

113TH CONGRESS
1ST SESSION

S. 805

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

IN THE SENATE OF THE UNITED STATES

APRIL 24, 2013

Mr. ROCKEFELLER (for himself, Mr. MANCHIN, Mr. HARKIN, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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, and 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 Mine and Workplace Safety and Health
6 Act of 2013”.

- 1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Findings.
 Sec. 3. References.

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION
 AUTHORITY

- Sec. 101. Independent accident investigations.
 Sec. 102. Subpoena authority and miner rights during inspections and investigations.
 Sec. 103. Designation of miner representative.
 Sec. 104. Additional amendments relating to inspections, investigations, and recordkeeping.

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

- Sec. 201. Significant and substantial violations.
 Sec. 202. Procedures and criteria for determining a pattern of violations.
 Sec. 203. Injunctive authority.
 Sec. 204. Revocation of approval of plans.
 Sec. 205. Challenging a decision to approve, modify, or revoke a coal or other mine plan.

TITLE III—PENALTIES

- Sec. 301. Civil penalties.
 Sec. 302. Civil and criminal liability of officers, directors, and agents.
 Sec. 303. Criminal penalties.
 Sec. 304. Commission review of penalty assessments.
 Sec. 305. Delinquent payments and prejudgment interest.

TITLE IV—WORKER RIGHTS AND PROTECTIONS

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

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 and additional technological improvements.
 Sec. 504. Technology related to respirable dust.
 Sec. 505. Refresher training on miner rights and responsibilities.
 Sec. 506. Additional training.
 Sec. 507. Brookwood-Sago mine safety grants.
 Sec. 508. Certification of personnel.
 Sec. 509. Electronic records requirement.

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

- Sec. 601. Definitions.
 Sec. 602. Assistance to States.
 Sec. 603. Black lung medical reports.

- Sec. 604. Study on workforce needs.
 Sec. 605. Mine Safety and Health Administration strategic planning.
 Sec. 606. Double encumbrance; succession plan.

TITLE VII—AMENDMENTS TO THE OCCUPATIONAL SAFETY AND
 HEALTH ACT OF 1970

- Sec. 701. Coverage of public employees.
 Sec. 702. Enhanced protections from retaliation.
 Sec. 703. Victims' rights.
 Sec. 704. Correction of serious, willful, or repeated violations pending contest
 and procedures for a stay.
 Sec. 705. Conforming amendments.
 Sec. 706. Civil penalties.
 Sec. 707. Criminal penalties.
 Sec. 708. Penalties.
 Sec. 709. Effective date.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Employers have an obligation to ensure a
 4 safe and healthy work environment for all employ-
 5 ees.

6 (2) To help fulfill that obligation, Congress
 7 must conduct oversight of the executive agencies re-
 8 sponsible for enforcing workplace safety laws and
 9 must revise and update Federal laws when necessary
 10 to protect the safety and health of the workforce of
 11 the United States.

12 (3) In response to several mining tragedies in
 13 early 2006, Congress quickly passed the most sweep-
 14 ing changes to mine safety laws in 30 years. The
 15 Mine Improvement and New Emergency Response
 16 Act of 2006 (Public Law 109–236, 120 Stat. 493),

1 also known as the “MINER Act”, was signed into
2 law on June 15, 2006.

3 (4) As a result of the MINER Act—

4 (A) coal miners are entitled to at least 2
5 hours of readily accessible oxygen supplies for
6 use in emergencies and additional oxygen sup-
7 plies every 30 minutes along escape routes;

8 (B) mines are required to implement emer-
9 gency response plans and have 2 rescue teams
10 located within one hour from the mine;

11 (C) mine operators are subjected to pen-
12 alties for failing to quickly notify the Mine
13 Safety and Health Administration about acci-
14 dents; and

15 (D) a new grant program was created to
16 provide mine safety training.

17 (5) Although the MINER Act made significant
18 improvements to mine rescue capabilities, Congress
19 was again reminded of the need to continually im-
20 prove and vigorously enforce our Federal mine safe-
21 ty laws when, on April 5, 2010, an explosion ripped
22 through the Upper Big Branch Mine in Montcoal,
23 West Virginia, killing 29 brave West Virginia coal
24 miners and seriously injuring another. This was the

1 worst coal mining disaster in the United States in
2 nearly 40 years.

3 (6) We must never forget those who have been
4 impacted by this tragedy—family members, friends,
5 coworkers, loved ones, and most importantly, the in-
6 dividuals who perished in the Upper Big Branch ex-
7 plosion: Carl “Pee Wee” Acord, Jason Matthew At-
8 kins, Christopher Lee Bell, Sr., Gregory Steven
9 Brock, Kenneth A. Chapman, Sr., Robert Eugene
10 Clark, Cory Davis, Charles Timothy Davis, Michael
11 Lee Elswick, William Ildon Griffith, Steven J.
12 “Smiley” Harrah, Edward “Dean” Jones, Richard
13 Keith Lane, William Roosevelt Lynch, Joe Marcum,
14 Ronald Lee Maynor, Nicolas D. McCroskey, James
15 “Eddie” Mooney, Adam K. Morgan, Rex Lane
16 Mullins, Joshua Scott Napper, Howard “Boone”
17 Payne, Jr., Dillard Earl “Dewey” Persinger, Joel R.
18 “Jody” Price, Gary Wayne Quarles, Deward Allan
19 Scott, Grover Dale Skeens, Benny Ray Willingham,
20 and Ricky L. Workman. Another miner, James
21 Woods, was seriously injured in the explosion and a
22 second survivor, Tim Blake, has been credited with
23 heroically attempting to save the lives of his fellow
24 miners by applying emergency breathing devices to
25 them while they were unconscious.

1 (7) Five Federal, State, and independent enti-
2 ties have conducted investigations into the Upper
3 Big Branch disaster. Together, these reports con-
4 clude that the Upper Big Branch disaster was a pre-
5 ventable explosion caused by a failure of the oper-
6 ator to follow known safety standards, including
7 those that are intended to prevent large-scale explo-
8 sions.

9 (8) The United States Attorney for the South-
10 ern District of West Virginia has launched a crimi-
11 nal investigation into the Upper Big Branch dis-
12 aster, which to date has resulted in the conviction of,
13 or guilty pleas from, 4 employees or former employ-
14 ees of the Upper Big Branch mine.

15 (9) In the 2 years following the Upper Big
16 Branch disaster, Congress has held a total of 9
17 hearings on the disaster and on mine safety gen-
18 erally.

19 (10) Congress enacted, as part of the Dodd-
20 Frank Wall Street Reform and Consumer Protection
21 Act (Public Law 111–203, 124 Stat. 1376), an
22 amendment requiring publicly traded mining compa-
23 nies to disclose serious safety violations to share-
24 holders, the public, and the Securities and Exchange
25 Commission.

1 (11) Congress appropriated \$22,000,000
2 through the Supplemental Appropriations Act, 2010
3 (Public Law 111–212) to reduce the backlog of ap-
4 peals at the Federal Mine Safety and Health Review
5 Commission, investigate the Upper Big Branch dis-
6 aster, and purchase emergency response equipment.
7 During the year that this funding was available, the
8 Federal Mine Safety and Health Review Commission
9 was able to hire 6 additional judges and support
10 staff and, along with the Department of Labor, was
11 able to dispose of 11,643 cases, including 6,924
12 cases that had been specifically targeted for backlog
13 reduction.

14 (12) In September 2010, the Mine Safety and
15 Health Administration issued an emergency tem-
16 porary standard that strengthened rock dusting re-
17 quirements to reduce the likelihood and severity of
18 explosions in underground mines. In June 2011, the
19 agency issued final regulations requiring mine opera-
20 tors to maintain incombustible content of combined
21 dust of at least 80 percent in underground mines.

22 (13) Since April 2010, the Mine Safety and
23 Health Administration has increased its enforcement
24 by implementing impact inspections that target vio-
25 lations at unsafe mines with poor compliance history

1 or specific safety concerns. As of March 2013, the
2 Administration had conducted 579 impact inspec-
3 tions, resulting in 10,036 citations, 946 orders, and
4 43 safeguards.

5 (14) The Mine Safety and Health Administra-
6 tion has also—

7 (A) revised the screening criteria for plac-
8 ing mines onto pattern of violations status
9 under section 104(e) of the Federal Mine Safe-
10 ty and Health Act of 1977 (30 U.S.C. 814(e)),
11 which subjects unsafe mines to increased en-
12 forcement and oversight;

13 (B) created a new online tool to allow op-
14 erators, miners, and the public to monitor
15 whether a mine could be subject to a pattern of
16 violations; and

17 (C) finalized new regulations that will
18 eliminate regulatory loopholes that have allowed
19 unsafe mines to avoid being placed onto pattern
20 of violations status altogether.

21 (15) In April 2011, for the first time in history
22 since the Federal Mine Safety and Health Act of
23 1977 (30 U.S.C. 801 et seq.) was enacted, the Mine
24 Safety and Health Administration placed 2 mines
25 onto pattern of violations status, and as of Novem-

1 ber 2012, had issued 98 letters notifying mines that
2 they faced a potential pattern of violations, which is
3 the regulatory precursor to being placed onto pat-
4 tern of violations status.

5 (16) The entities charged with investigating the
6 Upper Big Branch disaster have made several rec-
7 ommendations to improve the safety of miners that
8 can only be accomplished through the legislative
9 process. At this time, Congress has not passed com-
10 prehensive mine safety legislation that is critical to
11 improving the long-term structure of mine safety ef-
12 forts and providing the maximum level of protection
13 for our Nation’s miners and their families.

