

115TH CONGRESS  
1ST SESSION

# S. 854

To improve compliance with mine safety and health laws, empower miners to raise safety concerns, prevent future mine tragedies, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 5 (legislative day, APRIL 4), 2017

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

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## A BILL

To improve compliance with mine safety and health laws, empower miners to raise safety concerns, prevent future mine tragedies, 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 Safety Protection Act of 2017”.

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

Sec. 1. Short title; table of contents.

Sec. 2. References.

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION  
AUTHORITY

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

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

- Sec. 201. Technical amendment.
- Sec. 202. 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 program or plan.
- Sec. 206. GAO study on MSHA underground mine plan approval.

TITLE III—PENALTIES

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

TITLE IV—MINERS' RIGHTS AND PROTECTIONS

- Sec. 401. Protection from retaliation.
- Sec. 402. Protection from loss of pay.
- Sec. 403. Underground coal miner employment standard for mines with patterns of violations.

TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

- Sec. 501. Pre-shift review of mine conditions.
- Sec. 502. Rock dust standards.
- Sec. 503. Atmospheric monitoring systems.
- Sec. 504. Study on respirable dust standards.
- Sec. 505. Refresher training on miners' rights and responsibilities.
- Sec. 506. Authority to mandate 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. 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. Authorization of cooperative agreements by NIOSH Office of Mine Safety and Health.

Sec. 710. Effective date.

1 **SEC. 2. REFERENCES.**

2 Except as otherwise expressly provided, whenever in  
3 this Act an amendment is expressed as an amendment to  
4 a section or other provision, the reference shall be consid-  
5 ered to be made to a section or other provision of the Fed-  
6 eral Mine Safety and Health Act of 1977 (30 U.S.C. 801  
7 et seq.).

8 **TITLE I—ADDITIONAL INSPEC-**  
9 **TION AND INVESTIGATION**  
10 **AUTHORITY**

11 **SEC. 101. INDEPENDENT ACCIDENT INVESTIGATIONS.**

12 (a) IN GENERAL.—Section 103(b) (30 U.S.C.  
13 813(b)) is amended—

14 (1) by striking “(b) For the purpose” and in-  
15 serting the following:

16 “(b) ACCIDENT INVESTIGATIONS.—

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

19 “(A) determine why the accident occurred;

20 “(B) determine whether there were viola-  
21 tions of law, mandatory health or safety stand-

1           ards, or other requirements, and if there is evi-  
 2           dence of conduct that may constitute a violation  
 3           of Federal criminal law, the Secretary may  
 4           refer such evidence to the Attorney General;  
 5           and

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

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

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

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

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

23           “(B) APPOINTMENT.—

24                   “(i) IN GENERAL.—As soon as prac-  
 25           ticable after an accident described in sub-

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

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

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

23 “(iv) COMPOSITION.—The Secretary  
24 of Health and Human Services—

1                   “(I) shall appoint as members of  
2                   the Panel—

3                   “(aa) 1 operator of a mine  
4                   or individual representing mine  
5                   operators; and

6                   “(bb) 1 representative of a  
7                   labor organization that rep-  
8                   resents miners; and

9                   “(II) may not appoint more than  
10                  1 of either type of individuals de-  
11                  scribed in items (aa) and (bb) as  
12                  members of the Panel.

13                  “(v) STAFF AND EXPENSES.—The Di-  
14                  rector of NIOSH (referred to in this sub-  
15                  section as the ‘Director’) shall designate  
16                  NIOSH staff to facilitate the work of the  
17                  Panel. The Director may accept as staff  
18                  personnel on detail from other Federal  
19                  agencies or reemploy annuitants. The de-  
20                  tail of personnel under this paragraph may  
21                  be on a non-reimbursable basis, and such  
22                  detail shall be without interruption or loss  
23                  of civil service status or privilege. The Di-  
24                  rector shall have the authority to procure  
25                  on behalf of the Panel such materials, sup-

1           plies or services, including technical ex-  
2           perts, as requested in writing by a majority  
3           of the Panel.

