Revenue Code of 1986;

18 (2) an assessment of possible barriers to care
19 through the Black Lung Disability Trust Fund, and
20 the degree to which any barriers impact the ability
21 of patients with legitimate medical needs, particu-
22 larly those patients in rural areas, to access treat-
23 ment for pneumoconiosis;

1 (3) recommendations necessary to address
2 issues, if any, relating to patient access to care
3 through the Black Lung Disability Trust Fund; and

4 (4) an evaluation of whether the current benefit
5 payments authorized under the Black Lung Benefits
6 Act (30 U.S.C. 901 et seq.) as of the date of the re-
7 port, are sufficient to meet the expenses of disabled
8 miners and survivors.

9 **SEC. 5. REVIEW OF BLACK LUNG BENEFITS PROGRAM**

10 **FORMS.**

11 (a) REVIEW OF FEDERAL BLACK LUNG BENEFITS
12 PROGRAM FORMS.—Not later than 6 months after the
13 date of enactment of this Act, the Secretary of Labor shall
14 conduct a review of the forms related to obtaining workers'
15 compensation benefits under the Black Lung Benefits Act
16 (30 U.S.C. 901 et seq.) to determine any paperwork bar-
17 riers that may exist to speedily receiving and processing
18 pneumoconiosis benefits claims and the feasibility of re-
19 ducing the forms required of applicants to such program.

20 (b) REPORT TO CONGRESS.—Not later than 1 year
21 after the date of the enactment of this Act, the Secretary
22 of Labor shall prepare and submit a report to Congress
23 regarding—

24 (1) any changes that the Department has im-
25 plemented to reduce the forms and paperwork in-

1 volved in receiving and processing pneumoconiosis
2 claims under the Black Lung Benefits Act (30
3 U.S.C. 901 et seq.); and

4 (2) any administrative barriers identified in the
5 review conducted under subsection (a) that the De-
6 partment of Labor has addressed.

7 **SEC. 6. GRANT FUNDS TO STUDY THE PREVENTION AND**
8 **TREATMENT OF BLACK LUNG DISEASE.**

9 Section 14(d) of the Mine Improvement and New
10 Emergency Response Act of 2006 (30 U.S.C. 965(d)) is
11 amended—

12 (1) by striking “or to develop” and inserting
13 “to develop”; and

14 (2) by inserting “, or for research and outreach
15 related to the prevention and treatment of pneumo-
16 coniosis” before the period at the end.

17 **SEC. 7. LEGAL FEE PAYMENT PROGRAM.**

18 The Black Lung Benefits Act (30 U.S.C. 901 et seq.)
19 is amended by inserting after section 403, as added by
20 section 3, the following:

21 **“SEC. 404. LEGAL FEES.**

22 “(a) PROGRAM ESTABLISHED.—

23 “(1) IN GENERAL.—Not later than 180 days
24 after the date of enactment of the Black Lung
25 Health Improvements Act of 2013, the Secretary

1 shall establish an attorneys' fee payment program to
2 pay attorneys' fees, using amounts from the fund,
3 on behalf of claimants in qualifying claims.

4 “(2) QUALIFYING CLAIM.—A qualifying claim
5 for purposes of this section is a contested claim for
6 benefits under this title for which a final judgment
7 has not been entered within 1 year of the filing of
8 the claim.

9 “(3) USE OF PAYMENTS FROM THE FUND.—
10 Notwithstanding any other provision of law,
11 amounts in the fund shall be available for payments
12 authorized by the Secretary under the program
13 under this section.

14 “(b) PAYMENTS AUTHORIZED.—

15 “(1) IN GENERAL.—If a claimant for benefits is
16 a prevailing party on a qualifying claim before an
17 administrative law judge, the Benefits Review
18 Board, or a Federal court, and the judge, Board, or
19 court approves attorneys' fees for work done before
20 it, the Secretary shall, through the program under
21 this section, pay an amount of attorneys' fees not to
22 exceed \$1,500 at each stage of the administrative
23 and legal process.

24 “(2) MAXIMUM.—The program established
25 under this section shall not pay more than a total

1 of \$4,500 in attorneys' fees for any single qualifying
2 claim.

3 “(c) REIMBURSEMENT OF FUNDS.—In any case
4 where a qualifying claim results in a final order for com-
5 pensation, the employer subject to such claim shall reim-
6 burse the fund for any payments made under this section
7 on behalf of the claimant, subject to enforcement by the
8 Secretary under section 424 and in the same manner as
9 compensation orders are enforced under section 21(d) of
10 the Longshore and Harbor Workers Compensation Act
11 (33 U.S.C. 921(d)).

12 “(d) ADDITIONAL RULES.—Nothing in this section
13 shall limit or otherwise affect an employer's liability for
14 any attorneys' fees awarded by an administrative law
15 judge, the Benefits Review Board, or a Federal court, that
16 were not paid by the program under this section. Nothing
17 in this section shall limit or otherwise affect the ability
18 to use amounts provided through the fund to pay approved
19 attorneys' fees in claims for benefits under this title for
20 which a final judgment has been ordered, in cases where
21 the employer is unable to do so.