14 **SEC. 3. REFERENCES.**

15 Except in title VII and as otherwise expressly pro-
16 vided, whenever in this Act an amendment is expressed
17 as an amendment to a section or other provision, the ref-
18 erence shall be considered to be made to a section or other
19 provision of the Federal Mine Safety and Health Act of
20 1977 (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.
6 813(b)) is amended by striking “(b) For the purpose” and
7 inserting 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)(i) determine whether there were vio-
13 lations of law, mandatory health or safety
14 standards, or other requirements; and

15 “(ii) if there is evidence of conduct that
16 may constitute a violation of Federal criminal
17 law, refer such evidence to the Attorney General
18 of the United States; 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 ad-
24 dition 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 se-
7 verity 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
15 and Human Services shall appoint 5 mem-
16 bers for the Panel required under this
17 paragraph from among individuals who
18 have expertise in accident investigations,
19 mine engineering, or mine safety and
20 health that is relevant to the particular in-
21 vestigation.

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

1 occupational Safety and Health (referred to
2 in 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
8 to the same standards of ethical conduct
9 for persons employed by the Secretary.

10 “(iv) COMPOSITION.—The Secretary
11 of Health and Human Services—

12 “(I) shall appoint as members of
13 the Panel—

14 “(aa) 1 operator of a mine
15 or individual representing mine
16 operators; and

17 “(bb) 1 member of a labor
18 organization or other representa-
19 tive of miners; and

20 “(II) shall not appoint more than
21 1 of either type of individuals de-
22 scribed in items (aa) and (bb) as
23 members of the Panel.

24 “(v) STAFF AND EXPENSES.—The Di-
25 rector of NIOSH shall designate NIOSH

1 staff to facilitate the work of the Panel.
2 The Director may accept as staff personnel
3 on detail from other Federal agencies or
4 may re-employ annuitants. The detail of
5 personnel under this paragraph may be on
6 a non-reimbursable basis, and such detail
7 shall be without interruption or loss of civil
8 service status or privilege. The Director of
9 NIOSH shall have the authority to procure
10 on behalf of the Panel such materials, sup-
11 plies, or services, including technical ex-
12 perts, as requested in writing by a majority
13 of the Panel.

14 “(vi) COMPENSATION AND TRAVEL.—

15 All members of the Panel who are officers
16 or employees of the United States shall
17 serve without compensation in addition to
18 that received for their services as officers
19 or employees of the United States. Each
20 Panel member who is not an officer or em-
21 ployee of the United States shall be com-
22 pensated at a rate equal to the daily equiv-
23 alent of the annual rate of basic pay pre-
24 scribed for level IV of the Executive Sched-
25 ule under section 5315 of title 5, United

1 States Code, for each day (including travel
2 time) during which such member is en-
3 gaged in the performance of duties of the
4 Panel. The members of the Panel shall be
5 allowed travel expenses, including per diem
6 in lieu of subsistence, at rates authorized
7 for employees of agencies under subchapter
8 1 of chapter 57 of title 5, United States
9 Code, while away from their homes or reg-
10 ular places of business in the performance
11 of services for the Panel.

12 “(C) DUTIES.—The Panel shall—

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

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

21 “(I) the operator;

22 “(II) any contractors or other
23 persons engaged in mining-related
24 functions at the site;

1 “(III) any State agency with
2 oversight responsibilities;

3 “(IV) any agency or office within
4 the Department of Labor;

5 “(V) the Federal Mine Safety
6 and Health Review Commission; or

7 “(VI) any other person or entity
8 (including equipment manufacturers);

9 “(iii) review the determinations and
10 recommendations made by the Secretary
11 under paragraph (1);

12 “(iv) prepare a report that—

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

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

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

1 judgment of the Panel, would prevent
2 a recurrence at other mines; and

3 “(v) publish such findings and rec-
4 ommendations (excluding any portions
5 which the Attorney General requests that
6 the Secretary withhold in relation to a
7 criminal referral) and hold public meetings
8 to inform the mining community and fami-
9 lies of affected miners of the Panel’s find-
10 ings and recommendations.

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

19 “(E) MEMORANDUM OF UNDER-
20 STANDING.—Not later than 90 days after the
21 date of enactment of the Robert C. Byrd Mine
22 and Workplace Safety and Health Act of 2013,
23 the Secretary of Labor and the Secretary of
24 Health and Human Services shall conclude and

1 publically issue a memorandum of under-
2 standing that—

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

12 “(ii) ensures that Panel members or
13 staff will be able to participate in inves-
14 tigation activities (such as mine inspections
15 and interviews) related to the Secretary of
16 Labor’s investigation and will have full ac-
17 cess to documents that are assembled or
18 produced in such investigation, and en-
19 sures that the Secretary of Labor will
20 make available to the Panel all of the au-
21 thority provided to such Secretary under
22 this section, including subpoena authority,
23 to obtain information and witnesses which
24 may be requested by such Panel; and

1 “(iii) establishes such other arrange-
2 ments as are necessary to implement this
3 paragraph.

4 “(F) PROCEDURES.—Not later than 90
5 days after the date of enactment of the Robert
6 C. Byrd Mine and Workplace Safety and
7 Health Act of 2013, the Secretary of Health
8 and Human Services shall establish procedures
9 to ensure the consistency and effectiveness of
10 Panel investigations. In establishing such proce-
11 dures, such Secretary shall consult with inde-
12 pendent safety investigation agencies, sectors of
13 the mining industry, representatives of miners,
14 families of miners involved in fatal accidents,
15 State mine safety agencies, and mine rescue or-
16 ganizations. Such procedures shall include—

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

22 “(ii) provisions to ensure confiden-
23 tiality if requested by any witness, to the
24 extent permitted by law, and prevent con-

1 flicts of interest in witness representation;
2 and

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

7 “(G) SUBPOENAS; CONTEMPT; WIT-
8 NESSES.—

9 “(i) HEARINGS AND SUBPOENA AU-
10 THORITY.—For the purpose of carrying
11 out any investigation of any accident or
12 other occurrence relating to health or safe-
13 ty in a coal or other mine under this para-
14 graph, the Director of NIOSH shall, at the
15 request of a majority of the Panel or upon
16 the Director’s own initiative sign, and
17 issue subpoenas for the attendance and
18 testimony of witnesses and the production
19 of relevant papers, books, and documents,
20 and administer oaths. Witnesses sum-
21 moned shall be paid the same fees and
22 mileage that are paid witnesses in the
23 courts of the United States.

24 “(ii) CONTUMACY.—In case of contu-
25 macy or refusal to obey a subpoena served

1 upon any person under this subparagraph,
2 the district court of the United States for
3 any district in which such person is found,
4 resides, or transacts business, upon appli-
5 cation by the United States and after no-
6 tice to such person, shall have jurisdiction
7 to issue an order requiring such person to
8 appear and give testimony before the Di-
9 rector of NIOSH or Panel, or to appear
10 and produce documents before the Director
11 or Panel, or both, and any failure to obey
12 such order of the court may be punished
13 by such court as a contempt thereof.

14 “(iii) ADDITIONAL INVESTIGATIVE AU-
15 THORITY.—In carrying out inspections and
16 investigations under this paragraph, the
17 Director of NIOSH or the Panel, and the
18 staff of and attorneys representing the Di-
19 rector or Panel, are authorized to question
20 any individual privately. Under this sub-
21 paragraph, any individual who is willing to
22 speak with or provide a statement to the
23 Director or Panel, or the staff or attorneys
24 of the Director or Panel, may do so with-
25 out the presence, involvement, or knowl-

1 edge of the operator or the operator's
2 agents or attorneys. The Director or Panel
3 shall keep the identity of an individual pro-
4 viding such a statement confidential to the
5 extent permitted by law. Nothing in this
6 paragraph prevents any individual from
7 being represented by that individual's per-
8 sonal attorney or other representative.

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

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

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

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

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

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

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

2 Section 103(f) (30 U.S.C. 813(f)) is amended by in-
3 serting before the last sentence the following: “If any
4 miner is entrapped, disabled, killed, or otherwise prevented
5 as the result of an accident in such mine from designating
6 such a representative directly, such miner’s closest relative
7 may act on behalf of such miner in designating such a
8 representative. If any miner is not currently working in
9 such mine as the result of an accident in such mine, but
10 would be currently working in such mine but for such acci-
11 dent, such miner may designate such a representative. A
12 representative of miners shall have the right to participate
13 in any accident investigation the Secretary initiates pursu-
14 ant to subsection (b), including the right to participate
15 in investigative interviews and to review all relevant pa-
16 pers, books, documents and records produced in connec-
17 tion with the accident investigation, unless the Secretary,
18 in consultation with the Attorney General, excludes such
19 representative from the investigation on the grounds that
20 inclusion would interfere with or adversely impact a crimi-
21 nal investigation that is pending or under consideration.”.

22 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**
23 **SPECTIONS, INVESTIGATIONS, AND RECORD-**
24 **KEEPING.**

25 (a) HOURS OF INSPECTIONS.—Section 103(a) (30
26 U.S.C. 813(a)) is amended by inserting after the third

1 sentence the following: “Such inspections shall be con-
2 ducted during the various shifts and days of the week dur-
3 ing which miners are normally present in the mine to en-
4 sure that the protections of this Act are afforded to all
5 miners working all shifts. If an inspection of a working
6 section of a mine occurs during a shift on which a mecha-
7 nized mining unit is producing, or customarily produces,
8 coal on such section, then such inspection shall be con-
9 ducted while such unit is producing coal at a rate that
10 is reasonably consistent with the average rate of produc-
11 tion at the mine during the previous quarter.”.