4           “(vi) COMPENSATION AND TRAVEL.—

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

1 ular places of business in the performance  
2 of services for the Panel.

3 “(C) DUTIES.—The Panel shall—

4 “(i) assess and identify any factors  
5 that caused the accident, including defi-  
6 ciencies in safety management systems,  
7 regulations, enforcement, industry prac-  
8 tices or guidelines, or organizational fail-  
9 ures;

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

12 “(I) the operator;

13 “(II) any contractors or other  
14 persons engaged in mining-related  
15 functions at the site;

16 “(III) any State agency with  
17 oversight responsibilities;

18 “(IV) any agency or office within  
19 the Department of Labor;

20 “(V) the Federal Mine Safety  
21 and Health Review Commission; or

22 “(VI) any other person or entity  
23 (including equipment manufacturers);



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

4           “(iv) prepare a report that—

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

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

11                “(III) includes recommendations,  
12                including interim recommendations  
13                where appropriate, to industry, labor  
14                organizations, State and Federal  
15                agencies, or Congress, regarding pol-  
16                icy, regulatory, enforcement, adminis-  
17                trative, or other changes, which, in  
18                the judgment of the Panel, would pre-  
19                vent a recurrence at other mines; and

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

1           lies of affected miners of the Panel’s find-  
2           ings and recommendations.

3           “(D) HEARINGS; APPLICABILITY OF CER-  
4           TAIN FEDERAL LAW.—The Panel shall have the  
5           authority to conduct public hearings or meet-  
6           ings, but shall not be subject to the Federal Ad-  
7           visory Committee Act (5 U.S.C. App.). All pub-  
8           lic hearings of the Panel shall be subject to the  
9           requirements under section 552b of title 5,  
10          United States Code.

11          “(E) MEMORANDUM OF UNDER-  
12          STANDING.—Not later than 90 days after the  
13          date of enactment of the Robert C. Byrd Mine  
14          Safety Protection Act of 2017, the Secretary of  
15          Labor and the Secretary of Health and Human  
16          Services shall conclude and publically issue a  
17          memorandum of understanding that—

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

1 a process to resolve any conflicts between  
2 such investigations;

3 “(ii) ensures that Panel members or  
4 staff will be able to participate in inves-  
5 tigation activities (such as mine inspections  
6 and interviews) related to the Secretary of  
7 Labor’s investigation and will have full ac-  
8 cess to documents that are assembled or  
9 produced in such investigation, and en-  
10 sures that the Secretary of Labor will  
11 make available to the Panel all of the au-  
12 thority provided under this section to such  
13 Secretary relating to obtaining information  
14 and witnesses, which may be requested by  
15 the Panel; and

16 “(iii) establishes such other arrange-  
17 ments as are necessary to implement this  
18 paragraph.

19 “(F) PROCEDURES.—Not later than 90  
20 days after the date of enactment of the Robert  
21 C. Byrd Mine Safety Protection Act of 2017,  
22 the Secretary of Health and Human Services  
23 shall establish procedures to ensure the consist-  
24 ency and effectiveness of Panel investigations.  
25 In establishing such procedures, such Secretary

1 shall consult with independent safety investiga-  
2 tion agencies, sectors of the mining industry,  
3 representatives of miners, families of miners in-  
4 volved in fatal accidents, State mine safety  
5 agencies, and mine rescue organizations. Such  
6 procedures shall include—

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

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

17 “(iii) provisions for preservation of  
18 public access to the Panel’s records  
19 through the Secretary of Health and  
20 Human Services.

21 “(G) SUBPOENAS; WITNESSES; CON-  
22 TEMPT.—

23 “(i) SUBPOENA AUTHORITY.—For the  
24 purpose of making any investigation of any  
25 accident or other occurrence relating to

1 health or safety in a coal or other mine  
2 under this paragraph, the Director shall at  
3 the request of a majority of the Panel, or  
4 upon the initiative of such Director, sign  
5 and issue subpoenas for the attendance  
6 and testimony of witnesses and the produc-  
7 tion of relevant papers, books, and docu-  
8 ments, and administer oaths. Witnesses  
9 summoned shall be paid the same fees and  
10 mileage that are paid witnesses in the  
11 courts of the United States.