22 “(e) NO RECOUPMENT OF ATTORNEYS' FEES.—Any
23 payment for attorneys' fees made by the Secretary under
24 the program under this section shall not be recouped from
25 the claimant or the claimant's attorney.”.

1 **SEC. 8. BLACK LUNG BENEFITS ACT TECHNICAL AND CON-**
2 **FORMING AMENDMENTS.**

3 The Black Lung Benefits Act (30 U.S.C. 901 et seq.)
4 is amended—

5 (1) in section 401(a) (30 U.S.C. 901(a)), by in-
6 sserting “or who were found to be totally disabled by
7 such disease” after “such disease”;

8 (2) by striking subsection (a) of section 411 (20
9 U.S.C. 921) and inserting the following:

10 “(a) The Secretary shall, in accordance with the pro-
11 visions of this part, and the regulations promulgated by
12 the Secretary under this part, make payments of benefits
13 in respect of—

14 “(1) total disability of any miner due to pneu-
15 moconiosis;

16 “(2) the death of any miner whose death was
17 due to pneumoconiosis;

18 “(3) total disability of any miner at the time of
19 his death with respect to claims filed under part C
20 prior to January 1, 1982;

21 “(4) survivors’ benefits for any claim filed after
22 January 1, 2005, that is pending on or after March
23 23, 2010, where the miner is found entitled to re-
24 ceive benefits at the time of his death as a result of
25 a lifetime claim filed under part C; and

1 “(5) survivors’ benefits where the miner is
2 found entitled to receive benefits at the time of his
3 death as a result of a lifetime claim filed under part
4 C before January 1, 1982.”; and

5 (3) in section 412(a) (30 U.S.C. 922(a))—

6 (A) by striking paragraph (2) and insert-
7 ing the following:

8 “(2) In the case of a widow—

9 “(A) of a miner whose death is due to
10 pneumoconiosis;

11 “(B) in a claim filed after January 1,
12 2005, and that is pending on or after March
13 23, 2010, of a miner who is found entitled to
14 receive benefits at the time of the miner’s death
15 as a result of a lifetime claim filed under part
16 C;

17 “(C) of a miner who is found entitled to
18 receive benefits at the time of his death as a re-
19 sult of a lifetime claim filed under part C before
20 January 1, 1982; or

21 “(D) in a claim filed under part C of this
22 subchapter before January 1, 1982, of a miner
23 who was totally disabled by pneumoconiosis at
24 the time of his death,

1 benefits shall be paid to the miner's widow (if any)
2 at the rate the deceased miner would receive such
3 benefits if he were totally disabled.”;

4 (B) in paragraph (3)—

5 (i) by striking “(3) In the case” and
6 all that follows through “section 411(c)”
7 and inserting the following: “(3)(A) In the
8 case of the child or children of a miner de-
9 scribed in subparagraph (B)”;

10 (ii) by adding at the end the fol-
11 lowing:

12 “(B) Subparagraph (A) shall apply in the case
13 of any child or children—

14 “(i) of a miner whose death is due to pneu-
15 moconiosis;

16 “(ii) in a claim filed after January 1,
17 2005, that is pending on or after March 23,
18 2010, of a miner who is found entitled to re-
19 ceive benefits at the time of his death as a re-
20 sult of a lifetime claim filed under part C;

21 “(iii) of a miner who is found entitled to
22 receive benefits at the time of his death as a re-
23 sult of a lifetime claim filed under part C before
24 January 1, 1982;

1 “(iv) in a claim filed under part C before
2 January 1, 1982, of a miner who was totally
3 disabled by pneumoconiosis at the time of his
4 death;

5 “(v) of a widow who is found entitled to
6 receive benefits under this part at the time of
7 her death; or

8 “(vi) entitled to the payment of benefits
9 under paragraph (5) of section 411(c).”; and

10 (C) in paragraph (5), by striking “In the
11 case” and all that follows through “not survived
12 at the time of his death by a widow or a child,”
13 and inserting “In the case of the dependent
14 parent or parents of a miner who is not sur-
15 vived at the time of the miner’s death by a
16 widow or a child and (i) whose death is due to
17 pneumoconiosis, (ii) in a claim filed after Janu-
18 ary 1, 2005, that is pending on or after March
19 23, 2010, who is found entitled to receive bene-
20 fits at the time of his death as a result of a life-
21 time claim filed under part C, (iii) who is found
22 entitled to receive benefits at the time of his
23 death as a result of a lifetime claim filed under
24 part C before January 1, 1982, or (iv) in a
25 claim filed under part C before January 1,

1 1982, who was totally disabled by pneumo-
2 coniosis at the time of death,”.

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