12 (b) INCREASED TARGETED INSPECTIONS.—Section
13 103(a) (as amended by subsection (a)) is further amended
14 by inserting after the fifth sentence (as inserted by such
15 subsection) the following: “If the Secretary determines
16 that the operator has not properly maintained a record
17 of all violations of this Act (including any mandatory
18 health or safety standard or regulation promulgated under
19 this Act) for a mine, the Secretary shall provide, during
20 the 3-month period following such determination, a min-
21 imum of one spot inspection by his authorized representa-
22 tive of all or part of such mine, during every 15 working
23 days and at irregular intervals. Such inspections shall be
24 in addition to any other inspections required under this
25 section.”.

1 (c) INJURY AND ILLNESS REPORTING.—Section
2 103(d) (30 U.S.C. 813(d)) is amended by striking the last
3 sentence and inserting the following: “The records to be
4 kept and made available by the operator of the mine shall
5 include man-hours worked and occupational injuries and
6 illnesses, and shall be maintained separately for each mine
7 and be reported at a frequency determined by the Sec-
8 retary, but at not less than annually. Each operator shall
9 be responsible for reporting on all miners working at such
10 mine regardless of their employer, except that independent
11 contractors (within the meaning of section 3(d)) shall only
12 be responsible for reporting on miners in their employ or
13 under their direction or authority.”.

14 (d) ORDERS FOLLOWING AN ACCIDENT.—Section
15 103(k) (30 U.S.C. 813(k)) is amended by striking “, when
16 present,”.

17 (e) CONFLICT OF INTEREST IN THE REPRESENTA-
18 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) (as
19 amended by subsections (a) and (b)) is further amended
20 by adding at the end the following: “During inspections
21 and investigations under this section, and during any liti-
22 gation under this Act, no attorney shall represent or pur-
23 port to represent both the operator of a coal or other mine
24 and any other individual, unless such individual has know-
25 ingly and voluntarily waived all actual and reasonably

1 foreseeable conflicts of interest resulting from such rep-
2 resentation. The Secretary is authorized to take such ac-
3 tions as the Secretary considers appropriate to ascertain
4 whether such individual has knowingly and voluntarily
5 waived all such conflicts of interest. If the Secretary finds
6 that such an individual cannot be represented adequately
7 by such an attorney due to such conflicts of interest, the
8 Secretary may petition the appropriate United States Dis-
9 trict Court which shall have jurisdiction to disqualify such
10 attorney as counsel to such individual in the matter. The
11 Secretary may make such a motion as part of an ongoing
12 related civil action or as a miscellaneous action.”.

13 (f) ELECTRONIC DATABASE.—Section 103 (30
14 U.S.C. 813) is amended by adding at the end the fol-
15 lowing:

16 “(1) ELECTRONIC DATABASE.—The Secretary shall
17 establish and maintain a publicly available electronic data-
18 base containing current and historical data on the safety
19 records of each coal or other mine. Such database shall
20 be user-friendly and searchable, and shall have the ability
21 to provide aggregate data for each mine, each operator,
22 and each controller of a mine and the ability to compare
23 safety data between mines, operators, and controllers.”.

1 (g) FEDERAL-STATE COORDINATION.—Section 103
2 (as amended by subsection (f)) is further amended by add-
3 ing at the end the following:

4 “(m) FEDERAL-STATE COORDINATION.—

5 “(1) IN GENERAL.—To the maximum extent
6 practicable, when the Secretary identifies a mine as
7 having a significant or persistent safety or health
8 problem—

9 “(A) an authorized representative of the
10 Secretary shall request a meeting with the ap-
11 propriate State-level regulator to share the con-
12 cerns of the Secretary when the Secretary de-
13 termines that such actions would improve con-
14 ditions of the mine; and

15 “(B) the Secretary and the State-level reg-
16 ulator may develop a joint plan designed to cor-
17 rect the identified problem.

18 “(2) RULE OF CONSTRUCTION.—Nothing in
19 this subsection shall be construed to require the Sec-
20 retary to take action that could delay or compromise
21 any civil or criminal enforcement action or pro-
22 ceeding.”.

23 (h) OUTSIDE EXPERTS IN INVESTIGATIONS.—Sec-
24 tion 112 (30 U.S.C. 822) is amended—

1 (1) by striking “Except as provided” and in-
2 serting the following:

3 “(a) CIVIL LITIGATION REPRESENTATION.—Except
4 as provided”; and

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

6 “(b) MINING EXPERTS IN INVESTIGATIONS.—The
7 Attorney General shall designate 1 or more full-time em-
8 ployees with expertise in the mining industry to coordinate
9 with the Department of Labor and assist United States
10 attorneys in the investigation and prosecution of criminal
11 violations under this Act.”.

12 **TITLE II—ENHANCED**
13 **ENFORCEMENT AUTHORITY**

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

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

17 (1) in the first sentence—

18 (A) by striking “any mandatory health or
19 safety standard” and inserting “any provision
20 of this Act, including any mandatory health or
21 safety standard or regulation promulgated
22 under this Act”; and

23 (B) by striking “such mandatory health or
24 safety standards” and inserting “such provi-

1 sions, regulations, or mandatory health or safe-
2 ty standards”;

3 (2) in the second sentence, by striking “any
4 mandatory health or safety standard” and inserting
5 “any provision of this Act, including any mandatory
6 health or safety standard or regulation promulgated
7 under this Act,”; and

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

17 **SEC. 202. PROCEDURES AND CRITERIA FOR DETERMINING**
18 **A PATTERN OF VIOLATIONS.**

19 Section 104(e)(4) is amended to read as follows:

20 “(4) The criteria for determining when a pat-
21 tern of violations of mandatory health or safety
22 standards exists, and the requirements for the
23 issuance and termination of notice of a pattern of
24 violations, shall be the criteria and requirements in
25 the regulations promulgated by the Secretary under

1 part 104 of chapter I of title 30, Code of Federal
2 Regulations, as published on January 23, 2013 (78
3 Federal Register 5073 through 5074).”.

4 **SEC. 203. INJUNCTIVE AUTHORITY.**

5 Section 108(a)(2) (30 U.S.C. 818(a)(2)) is amended
6 by striking “a pattern of violation of” and all that follows
7 and inserting “a course of conduct that in the judgment
8 of the Secretary constitutes a continuing hazard to the
9 health or safety of miners, including violations of this Act
10 or of mandatory health or safety standards or regulations
11 under this Act.”.

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

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

14 (1) by redesignating subsection (d) as sub-
15 section (e); and

16 (2) by inserting after subsection (c) the fol-
17 lowing:

18 “(d) REVOCATION OF APPROVAL OF PLANS.—

19 “(1) REVOCATION.—If the Secretary finds that
20 any program or plan of an operator, or part thereof,
21 that was approved by the Secretary under this Act
22 is based on inaccurate information or that cir-
23 cumstances that existed when such plan was ap-
24 proved have materially changed and that continued
25 operation of such mine under such plan constitutes

1 a hazard to the safety or health of miners, the Sec-
2 retary shall revoke the approval of such program or
3 plan.

4 “(2) WITHDRAWAL ORDERS.—Upon revocation
5 of the approval of a program or plan under sub-
6 section (a), the Secretary may immediately issue an
7 order requiring the operator to cause all persons, ex-
8 cept those persons referred to in section 104(c), to
9 be withdrawn from such mine, and to be prohibited
10 from entering such mine, until the operator has sub-
11 mitted and the Secretary has approved a new plan.”.

12 **SEC. 205. CHALLENGING A DECISION TO APPROVE, MOD-**
13 **IFY, OR REVOKE A COAL OR OTHER MINE**
14 **PLAN.**

15 Section 105(e) (as redesignated by section 204(1))
16 (30 U.S.C. 815(e)) is amended by adding at the end the
17 following: “In any proceeding in which a party challenges
18 the Secretary’s decision regarding whether to approve,
19 modify, or revoke a coal or other mine plan under this
20 Act, the Commission and the courts shall affirm the Sec-
21 retary’s decision unless the challenging party establishes
22 that such decision was arbitrary, capricious, an abuse of
23 discretion, or otherwise not in accordance with law.”.

1 **TITLE III—PENALTIES**

2 **SEC. 301. CIVIL PENALTIES.**

3 (a) **MAXIMUM CIVIL PENALTIES.**—Section 110(a)(1)
4 (30 U.S.C. 820(a)(1)) is amended—

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

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

11 (b) **INCREASED CIVIL PENALTIES.**—Section 110(b)
12 (30 U.S.C. 820(b)) is amended by adding at the end the
13 following—

14 “(3) The operator of a coal or other mine may
15 be assessed a civil penalty of not more than
16 \$220,000 by the Secretary for—

17 “(A) any change in ventilation in a coal or
18 other mine, where such ventilation system or
19 control is required by a ventilation plan, safety
20 standard, or order, that is made without prior
21 approval from the Secretary;

22 “(B) a violation of a mandatory health or
23 safety standard requiring rock dusting;

1 “(C) a violation of the prohibition under
2 section 101 regarding providing advance notice
3 of an inspection;

4 “(D) a violation of a mandatory health or
5 safety standard requiring examinations of work
6 areas in an underground coal mine; or

7 “(E) a failure to keep the records required
8 for the mine by the Secretary in accordance
9 with this Act.