12 “(ii) ADDITIONAL INVESTIGATIVE AU-  
13 THORITY.—In carrying out inspections and  
14 investigations under this paragraph, the  
15 staff of the Director or Panel and attor-  
16 neys representing the Director or Panel  
17 are authorized to question any individual  
18 privately. Under this subparagraph, any  
19 individual who is willing to speak with or  
20 provide a statement to the Director or  
21 Panel’s staff or their attorneys, may do so  
22 without the presence, involvement, or  
23 knowledge of the operator or the operator’s  
24 agents or attorneys. The Director or Panel  
25 shall keep the identity of an individual pro-

1           viding such a statement confidential to the  
2           extent permitted by law. Nothing in this  
3           paragraph prevents any individual from  
4           being represented by that individual’s per-  
5           sonal attorney or other representative.

6           “(3) POWERS AND PROCESSES.—For the pur-  
7           pose”; and

8           (2) by striking “give testimony before the Sec-  
9           retary or to appear and produce documents before  
10          the Secretary” and inserting “give testimony before  
11          the Secretary (or, in the case of a subpoena under  
12          paragraph (2)(G), the Director or Panel) and  
13          produce documents before the Secretary (or, in such  
14          case, the Director or Panel)”.

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)(2) received in the preceding 5  
20          years,”.

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

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

1           “(4) **ADDITIONAL POWERS.**—In carrying out in-  
2           spections and investigations under this subsection,  
3           authorized representatives of the Secretary and at-  
4           torneys representing the Secretary are authorized to  
5           question any individual privately. Under this section,  
6           any individual who is willing to speak with or pro-  
7           vide a statement to such authorized representatives  
8           or attorneys representing the Secretary may do so  
9           without the presence, involvement, or knowledge of  
10          the operator or the operator’s agents or attorneys.  
11          The Secretary shall keep the identity of an indi-  
12          vidual providing such a statement confidential to the  
13          extent permitted by law. Nothing in this paragraph  
14          prevents any individual from being represented by  
15          that individual’s personal attorney or other rep-  
16          resentative.

17           “(5) **AUTHORIZATION OF APPROPRIATIONS.**—  
18          There is authorized to be appropriated to carry out  
19          this subsection such sums as may be necessary.”.

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

21          Section 103(f) (30 U.S.C. 813(f)) is amended by in-  
22          serting before the last sentence the following: “If any  
23          miner is entrapped, disabled, killed, or otherwise prevented  
24          as the result of an accident in such mine from designating  
25          such a representative directly, such miner’s closest relative

1 may act on behalf of such miner in designating such a  
2 representative. If any miner is not currently working in  
3 such mine as the result of an accident in such mine, but  
4 would be currently working in such mine but for such acci-  
5 dent, such miner may designate such a representative. A  
6 representative of miners shall have the right to participate  
7 in any accident investigation the Secretary initiates pursu-  
8 ant to subsection (b), including the right to participate  
9 in investigative interviews and to review all relevant pa-  
10 pers, books, documents, and records produced in connec-  
11 tion with the accident investigation, unless the Secretary,  
12 in consultation with the Attorney General, excludes rep-  
13 resentatives of miners from the investigation on the  
14 grounds that inclusion would interfere with or adversely  
15 impact a criminal investigation that is pending or under  
16 consideration.”.

17 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**  
18 **SPECTIONS AND INVESTIGATIONS.**

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



1 (b) REVIEW OF PATTERN OF VIOLATIONS.—Section  
2 103(a) (30 U.S.C. 813(a)), as so amended, is further  
3 amended by inserting before the last sentence the fol-  
4 lowing: “Upon request by an operator or authorized rep-  
5 resentative of such operator, during the course of the in-  
6 spections required to carry out the requirements of clauses  
7 (3) and (4) or (at the discretion of the Secretary) during  
8 the pre-inspection conference, the Secretary shall review  
9 with the appropriate mine officials the Secretary’s most  
10 recent determination regarding whether such operator has  
11 a pattern of violations under section 104(e) for the appli-  
12 cable coal or other mine.”.