10 “(4) Notwithstanding any other provision of
11 this Act, an operator of a coal or other mine that
12 is in pattern of violations status under section
13 104(e) shall be assessed an increased civil penalty
14 for any violation of this Act, including any manda-
15 tory health or safety standard or regulation promul-
16 gated under this Act. Such increased penalty shall
17 be twice the amount that would otherwise be as-
18 sessed for the violation under this Act, including the
19 regulations promulgated under this Act, subject to
20 the maximum civil penalty established for the viola-
21 tion under this Act.”.

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

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

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

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

9 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**
10 **RECTORS, AND AGENTS.**

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

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

1 ment that may be imposed upon a person under this sec-
2 tion.”.

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

4 (a) INTENT REQUIREMENTS FOR CRIMINAL PEN-
5 ALTY STANDARDS.—Section 110(d) (30 U.S.C. 820(d)) is
6 amended—

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

9 (2) by striking “\$250,000, or by imprisonment
10 for not more than one year” and inserting
11 “\$1,000,000, or by imprisonment for not more than
12 5 years”; and

13 (3) by striking “\$500,000, or by imprisonment
14 for not more than five years” and inserting
15 “\$2,000,000, or by imprisonment for not more than
16 10 years”.

17 (b) CRIMINAL PENALTY FOR RETALIATION.—Section
18 110(d) is further amended—

19 (1) by inserting “(1)” before “Any operator”;
20 and

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

22 “(2) Whoever knowingly takes any action that is di-
23 rectly or indirectly harmful to any person, including action
24 that interferes with the lawful employment or livelihood
25 of any person, because such person has provided an au-

1 thORIZED representative of the Secretary or another law en-
 2 forcement officer with any information related to the exist-
 3 ence of a health or safety violation or an unhealthful or
 4 unsafe condition, policy, or practice under this Act shall
 5 be fined under title 18, United States Code, imprisoned
 6 for not more than 10 years, or both.”.

7 (c) ADVANCE NOTICE OF INSPECTIONS.—

8 (1) IN GENERAL.—Section 110(e) (30 U.S.C.
 9 820(e)) is amended—

10 (A) by striking “Unless” and inserting
 11 “(1) Unless”; and

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

13 “(2) Unless otherwise authorized by this Act, any op-
 14 erator, agent or contractor of any operator, miner, inspec-
 15 tor, employee of the Administration, or State mine inspec-
 16 tor, that knowingly gives, causes to give, or attempts to
 17 give or cause to give advance notice of any inspection to
 18 be conducted under this Act shall be fined under title 18,
 19 United States Code, imprisoned for not more than 5 years,
 20 or both.”.

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

24 “(e) POSTING OF ADVANCE NOTICE PENALTIES.—
 25 Each operator of a coal or other mine shall post, on the

1 bulletin board described in subsection (a) and in a con-
 2 spicuous place near each staffed entrance onto the mine
 3 property, a notice stating, in a form and manner to be
 4 prescribed by the Secretary—

5 “(1) that giving, causing to give, or attempting
 6 to give or cause to give advance notice of any inspec-
 7 tion to be conducted under this Act is unlawful pur-
 8 suant to section 110(e); and

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

11 **SEC. 304. COMMISSION REVIEW OF PENALTY ASSESS-**
 12 **MENTS.**

13 Section 110(i) (30 U.S.C. 820(i)) is amended by
 14 striking “In assessing civil monetary penalties, the Com-
 15 mission shall consider” and inserting the following: “In
 16 any review of a citation and proposed penalty assessment
 17 contested by an operator, the Commission shall assess not
 18 less than the penalty derived by using the same method-
 19 ology (including any point system) prescribed in regula-
 20 tions under this Act, so as to ensure consistency in oper-
 21 ator penalty assessments, except that the Commission may
 22 assess a penalty for less than the amount that would result
 23 from the utilization of such methodology if the Commis-
 24 sion finds that there are extraordinary circumstances. If
 25 there is no such methodology prescribed for a citation or

1 there are such extraordinary circumstances, the Commis-
2 sion shall assess the penalty by considering”.

3 **SEC. 305. DELINQUENT PAYMENTS AND PREJUDGMENT IN-**
4 **TEREST.**

5 (a) PRE-FINAL ORDER INTEREST.—Section 110(j)
6 (30 U.S.C. 820(j)) is amended by striking the second and
7 third sentences and inserting the following: “Pre-final
8 order interest on such penalties shall begin to accrue on
9 the date the operator contests a citation issued under this
10 Act, including any mandatory health or safety standard
11 or regulation promulgated under this Act, and shall end
12 upon the issuance of the final order. Such pre-final order
13 interest shall be calculated at the current underpayment
14 rate determined by the Secretary of the Treasury pursu-
15 ant to section 6621 of the Internal Revenue Code of 1986,
16 and shall be compounded daily. Post-final order interest
17 shall begin to accrue 30 days after the date a final order
18 of the Commission or the court is issued, and shall be
19 charged at the rate of 8 percent per annum.”.

20 (b) ENSURING PAYMENT OF PENALTIES.—

21 (1) AMENDMENTS.—Section 110 (30 U.S.C.
22 820) is further amended—

23 (A) by redesignating subsection (l) as sub-
24 section (m); and

1 (B) by inserting after subsection (k) the
2 following:

3 “(l) ENSURING PAYMENTS OF PENALTIES.—

4 “(1) DELINQUENT PAYMENT LETTER.—If the
5 operator of a coal or other mine fails to pay any civil
6 penalty assessment that has become a final order of
7 the Commission or a court within 45 days after such
8 assessment became a final order, the Secretary shall
9 send the operator a letter advising the operator of
10 the consequences under this subsection of such fail-
11 ure to pay. The letter shall also advise the operator
12 of the opportunity to enter into or modify a payment
13 plan with the Secretary based upon a demonstrated
14 inability to pay, the procedure for entering into such
15 plan, and the consequences of not entering into or
16 not complying with such plan.

17 “(2) WITHDRAWAL ORDERS FOLLOWING FAIL-
18 URE TO PAY.—If an operator that receives a letter
19 under paragraph (1) has not paid the assessment by
20 the date that is 180 days after such assessment be-
21 came a final order and has not entered into a pay-
22 ment plan with the Secretary, the Secretary shall
23 issue an order requiring such operator to cause all
24 persons, except those referred to in section 104(e),
25 to be withdrawn from, and to be prohibited from en-

1 tering, the mine that is covered by the final order
2 described in paragraph (1), until the operator pays
3 such assessment in full (including interest and ad-
4 ministrative costs) or enters into a payment plan
5 with the Secretary. If such operator enters into a
6 payment plan with the Secretary and at any time
7 fails to comply with the terms specified in such pay-
8 ment plan, the Secretary shall issue an order requir-
9 ing such operator to cause all persons, except those
10 referred to in section 104(c), to be withdrawn from
11 the mine that is covered by such final order, and to
12 be prohibited from entering such mine, until the op-
13 erator rectifies the noncompliance with the payment
14 plan in the manner specified in such payment
15 plan.”.

16 (2) APPLICABILITY AND EFFECTIVE DATE.—
17 The amendments made by paragraph (1) shall apply
18 to all unpaid civil penalty assessments under the
19 Federal Mine Safety and Health Act of 1977 (30
20 U.S.C. 801 et seq.), except that, for any unpaid civil
21 penalty assessment that became a final order of the
22 Commission or a court before the date of enactment
23 of this Act, the time periods under section 110(l) of
24 the Federal Mine Safety and Health Act of 1977 (as
25 amended) (30 U.S.C. 820(l)) shall be calculated as

1 beginning on the date of enactment of this Act in-
2 stead of on the date of the final order.

3 **TITLE IV—WORKER RIGHTS AND** 4 **PROTECTIONS**

5 **SEC. 401. PROTECTION FROM RETALIATION.**

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

8 “(c) PROTECTION FROM RETALIATION.—

9 “(1) RETALIATION PROHIBITED.—

10 “(A) RETALIATION FOR COMPLAINT OR
11 TESTIMONY.—No person shall discharge or in
12 any manner discriminate against or cause to be
13 discharged or cause discrimination against or
14 otherwise interfere with the exercise of the stat-
15 utory rights of any miner or other employee of
16 an operator, any representative of miners, or
17 any applicant for employment—

18 “(i) because such miner or other em-
19 ployee, representative, or applicant for em-
20 ployment—

21 “(I) has filed or made a com-
22 plaint, or is about to file or make a
23 complaint, including a complaint noti-
24 fying the operator or the operator’s
25 agent, or the representative of the

1 miners at the coal or other mine, of
2 an alleged danger or safety or health
3 violation in a coal or other mine;

4 “(II) has instituted or caused to
5 be instituted, or is about to institute
6 or cause to be instituted, any pro-
7 ceeding under or related to this Act or
8 has testified or is about to testify in
9 any such proceeding;

10 “(III) has exercised, on behalf of
11 him or herself or others, any right af-
12 forded by this Act, or has reported
13 any injury or illness to an operator or
14 agent;

15 “(IV) has testified or is about to
16 testify before Congress or any Federal
17 or State proceeding related to safety
18 or health in a coal or other mine; or

19 “(V) refused to violate any provi-
20 sion of this Act (including any manda-
21 tory health or safety standard or reg-
22 ulation promulgated under this Act);

23 “(ii) because such miner is the subject
24 of medical evaluations and potential trans-

1 fer under a standard published pursuant to
2 section 101;

3 “(iii) where the discharge, discrimina-
4 tion or other retaliation was based on a
5 suspicion or belief that such miner or other
6 employee, representative, or applicant, or
7 engaged in, or is about to engage in, any
8 of the activities described in clause (i); or

9 “(iv) because the spouse, sibling,
10 child, or parent of the miner or other em-
11 ployee or applicant for employment—

12 “(I) is a miner or other employee
13 or applicant at a mine under the con-
14 trol of the same operator; and

15 “(II) has engaged in activity that
16 is protected under clause (i), (ii), or
17 (iii).

18 “(B) RETALIATION FOR REFUSAL TO PER-
19 FORM DUTIES.—

20 “(i) IN GENERAL.—No person shall
21 discharge or in any manner discriminate
22 against a miner or other employee of an
23 operator for refusing to perform the min-
24 er’s or other employee’s duties if the miner
25 or other employee has a good-faith and

1 reasonable belief that performing such du-
2 ties would pose a safety or health hazard
3 to the miner or other employee or to any
4 other miner or employee.

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

21 “(2) COMPLAINT.—Any miner or other em-
22 ployee, representative of miners, or applicant for em-
23 ployment who believes that he or she has been dis-
24 charged, disciplined, or otherwise discriminated
25 against by any person in violation of paragraph (1)

1 may file a complaint with the Secretary alleging
2 such discrimination not later than 180 days after
3 the later of the last date on which an alleged viola-
4 tion of such paragraph occurs or the date on which
5 the miner or other employee or representative knows
6 or should reasonably have known that such alleged
7 violation occurred.

8 “(3) INVESTIGATION AND HEARING.—

9 “(A) COMMENCEMENT OF INVESTIGATION
10 AND INITIAL DETERMINATION.—Upon receipt
11 of such complaint, the Secretary shall—

12 “(i) forward a copy of the complaint
13 to the respondent;

14 “(ii) commence an investigation with-
15 in 15 days of the Secretary’s receipt of the
16 complaint; and

17 “(iii) as soon as practicable after com-
18 mencing such investigation, make the de-
19 termination required under subparagraph
20 (B) regarding the reinstatement of the
21 miner or other employee.

22 “(B) REINSTATEMENT.—If the Secretary
23 finds that such complaint was not frivolously
24 brought, the Commission, on an expedited basis
25 upon application of the Secretary, shall order

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

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

1 “(i) providing the respondent an op-
2 portunity to submit to the Secretary a
3 written response to the complaint and to
4 present statements from witnesses or pro-
5 vide evidence; and

6 “(ii) providing the complainant an op-
7 portunity to receive any statements or evi-
8 dence provided to the Secretary and to
9 provide additional information or evidence,
10 or to rebut any statements or evidence.

11 “(D) ACTION BY THE SECRETARY.—If,
12 upon such investigation, the Secretary deter-
13 mines that the provisions of this subsection
14 have been violated, the Secretary shall imme-
15 diately file a complaint with the Commission,
16 with service upon the alleged violator and the
17 miner or other employee, representative of min-
18 ers, or applicant for employment alleging such
19 discrimination or interference and propose an
20 order granting appropriate relief.

21 “(E) ACTION OF THE COMMISSION.—The
22 Commission shall afford an opportunity for a
23 hearing on the record (in accordance with sec-
24 tion 554 of title 5, United States Code, but
25 without regard to subsection (a)(3) of such sec-

1 tion) and thereafter shall issue an order, based
2 upon findings of fact, affirming, modifying, or
3 vacating the Secretary's proposed order, or di-
4 recting other appropriate relief. Such order
5 shall become final 30 days after its issuance.
6 The complaining miner or other employee, rep-
7 resentative, or applicant for employment may
8 present additional evidence on his or her own
9 behalf during any hearing held pursuant to this
10 paragraph.

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

17 “(i) the rehiring or reinstatement of
18 the miner or other employee with back pay
19 and interest and without loss of position or
20 seniority, and restoration of the terms,
21 rights, conditions, and privileges associated
22 with the complainant's employment;

23 “(ii) any other compensatory and con-
24 sequential damages sufficient to make the

1 complainant whole, and exemplary dam-
2 ages where appropriate; and

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

14 “(4) NOTICE TO AND ACTION OF COMPLAIN-
15 ANT.—

16 “(A) NOTICE TO COMPLAINANT.—Not
17 later than 90 days after the receipt of a com-
18 plaint filed under paragraph (2), the Secretary
19 shall notify, in writing, the miner or other em-
20 ployee, representative of miners, or applicant
21 for employment of his determination whether a
22 violation has occurred.

23 “(B) ACTION OF COMPLAINANT.—If the
24 Secretary, upon investigation, determines that
25 the provisions of this subsection have not been

1 violated, the complainant shall have the right,
2 within 30 days after receiving notice of the Sec-
3 retary's determination, to file an action in his
4 or her own behalf before the Commission,
5 charging discrimination or interference in viola-
6 tion of paragraph (1).

7 “(C) HEARING AND DECISION.—The Com-
8 mission shall afford an opportunity for a hear-
9 ing on the record (in accordance with section
10 554 of title 5, United States Code, but without
11 regard to subsection (a)(3) of such section),
12 and thereafter shall issue an order, based upon
13 findings of fact, dismissing or sustaining the
14 complainant's charges and, if the charges are
15 sustained, granting such relief as it deems ap-
16 propriate as described in paragraph (3)(F).
17 Such order shall become final 30 days after its
18 issuance.

19 “(5) BURDEN OF PROOF.—In adjudicating a
20 complaint pursuant to this subsection, the Commis-
21 sion may determine that a violation of paragraph (1)
22 has occurred only if the complainant demonstrates
23 that any conduct described in paragraph (1) with re-
24 spect to the complainant was a contributing factor
25 in the adverse action alleged in the complaint. A de-

1 cision or order that is favorable to the complainant
2 shall not be issued pursuant to this subsection if the
3 respondent demonstrates by clear and convincing
4 evidence that the respondent would have taken the
5 same adverse action in the absence of such conduct.

6 “(6) ATTORNEY’S FEES.—Whenever an order is
7 issued sustaining the complainant’s charges under
8 this subsection, a sum equal to the aggregate
9 amount of all costs and expenses, including attor-
10 ney’s fees, as determined by the Commission to have
11 been reasonably incurred by the complainant for, or
12 in connection with, the institution and prosecution of
13 such proceedings, shall be assessed against the per-
14 son committing such violation. The Commission
15 shall determine whether such costs and expenses
16 were reasonably incurred by the complainant without
17 reference to whether the Secretary also participated
18 in the proceeding.

19 “(7) EXPEDITED PROCEEDINGS; JUDICIAL RE-
20 VIEW.—Proceedings under this subsection shall be
21 expedited by the Secretary and the Commission. Any
22 order issued by the Commission under this sub-
23 section shall be subject to judicial review in accord-
24 ance with section 106. Violations by any person of

1 paragraph (1) shall be subject to the provisions of
2 sections 108 and 110(a)(4).

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

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

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

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

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

17 “(a) PROTECTION FROM LOSS OF PAY.—

18 “(1) WITHDRAWAL ORDER.—If a coal or other
19 mine or area of such mine is closed by an order
20 issued under section 103, 104, 107, 108, or 110, all
21 miners who are idled by such order shall be entitled,
22 regardless of the result of any review of such order,
23 to full compensation by the operator at their regular
24 rates of pay and in accordance with their regular

1 schedules of pay for the entire period for which they
2 are idled.

3 “(2) CLOSURE IN ADVANCE OF ORDER.—If the
4 Secretary finds that such mine or such area of a
5 mine was closed by the operator in anticipation of
6 the issuance of such an order, all miners who are
7 idled by such closure shall be entitled to full com-
8 pensation by the operator at their regular rates of
9 pay and in accordance with their regular schedules
10 of pay, from the time of such closure until such time
11 as the Secretary authorizes reopening of such mine
12 or such area of the mine.

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

25 “(b) ENFORCEMENT.—

1 “(1) COMMISSION ORDERS.—The Commission
2 shall have authority to order compensation due
3 under this section upon the filing of a complaint by
4 a miner or a miner’s representative and after oppor-
5 tunity for a hearing on the record subject to section
6 554 of title 5, United States Code. Whenever the
7 Commission issues an order sustaining the complaint
8 under this subsection in whole or in part, the Com-
9 mission shall award the complainant reasonable at-
10 torneys’ fees and costs.

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

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

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

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

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

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

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

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

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

13 “(C) Not later than 90 days after the date of enact-
14 ment of the Robert C. Byrd Mine and Workplace Safety
15 and Health Act of 2013, the Secretary shall promulgate
16 interim final rules implementing the requirements of sub-
17 paragraphs (A) and (B).”

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

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

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

23 “(1) IN GENERAL.—Where rock”;

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

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

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

6 “(2) METHODS OF MEASUREMENT.—

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

15 “(B) DIRECT READING MONITORS.—In
16 order to ensure timely assessment and compli-
17 ance with the requirements of subparagraph
18 (A), the Secretary shall, beginning not later
19 than 180 days after the date of enactment of
20 the Robert C. Byrd Mine and Workplace Safety
21 and Health Act of 2013, require operators to
22 measure total incombustible content in samples
23 of combined coal dust, rock dust, and other
24 dust, using direct reading monitors that the
25 Secretary has approved for use in an under-

1 ground coal mine, such as coal dust explosibility
2 monitors.