13 (c) INJURY AND ILLNESS REPORTING.—Section  
14 103(d) (30 U.S.C. 813(d)) is amended by striking the last  
15 sentence and inserting the following: “The records to be  
16 kept and made available by the operator of the mine shall  
17 include man-hours worked, and occupational injuries and  
18 illnesses, of the miners employed by, or under the direction  
19 or authority of, such operator, and shall be maintained  
20 separately for each mine and be reported at a frequency  
21 determined by the Secretary, but not less than annually.  
22 Independent contractors (within the meaning of section  
23 3(d)) shall be responsible for reporting accidents, occupa-  
24 tional injuries and illnesses, and man-hours worked for  
25 each mine with respect to the miners in their employ or

1 under their direction or authority. Such independent con-  
2 tractors shall so report at a frequency determined by the  
3 Secretary, but not less than annually. Reports or records  
4 of operators required and submitted to the Secretary  
5 under this subsection shall be signed and certified as accu-  
6 rate and complete by a knowledgeable and responsible per-  
7 son possessing a certification, registration, qualification,  
8 or other approval under section 118. Knowingly falsifying  
9 such reports or records shall be grounds for revoking such  
10 certification, registration, qualification, or other approval  
11 under the standards established under subsection (b)(1)  
12 of such section.”.

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

16 (e) CONFLICT OF INTEREST IN THE REPRESENTA-  
17 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)), as  
18 amended by this section, is further amended by adding  
19 at the end the following: “During inspections and inves-  
20 tigation under this section, and during any litigation  
21 under this Act, no attorney shall represent or purport to  
22 represent both the operator of a coal or other mine and  
23 any other individual, unless such individual has knowingly  
24 and voluntarily waived all actual and reasonably foresee-  
25 able conflicts of interest resulting from such representa-

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

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

14 **SEC. 201. TECHNICAL AMENDMENT.**

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”; and

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.”.

8   **SEC. 202. PROCEDURES AND CRITERIA FOR DETERMINING**  
9                                   **A PATTERN OF VIOLATIONS.**

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

11                 “(4) The criteria for determining when a pat-  
12                 tern of violations of mandatory health or safety  
13                 standards exists, and the requirements for the  
14                 issuance and termination of notice of a pattern of  
15                 violations, shall be the criteria and requirements in  
16                 the regulations promulgated by the Secretary under  
17                 part 104 of chapter I of title 30, Code of Federal  
18                 Regulations, as published on January 23, 2013.”.

19   **SEC. 203. INJUNCTIVE AUTHORITY.**

20          Section 108(a)(2) (30 U.S.C. 818(a)(2)) is amended  
21          by striking “a pattern of violation of” and all that follows  
22          through the period and inserting “a course of conduct that  
23          in the judgment of the Secretary constitutes a continuing  
24          hazard to the health or safety of miners, including viola-

1 tions of this Act or of mandatory health or safety stand-  
2 ards or regulations under this Act.”.

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

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

5 (1) by redesignating subsection (d) as sub-  
6 section (e);

7 (2) in subsection (a), by striking “subsection  
8 (d)” and inserting “subsection (e)”; and

9 (3) by inserting after subsection (c) the fol-  
10 lowing:

11 “(d) REVOCATION OF APPROVAL OF PROGRAMS OR  
12 PLANS.—

13 “(1) REVOCATION.—If the Secretary finds that  
14 any program or plan of an operator, or part thereof,  
15 that was approved by the Secretary under this Act  
16 is based on inaccurate information or that cir-  
17 cumstances that existed when such program or plan  
18 was approved have materially changed and that con-  
19 tinued operation of such mine or an area of such  
20 mine under such program or plan constitutes a haz-  
21 ard to the safety or health of miners, the Secretary  
22 shall revoke the approval of such program or plan.

23 “(2) WITHDRAWAL ORDERS.—Upon revocation  
24 of the approval of a program or plan under para-  
25 graph (1), the Secretary may immediately issue an

1 order requiring the operator to cause all persons, ex-  
2 cept those persons referred to in section 104(c), to  
3 be withdrawn from such mine or an area of such  
4 mine, and to be prohibited from entering such mine  
5 or such area, until the operator has submitted and  
6 the Secretary has approved a new plan.”.