3 “(C) REGULATIONS.—The Secretary shall,
4 by not later than 180 days after the date of en-
5 actment of the Robert C. Byrd Mine and Work-
6 place Safety and Health Act of 2013, promul-
7 gate an interim final rule that prescribes meth-
8 ods for sampling of total incombustible content
9 (or an equivalent measure of explosibility) in
10 samples of combined coal dust, rock dust, and
11 other dust using direct reading monitors and
12 includes requirements for locations, methods,
13 and intervals for mandatory operator sampling.

14 “(D) RECOMMENDATIONS.—Not later than
15 1 year after the date of enactment of the Rob-
16 ert C. Byrd Mine and Workplace Safety and
17 Health Act of 2013, the Secretary of Health
18 and Human Services shall, based upon the lat-
19 est research, recommend to the Secretary of
20 Labor any revisions to the mandatory operator
21 sampling locations, methods, and intervals in-
22 cluded in the interim final rule described in
23 subparagraph (C) that may be warranted in
24 light of such research.”.

1 (b) REPORT.—Not later than 1 year after the date
2 of enactment of this Act, the Secretary of Health and
3 Human Services, in consultation with the Secretary of
4 Labor, shall prepare and submit, to the Committee on
5 Education and the Workforce of the House of Representa-
6 tives and the Committee on Health, Education, Labor,
7 and Pensions of the Senate, a report—

8 (1) regarding whether any direct reading mon-
9 itor described in section 304(d)(2)(B) of the Federal
10 Mine Safety and Health Act of 1977 (30 U.S.C.
11 864(d)(2)(B)) is sufficiently reliable and accurate
12 for the enforcement of the mandatory health or safe-
13 ty standards by the Secretary of Labor under such
14 Act, and whether additional improvement to such di-
15 rect reading monitor, or additional verification re-
16 garding reliability and accuracy, would be needed for
17 enforcement purposes; and

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

20 (c) ADDITIONAL ROCK DUST REPORTING.—Section
21 103(h) (30 U.S.C. 813(h)) is amended by inserting after
22 the first sentence the following: “An operator of a coal
23 or other mine shall, as part of the recordkeeping require-
24 ments of this Act, maintain up-to-date records of the
25 amount of rock dust purchased and dispersed.”.

1 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS AND ADDI-**
2 **TIONAL TECHNOLOGICAL IMPROVEMENTS.**

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

5 “(u) **ATMOSPHERIC MONITORING SYSTEMS.**—Not
6 later than 1 year after the date of enactment of the Robert
7 C. Byrd Mine and Workplace Safety and Health Act of
8 2013, the Secretary shall promulgate regulations requiring
9 that each operator of an underground coal mine install
10 atmospheric monitoring systems that—

11 “(1) protect miners where the miners normally
12 work and travel;

13 “(2) provide real-time information regarding
14 methane and carbon monoxide levels, and airflow di-
15 rection, as appropriate, with sensing, annunciating,
16 and recording capabilities; and

17 “(3) can, to the maximum extent practicable,
18 withstand explosions and fires.

19 “(v) **ADDITIONAL TECHNOLOGICAL IMPROVE-**
20 **MENTS.**—Not later than 2 years after the date of enact-
21 ment of the Robert C. Byrd Mine and Workplace Safety
22 and Health Act of 2013, the Secretary shall promulgate
23 regulations requiring that mining equipment used in a coal
24 mine incorporate an atmospheric monitoring and record-
25 ing device that samples and records the methane, oxygen,
26 carbon monoxide, and coal dust levels in the mine.”.

1 “(w) PROXIMITY DETECTORS.—Not later than 6
2 months after the date of enactment of the Robert C. Byrd
3 Mine and Workplace Safety and Health Act of 2013, the
4 Secretary shall promulgate regulations requiring that min-
5 ing equipment and other mobile equipment incorporate
6 proximity detectors.”.

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

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

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

11 (2) by striking the second sentence and insert-
12 ing the following: “Not later than 6 months after
13 the date of enactment of the Robert C. Byrd Mine
14 and Workplace Safety and Health Act of 2013, the
15 Secretary shall issue a final regulation lowering per-
16 missible exposure levels to respirable dust and up-
17 dating sampling and testing procedures, in order to
18 provide the maximum feasible protection from res-
19 pirable dust, including coal and silica dust, that is
20 achievable through environmental controls. Not later
21 than 5 years after the date of issuance of such final
22 regulation, and once every 5 years thereafter, the
23 Secretary shall reexamine the incidence of pneumo-
24 coniosis in miners and, unless there is a decline in
25 pneumoconiosis, shall update the regulation.”.

1 **SEC. 505. REFRESHER TRAINING ON MINER RIGHTS AND**
2 **RESPONSIBILITIES.**

3 (a) IN GENERAL.—Section 115(a)(3) (30 U.S.C.
4 825(a)(3)) is amended to read as follows:

5 “(3) all miners shall receive not less than 9
6 hours of refresher training not less frequently than
7 once every 12 months, and such training shall in-
8 clude one hour of training on the statutory rights
9 and responsibilities of miners and their representa-
10 tives under this Act and other applicable Federal
11 and State law, pursuant to a program of instruction
12 developed by the Secretary and delivered by an em-
13 ployee of the Administration or by a trainer ap-
14 proved by the Administration that is a party inde-
15 pendent from the operator;”.

16 (b) TIMING OF INITIAL STATUTORY RIGHTS TRAIN-
17 ING.—Notwithstanding section 115 of the Federal Mine
18 Safety and Health Act of 1977 (as amended by subsection
19 (a)) (30 U.S.C. 825) or the health and safety training pro-
20 gram approved under such section, an operator shall en-
21 sure that all miners already employed by the operator on
22 the date of enactment of this Act shall receive the one
23 hour of statutory rights and responsibilities training de-
24 scribed in section 115(a)(3) of such Act by not later than
25 180 days after such date.

1 **SEC. 506. ADDITIONAL TRAINING.**

2 (a) AUTHORITY TO MANDATE ADDITIONAL TRAIN-
3 ING.—

4 (1) IN GENERAL.—Section 115 (30 U.S.C. 825)
5 is further amended by redesignating subsection (e)
6 as subsection (f) and inserting after subsection (d)
7 the following:

8 “(e) AUTHORITY TO MANDATE ADDITIONAL TRAIN-
9 ING.—

10 “(1) IN GENERAL.—The Secretary is authorized
11 to issue an order requiring that an operator of a
12 coal or other mine provide additional training be-
13 yond what is otherwise required by law, and speci-
14 fying the time period within which such training
15 shall be provided, if the Secretary finds that—

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

18 “(ii) such mine has experienced accident
19 and injury rates, citations for violations of this
20 Act (including mandatory health or safety
21 standards or regulations promulgated under
22 this Act), citations for significant and substan-
23 tial violations, or withdrawal orders issued
24 under this Act, at a rate above the average for
25 mines of similar size and type; and

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

3 “(2) WITHDRAWAL ORDER.—If the operator
4 fails to provide training ordered under paragraph
5 (1) within the specified time, the Secretary shall
6 issue an order requiring such operator to cause all
7 affected persons, except those persons referred to in
8 section 104(c), to be withdrawn, and to be prohib-
9 ited from entering such mine, until such operator
10 has provided such training.”.

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

16 (b) ADDITIONAL TRAINING.—Section 115(a) (30
17 U.S.C. 825(a)) is amended—

18 (1) in paragraph (5), by striking the period and
19 inserting “; and”; and

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

21 “(6) each miner in an underground coal mine
22 shall receive quarterly training on the use of self-res-
23 cue devices, which shall be conducted in cir-
24 cumstances that approximate actual operating cir-
25 cumstances as closely as practicable, including prac-

1 tice during production events and during shift
2 changes.”.

3 **SEC. 507. BROOKWOOD-SAGO MINE SAFETY GRANTS.**

4 Section 14(e)(2) of the Mine Improvement and New
5 Emergency Response Act of 2006 (30 U.S.C. 965(e)(2))
6 is amended by inserting before the period “, and under-
7 ground mine rescue training activities that simulate mine
8 accident conditions”.

9 **SEC. 508. CERTIFICATION OF PERSONNEL.**

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

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

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

1 “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-
2 MENTS AND PROCEDURES.—

3 “(1) IN GENERAL.—Not later than 1 year after
4 the date of enactment of the Robert C. Byrd Mine
5 and Workplace Safety and Health Act of 2013, the
6 Secretary shall issue mandatory standards to estab-
7 lish—

8 “(A) requirements for such certification,
9 registration, qualification, or other approval, in-
10 cluding the experience, examinations, and ref-
11 erences that may be required as appropriate;

12 “(B) time limits for such certifications and
13 procedures for obtaining and renewing such cer-
14 tification, registration, qualification, or other
15 approval; and

16 “(C) procedures and criteria for revoking
17 such certification, registration, qualification, or
18 other approval, including procedures that en-
19 sure that the Secretary responds to requests for
20 revocation.

21 “(2) COORDINATION WITH STATES.—In devel-
22 oping the standards under paragraph (1), the Sec-
23 retary shall consult with States that have miner cer-
24 tification programs to ensure effective coordination
25 with existing State standards and requirements for

1 certification. The standards required under para-
2 graph (1) may provide that the certification, reg-
3 istration, qualification, or other approval of the
4 State in which the coal or other mine is located sat-
5 isfies the requirement of subsection (a) if the State’s
6 program of certification, registration, qualification,
7 or other approval is no less stringent than the stand-
8 ards established by the Secretary under paragraph
9 (1).

10 “(c) OPERATOR FEES FOR CERTIFICATION.—

11 “(1) ASSESSMENT AND COLLECTION.—Begin-
12 ning 180 days after the date of enactment of the
13 Robert C. Byrd Mine and Workplace Safety and
14 Health Act of 2013, the Secretary shall assess and
15 collect fees, in accordance with this subsection, from
16 each operator for each person certified under this
17 section. Fees shall be assessed and collected in
18 amounts determined by the Secretary as necessary
19 to fund the certification programs established under
20 this section.

21 “(2) MINE SAFETY AND HEALTH CERTIFI-
22 CATION FUND.—There is established in the Treasury
23 of the United States a separate account for the de-
24 posit of fees collected under this subsection to be
25 known as the Mine Safety and Health Certification

1 Fund. The Secretary shall deposit any fees collected
2 pursuant to paragraph (1) into the fund.

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

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

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

23 “(d) CITATION; WITHDRAWAL ORDER.—Any oper-
24 ator who permits a person to perform any of the health
25 or safety related functions described in subsection (a)

1 without a current certification that meets the require-
2 ments of this section shall be considered to have com-
3 mitted an unwarrantable failure under section 104(d)(1),
4 and the Secretary shall issue an order requiring that the
5 miner be withdrawn or reassigned to duties that do not
6 require such certification.”.

7 (b) CONFORMING AMENDMENTS.—The Act is amend-
8 ed—

9 (1) in section 318 (30 U.S.C. 878)—

10 (A) by striking subsections (a) and (b);

11 (B) in subsection (c), by redesignating
12 paragraphs (1) through (3) as subparagraphs
13 (A) through (C), respectively;

14 (C) in subsection (g), by redesignating
15 paragraphs (1) through (4) as subparagraphs
16 (A) through (D), respectively; and

17 (D) by redesignating subsections (e)
18 through (j) as paragraphs (1) through (8), re-
19 spectively; and

20 (2) by redesignating section 214 as section 114.

21 **SEC. 509. ELECTRONIC RECORDS REQUIREMENT.**

22 Section 103 is amended by adding at the end the fol-
23 lowing:

24 “(n) ELECTRONIC RECORDS.—

1 “(1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of the Robert C. Byrd
3 Mine and Workplace Safety and Health Act of 2013,
4 the Secretary shall promulgate regulations requiring
5 that mine operators retain records and data required
6 by this Act, or otherwise required by the Secretary,
7 that are created, stored or transmitted in electronic
8 form.

9 “(2) CONTENTS.—The records described in
10 paragraph (1) shall include records pertaining to—

11 “(A) miner safety and health, tracking and
12 communications;

13 “(B) atmospheric monitoring of methane,
14 carbon monoxide, oxygen, coal dust, and other
15 mine conditions;

16 “(C) equipment usage history and oper-
17 ating parameters;

18 “(D) equipment calibration and mainte-
19 nance; and

20 “(E) other information relevant to compli-
21 ance with Federal mine health and safety laws
22 (including health or safety standards and regu-
23 lations).

24 “(3) REGULATIONS.—Not later than 2 years
25 after the date of enactment of the Robert C. Byrd

1 Mine and Workplace Safety and Health Act of 2013,
2 the Secretary shall promulgate a regulation regard-
3 ing the minimum necessary capabilities of equipment
4 to retain, store, and recover data created or trans-
5 mitted in electronic form for purposes of this sub-
6 section.”.

7 **TITLE VI—ADDITIONAL MINE** 8 **SAFETY PROVISIONS**

9 **SEC. 601. DEFINITIONS.**

10 (a) DEFINITION OF OPERATOR.—Section 3(d) (30
11 U.S.C. 802) is amended to read as follows:

12 “(d) ‘operator’ means—

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

14 “(A) operates or supervises a coal or other
15 mine; or

16 “(B) controls such mine by making or hav-
17 ing the authority to make management or oper-
18 ational decisions that affect, directly or indi-
19 rectly, the health or safety at such mine; or

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

22 (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.
23 802(e)) is amended by striking “the miners” and inserting
24 “any miner”.

1 (c) DEFINITION OF MINER.—Section 3(g) (30 U.S.C.
2 802(g)) is amended by inserting after “or other mine” the
3 following: “, and includes any individual who is not cur-
4 rently working in a coal or other mine but would be cur-
5 rently working in such mine, but for an accident in such
6 mine”.

7 (d) DEFINITION OF IMMINENT DANGER.—Section
8 3(j) (30 U.S.C. 802(j)) is amended—

9 (1) by striking “means the” and inserting the
10 following: “means—

11 “(1) the”;

12 (2) by striking the semicolon at the end and in-
13 serting “; or”; and

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

15 “(2) the existence of multiple conditions or
16 practices (regardless of whether related to each
17 other) that, when considered in the aggregate, could
18 reasonably be expected to cause death or serious
19 physical harm before such conditions or practices
20 can be abated;”.

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

24 (1) in subsection (m), by striking “and” after
25 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).”.

13 **SEC. 602. ASSISTANCE TO STATES.**

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

15 (1) in subsection (a)—

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

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

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

24 (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 annually in
7 each succeeding fiscal year” and inserting
8 “\$20,000,000 for each fiscal year”.

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

10 The Black Lung Benefits Act (30 U.S.C. 901 et seq.)
11 is amended by adding at the end the following:

12 **“SEC. 435. MEDICAL REPORTS.**

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

1 **SEC. 604. STUDY ON WORKFORCE NEEDS.**

2 (a) IN GENERAL.—Not later than 18 months after
3 the date of enactment of this Act, the Comptroller General
4 of the United States shall conduct a study on the work-
5 force needs of the mining industry and Federal and State
6 mining enforcement agencies, including the need for engi-
7 neers and mine safety and health professionals.

8 (b) ISSUES TO BE STUDIED.—The study in sub-
9 section (a) shall include—

10 (1) an analysis of the training and expertise of
11 the mine engineers and the mine safety and health
12 workforce; and

13 (2) the need for a highly trained workforce of
14 engineers and safety and health professionals with-
15 in—

16 (A) the mining industry;

17 (B) the Mine Safety and Health Adminis-
18 tration; and

19 (C) State enforcement agencies responsible
20 for mine safety and health.

21 (c) REPORT.—The Comptroller General of the United
22 States shall prepare and submit to the Committee on
23 Health, Education, Labor, and Pensions of the Senate and
24 to the Committee on Education and the Workforce of the
25 House of Representatives a report on the study described
26 in subsection (a).

1 (d) RECOMMENDATIONS.—As needed, the Comp-
2 troller General of the United States shall provide rec-
3 ommendations for improvement in the report in subsection
4 (c).

5 **SEC. 605. MINE SAFETY AND HEALTH ADMINISTRATION**
6 **STRATEGIC PLANNING.**

7 (a) STRATEGIC PLAN.—Not later than December 31,
8 2013, the Secretary of Labor, acting through the Assist-
9 ant Secretary of Labor for Mine Safety and Health, shall
10 submit to the Director of the Office of Management and
11 Budget and to the Congress, and post on the public
12 website of the Mine Safety and Health Administration, a
13 5-year strategic plan for program activities. Such plan
14 shall be—

15 (1) prepared in accordance with the require-
16 ments for agency strategic plans under section 306
17 of title 5, United States Code, except as otherwise
18 provided in this section;

19 (2) aligned with the strategic plan of the De-
20 partment of Labor; and

21 (3) revised at least once every 4 years.

22 (b) ANNUAL PERFORMANCE PLAN.—Beginning with
23 the Mine Safety and Health Administration budget sub-
24 mission for fiscal year 2015, the Secretary of Labor, act-
25 ing through the Assistant Secretary of Labor for Mine

1 Safety and Health, shall submit to the Director of the Of-
2 fice of Management and Budget an annual performance
3 plan covering each program activity set forth in the budget
4 of the Mine Safety and Health Administration. Such plan
5 shall—

6 (1) be prepared in accordance with the require-
7 ments for performance plans under section 1115 of
8 title 31, United States Code, except as otherwise
9 provided in this section;

10 (2) be consistent with the strategic plan of the
11 Mine Safety and Health Administration under sub-
12 section (a); and

13 (3) include a strategic workforce plan that pro-
14 vides a clear line of sight between the performance
15 goals and objectives of the Mine Safety and Health
16 Administration and the human capital strategies em-
17 ployed to meet such goals and objectives.

18 (c) REPORT.—Not later than 150 days after the end
19 of each fiscal year, beginning with fiscal year 2015, the
20 Secretary of Labor, acting through the Assistant Sec-
21 retary of Labor for Mine Safety and Health, shall prepare
22 and submit to the President and Congress, and post on
23 the public website of the Mine Safety and Health Adminis-
24 tration, a report on the program performance for the pre-
25 vious fiscal year. Such report shall—

1 (1) be prepared in accordance with the require-
2 ments for program performance reports under sec-
3 tion 1116 of title 31, United States Code; and

4 (2) address the extent to which the Mine Safety
5 and Health Administration is using performance in-
6 formation to improve program performance.