7 **SEC. 205. CHALLENGING A DECISION TO APPROVE, MOD-**  
8 **IFY, OR REVOKE A COAL OR OTHER MINE**  
9 **PROGRAM OR PLAN.**

10 Section 105(e) (30 U.S.C. 815(e)), as so redesignated  
11 by section 204(1), is amended by adding at the end the  
12 following: “In any proceeding in which a party challenges  
13 the Secretary’s decision whether to approve, modify, or re-  
14 voke a coal or other mine program or plan under this Act,  
15 the Commission shall affirm the Secretary’s decision un-  
16 less the challenging party establishes that such decision  
17 was arbitrary, capricious, an abuse of discretion, or other-  
18 wise not in accordance with law.”.

19 **SEC. 206. GAO STUDY ON MSHA UNDERGROUND MINE PLAN**  
20 **APPROVAL.**

21 Not later than 1 year after the date of enactment  
22 of this Act, the Comptroller General of the United States  
23 shall provide a report to Congress on the timeliness of ap-  
24 proval by the Mine Safety and Health Administration of  
25 plans, and amendments to such plans, for underground

1 coal mines under the Federal Mine Safety and Health Act  
2 of 1977 (30 U.S.C. 801 et seq.), including—

3 (1) factors that contribute to any delays in the  
4 approval of such plans; and

5 (2) as appropriate, recommendations for im-  
6 proving timeliness of plan review and for achieving  
7 prompt decisions regarding such approval.

## 8 **TITLE III—PENALTIES**

### 9 **SEC. 301. CIVIL PENALTIES.**

10 (a) **TARGETED PENALTIES.**—Section 110(b) (30  
11 U.S.C. 820(b)) is amended by adding at the end the fol-  
12 lowing:

13 “(3) Any person may be assessed a civil penalty  
14 of not more than \$220,000 for—

15 “(A) any change to a ventilation system or  
16 ventilation control in a coal or other mine,  
17 where such ventilation system or control is re-  
18 quired by a ventilation plan, safety standard, or  
19 order, and such change is made without prior  
20 approval of the Secretary and diminishes the  
21 level of protection below the minimum require-  
22 ments of the approved ventilation plan or appli-  
23 cable safety standard or order;

1           “(B) a violation of a mandatory health or  
2           safety standard requiring rock dusting in a coal  
3           mine;

4           “(C) a violation of the prohibition under  
5           section 103 on providing advance notice of an  
6           inspection; or

7           “(D) a violation of a mandatory health or  
8           safety standard requiring examinations of work  
9           areas in an underground coal mine.”.

10         (b) INCREASED CIVIL PENALTIES FOR PATTERNS OF  
11 VIOLATIONS.—Section 110(b) (30 U.S.C. 820(b)), as so  
12 amended, is further amended by adding at the end the  
13 following:

14         “(4) Notwithstanding any other provision of this Act,  
15 an operator of a coal or other mine that has established  
16 a pattern of violations under section 104(e) shall be as-  
17 sessed an increased civil penalty for any violation of this  
18 Act, including any mandatory health or safety standard  
19 or regulation promulgated under this Act. Such increased  
20 penalty shall be twice the amount that would otherwise  
21 be assessed for the violation under this Act, including the  
22 regulations promulgated under this Act, subject to the  
23 maximum civil penalty established for the violation under  
24 this Act.”.



1 (c) CIVIL PENALTY FOR RETALIATION.—Section  
2 110(a) (30 U.S.C. 820(a)) is amended—

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

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

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

13 (d) TECHNICAL AMENDMENT.—Section 110(a)(1)  
14 (30 U.S.C. 820(a)(1)) is amended by inserting “including  
15 any regulation promulgated under this Act,” after “this  
16 Act,”.

17 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**  
18 **RECTORS, AND AGENTS.**

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

21 “(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS,  
22 DIRECTORS, AND AGENTS.—

23 “(1) CIVIL PENALTIES.—Whenever an operator  
24 engages in conduct for which the operator is subject  
25 to a civil penalty under this section, any director, of-

1       ficer, or agent of such operator who knowingly au-  
2       thorizes, orders, or carries out such conduct, or who  
3       knowingly authorizes, orders, or carries out any pol-  
4       icy or practice that results in such conduct (having  
5       reason to believe such a result would occur), shall be  
6       subject to the same civil penalty under this section  
7       as such operator.

8               “(2) CRIMINAL PENALTIES.—Whenever an op-  
9       erator engages in conduct for which the operator is  
10      subject to a criminal penalty under subsection (d),  
11      any director, officer, or agent of such operator who  
12      knowingly authorizes, orders, or carries out such  
13      conduct, or who knowingly authorizes, orders, or  
14      carries out a policy or practice that results in such  
15      conduct (knowing that such a result would occur),  
16      shall be subject to the same penalty under para-  
17      graph (1), (2), or (3) of subsection (d) as such oper-  
18      ator.”.

19 **SEC. 303. CRIMINAL PENALTIES.**

20       (a) IN GENERAL.—Section 110(d) (30 U.S.C.  
21 820(d)) is amended to read as follows:

22       “(d) CRIMINAL PENALTIES.—

23               “(1) IN GENERAL.—Subject to paragraph (2),  
24      any operator shall, upon conviction, be assessed a  
25      fine of not more than \$250,000, imprisoned for not

1 more than 1 year, or both, if such operator know-  
2 ingly—

3 “(A) violates a mandatory health or safety  
4 standard; or

5 “(B) violates (or fails or refuses to comply  
6 with) any order issued under section 104 or  
7 107, or any order incorporated in a final deci-  
8 sion issued under this Act (except an order in-  
9 corporated in a decision under subsection (a)(1)  
10 or section 105(c)).

11 “(2) PREVIOUS CONVICTION.—Any operator  
12 who commits a violation under paragraph (1) after  
13 having been previously convicted of a violation under  
14 such paragraph and knows or has reason to know  
15 that such subsequent violation has the potential to  
16 expose a miner to a risk of serious injury, serious ill-  
17 ness, or death, shall, upon such subsequent convic-  
18 tion, be fined not more than \$1,000,000, or impris-  
19 oned for not more than 5 years, or both.

20 “(3) SIGNIFICANT RISK OF SERIOUS INJURY,  
21 SERIOUS ILLNESS, OR DEATH.—

22 “(A) IN GENERAL.—Subject to subpara-  
23 graph (B), any operator shall, upon conviction,  
24 be fined not more than \$1,000,000 or impris-  
25 oned for not more than 5 years, or both, if such

1 operator recklessly exposes a miner to a signifi-  
2 cant risk of serious injury, serious illness, or  
3 death, by knowingly—

4 “(i) tampering with or disabling a re-  
5 quired safety device (except with express  
6 authorization from the Secretary);

7 “(ii) violating a mandatory health or  
8 safety standard; or

9 “(iii) violating (or failing or refusing  
10 to comply with) an order issued under sec-  
11 tion 104 or 107, or any order incorporated  
12 in a final decision issued under this Act  
13 (except an order incorporated in a decision  
14 under subsection (a)(1) or section 105(c)).

15 “(B) EXCEPTION.—Any operator who com-  
16 mits a violation under subparagraph (A) after  
17 having been previously convicted of a violation  
18 under such subparagraph shall, upon such sub-  
19 sequent conviction, be fined not more than  
20 \$2,000,000, or imprisoned for not more than  
21 10 years, or both.

22 “(4) INTERFERENCE WITH EMPLOYMENT OR  
23 LIVELIHOOD.—

24 “(A) IN GENERAL.—Any operator shall be  
25 fined under title 18, United States Code, im-

1           prisoned for not more than 5 years, or both, if  
2           such operator knowingly, and with any intent  
3           described in subparagraph (B), interferes with  
4           the lawful employment or livelihood of a person,  
5           or the spouse, sibling, child, or parent of a per-  
6           son, because such person, spouse, sibling, child,  
7           or parent provides information, in reasonable  
8           belief that such information is true and related  
9           to an apparent health or safety violation (or to  
10          an apparent unhealthy or unsafe condition, pol-  
11          icy, or practice) under this Act, to an author-  
12          ized representative of the Secretary, to a State  
13          or local mine safety or health officer or official,  
14          or to any other law enforcement officer or offi-  
15          cial.