7 **SEC. 606. DOUBLE ENCUMBRANCE; SUCCESSION PLAN.**

8 (a) **AUTHORIZATION.**—Notwithstanding any per-
9 sonnel procedures, rules, or guidance, the Secretary of
10 Labor is authorized to double encumber a position or uti-
11 lize early replacement hiring for authorized representa-
12 tives and technical specialist positions in the Mine Safety
13 and Health Administration. The number of such positions
14 shall be consistent with the staffing requirements set forth
15 in the succession plan under subsection (b).

16 (b) **SUCCESSION PLAN.**—

17 (1) **IN GENERAL.**—Not later than 90 days after
18 the date of enactment of this Act, the Secretary of
19 Labor shall develop and provide to Congress a suc-
20 cession plan for the Mine Safety and Health Admin-
21 istration for the next 5 years to assure timely re-
22 placement of qualified employees critical to main-
23 taining the agency’s mission. The succession plan
24 shall—

1 (A) estimate employee turnover for each
2 year;

3 (B) set benchmarks for maximum allow-
4 able percentage of vacancies, and a maximum
5 ratio of trainees to authorized representatives;

6 (C) utilize double encumbrance or early re-
7 placement hiring for authorized representatives
8 and technical specialists;

9 (D) include the implementation of tracking
10 systems to assure that staffing levels of author-
11 ized representatives and technical specialists do
12 not fall below the minimum required to conduct
13 necessary inspections, thoroughly review mine
14 plans, and conduct accident and special inves-
15 tigations; and

16 (E) identify resources necessary to imple-
17 ment such plan. Such succession plan shall be
18 updated biennially.

19 (2) UPDATE OF PLAN.—The Secretary of Labor
20 shall update the succession plan under subsection
21 (a) biennially.

1 **TITLE VII—AMENDMENTS TO**
2 **THE OCCUPATIONAL SAFETY**
3 **AND HEALTH ACT OF 1970**

4 **SEC. 701. COVERAGE OF PUBLIC EMPLOYEES.**

5 (a) IN GENERAL.—Section 3(5) of the Occupational
6 Safety and Health Act of 1970 (29 U.S.C. 652(5)) is
7 amended by striking “but does not include” and all that
8 follows through the period at the end and inserting “in-
9 cluding the United States, a State, or a political subdivi-
10 sion of a State.”.

11 (b) CONSTRUCTION.—Nothing in this Act, or the
12 amendments made by this Act, shall be construed to affect
13 the application of section 18 of the Occupational Safety
14 and Health Act of 1970 (29 U.S.C. 667).

15 **SEC. 702. ENHANCED PROTECTIONS FROM RETALIATION.**

16 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the
17 Occupational Safety and Health Act of 1970 (29 U.S.C.
18 660(c)(1)) is amended—

19 (1) by striking “discharge” and all that follows
20 through “because such” and inserting the following:
21 “discharge or cause to be discharged, or in any man-
22 ner discriminate against or cause to be discriminated
23 against, any employee because—

24 “(A) such”;

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

3 “(B) such employee has”;

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

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

10 “(D) of the exercise”; and

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

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

20 “(2)(A) No person shall discharge, or cause to be dis-
21 charged, or in any manner discriminate against, or cause
22 to be discriminated against, an employee for refusing to
23 perform the employee’s duties if the employee has a rea-
24 sonable apprehension that performing such duties would

1 result in serious injury to, or serious impairment of the
2 health of, the employee or other employees.

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

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

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

23 “(4) STATUTE OF LIMITATIONS.—

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

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

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

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

14 “(5) INVESTIGATION.—

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

22 “(i) shall include—

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(7) HEARING.—

19 “(A) REQUEST FOR HEARING.—

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

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

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

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

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

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

18 “(B) PROCEDURES.—

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

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

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

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

3 “(8) ADMINISTRATIVE APPEAL.—

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

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

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

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

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

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

13 “(B) PUBLIC POLICY CONSIDERATIONS.—
14 Neither the Secretary, an administrative law
15 judge, or review board conducting a hearing
16 under this subsection shall accept a settlement
17 that contains conditions conflicting with the
18 rights protected under this Act or that are con-
19 trary to public policy, including a restriction on
20 a complainant’s right to future employment
21 with employers other than the specific employ-
22 ers named in a complaint.

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

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

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

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

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

24 “(11) JUDICIAL REVIEW.—

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

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

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

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

9 “(13) BURDENS OF PROOF.—

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

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

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

3 “(14) RELIEF.—

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

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

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

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

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

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

19 “(i) reasonable attorneys’ fees; and

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

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

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

11 “(17) ELECTION OF VENUE.—

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

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

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

21 “(B) REFERRALS.—If—

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

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

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

10 **SEC. 703. VICTIMS’ RIGHTS.**

11 The Occupational Safety and Health Act of 1970 (29
12 U.S.C. 651 et seq.) is amended by inserting after section
13 9 (29 U.S.C. 658) the following:

14 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 704. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
 2 **PEATED VIOLATIONS PENDING CONTEST AND**
 3 **PROCEDURES FOR A STAY.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **SEC. 705. CONFORMING AMENDMENTS.**

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

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

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

9 **SEC. 706. CIVIL PENALTIES.**

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

13 (1) in subsection (a)—

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

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

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

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

7 (2) in subsection (b)—

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

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

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

21 (4) in subsection (d), as amended by section
22 705, by striking “\$7,000” each place it occurs and
23 inserting “\$12,000”;

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

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

4 (b) INFLATION ADJUSTMENT.—Section 17 of such
5 Act is further amended by inserting after subsection (d)
6 the following:

7 “(e) Amounts provided under this section for civil
8 penalties shall be adjusted by the Secretary at least once
9 during each 4-year period beginning January 1, 2016, to
10 account for the percentage increase or decrease in the
11 Consumer Price Index for all urban consumers during
12 such period.”.

13 **SEC. 707. CRIMINAL PENALTIES.**

14 (a) IN GENERAL.—Section 17 of the Occupational
15 Safety and Health Act of 1970 (29 U.S.C. 666) (as
16 amended by sections 705 and 706) is further amended—

17 (1) by amending subsection (f) to read as fol-
18 lows:

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

1 tion is for a violation committed after a first conviction
2 of such person under this subsection or subsection (i),
3 punishment shall be by a fine in accordance title 18,
4 United States Code, or by imprisonment for not more than
5 20 years, or by both.

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

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

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

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

21 (5) by inserting after subsection (i) the fol-
22 lowing:

23 “(j)(1) Any employer who knowingly violates any
24 standard, rule, or order promulgated under section 6, or
25 any regulation prescribed under this Act, and that viola-

1 tion causes or contributes to serious bodily harm to any
 2 employee but does not cause death to any employee, shall,
 3 upon conviction, be punished by a fine in accordance with
 4 title 18, United States Code, or by imprisonment for not
 5 more than 5 years, or by both, except that if the conviction
 6 is for a violation committed after a first conviction of such
 7 person under this subsection or subsection (e), punishment
 8 shall be by a fine in accordance with title 18, United
 9 States Code, or by imprisonment for not more than 10
 10 years, or by both.

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

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

17 “(A) a substantial risk of death;

18 “(B) protracted unconsciousness;

19 “(C) protracted and obvious physical disfigure-
 20 ment; or

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

24 (b) JURISDICTION FOR PROSECUTION UNDER STATE
 25 AND LOCAL CRIMINAL LAWS.—Section 17 of such Act (29

1 U.S.C. 666) (as amended by this Act) is further amended
2 by adding at the end the following:

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

7 **SEC. 708. PENALTIES.**

8 Section 17(n) of the Occupational Safety and Health
9 Act of 1970 (as redesignated by section 707(a)(4)) (29
10 U.S.C. 666(n)) is amended by adding at the end the fol-
11 lowing: “Pre-final order interest on such penalties shall
12 begin to accrue on the date the party contests a citation
13 issued under this Act, and shall end upon the issuance
14 of the final order. Such pre-final order interest shall be
15 calculated at the current underpayment rate determined
16 by the Secretary of the Treasury pursuant to section 6621
17 of the Internal Revenue Code of 1986, and shall be com-
18 pounded daily. Post-final order interest shall begin to ac-
19 crue 30 days after the date a final order of the Commis-
20 sion or the court is issued, and shall be charged at the
21 rate of 8 percent per year.”.

22 **SEC. 709. EFFECTIVE DATE.**

23 (a) GENERAL RULE.—Except as provided for in sub-
24 section (b), this title and the amendments made by this

1 title shall take effect not later than 90 days after the date
2 of the enactment of this Act.

3 (b) EXCEPTION FOR STATES AND POLITICAL SUB-
4 DIVISIONS.—The following are exceptions to the effective
5 date described in subsection (a):

6 (1) A State that has a State plan approved
7 under section 18 of the Occupational Safety and
8 Health Act of 1970 (29 U.S.C. 667) shall amend its
9 State plan to conform with the requirements of this
10 Act and the amendments made by this Act not later
11 than 12 months after the date of the enactment of
12 this Act. The Secretary of Labor may extend the pe-
13 riod for a State to make such amendments to its
14 State plan by not more than 12 months, if the
15 State’s legislature is not in session during the 12-
16 month period beginning with the date of the enact-
17 ment of this Act. Such amendments to the State
18 plan shall take effect not later than 90 days after
19 the adoption of such amendments by such State.

20 (2) This Act and the amendments made by this
21 Act shall take effect not later than 36 months after
22 the date of the enactment of this Act with respect
23 to a workplace of a State, or a political subdivision

1 of a State, that does not have a State plan approved
2 under such section 18 (29 U.S.C. 667).

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