16                 “(B) INTENT.—The intent required under  
17                 subparagraph (A) is the intent to—

18                         “(i) retaliate against a person, spouse,  
19                         sibling, child, or parent described in such  
20                         subparagraph; or

21                         “(ii) prevent such person, spouse, sib-  
22                         ling, child, or parent from providing the in-  
23                         formation as described in such subpara-  
24                         graph.”.

25           (b) ADVANCE NOTICE OF INSPECTIONS.—

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

3       “(e) ADVANCE NOTICE OF INSPECTIONS.—

4           “(1) IN GENERAL.—Subject to paragraph (2),  
5       any person (other than the Secretary of Health and  
6       Human Services with respect to inspections under  
7       clauses (1) and (2) of section 103(a)) who know-  
8       ingly, with the intent to give advance notice of an  
9       inspection conducted, or to be conducted, under this  
10      Act and thereby with the intent to impede, interfere  
11      with, or frustrate such inspection, engages in, or di-  
12      rects another person to engage in, conduct that a  
13      reasonable person would expect to result in such ad-  
14      vance notice, shall be fined under title 18, United  
15      States Code, imprisoned for not more than 5 years,  
16      or both.

17           “(2) OFFENSE BY A MINER.—Any miner (other  
18      than a director, officer, or agent of the operator in-  
19      volved) who commits the offense described in para-  
20      graph (1) at the direction of a superior shall be  
21      fined under title 18, United States Code, imprisoned  
22      not more than 1 year, or both, unless such miner  
23      commits a subsequent offense under this subsection  
24      (without regard to whether the offense was com-  
25      mitted at the direction of a superior) in which case

1 such miner shall be fined for such subsequent of-  
2 fense under title 18, United States Code, imprisoned  
3 for not more than 5 years, or both.”.

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

7 “(e) POSTING OF ADVANCE NOTICE PENALTIES.—  
8 Each operator of a coal or other mine shall post, on the  
9 bulletin board described in subsection (a) and in a con-  
10 spicuous place near each staffed entrance to the mine  
11 property, a notice stating, in a form and manner to be  
12 prescribed by the Secretary—

13 “(1) that it is unlawful under section 110(e) for  
14 any person (other than the Secretary of Health and  
15 Human Services with respect to inspections under  
16 clauses (1) and (2) of section 103(a)), with the in-  
17 tent to impede, interfere with, or frustrate an in-  
18 spection conducted or to be conducted under this  
19 Act, to engage in, or direct another person to engage  
20 in, any conduct that a reasonable person would ex-  
21 pect to result in advance notice of such inspection;  
22 and

23 “(2) the maximum penalties for a violation  
24 under section 110(e).”.

1 **SEC. 304. COMMISSION REVIEW OF PENALTY ASSESS-**  
2 **MENTS.**

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

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

20 (a) PRE-FINAL ORDER INTEREST.—Section 110(j)  
21 (30 U.S.C. 820(j)) is amended by striking the second and  
22 third sentences and inserting the following: “Pre-final  
23 order interest on such penalties shall begin to accrue on  
24 the date the operator contests a citation issued under this  
25 Act, including any mandatory health or safety standard  
26 or regulation promulgated under this Act, and shall end



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

9 (b) ENSURING PAYMENT OF PENALTIES.—

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

12 (A) by redesignating subsection (l) as sub-  
 13 section (m); and

14 (B) by inserting after subsection (k) the  
 15 following:

16 “(l) ENSURING PAYMENT OF PENALTIES.—

17 “(1) DELINQUENT PAYMENT LETTER.—If the  
 18 operator of a coal or other mine fails to pay any civil  
 19 penalty assessment that has become a final order of  
 20 the Commission or a court within 45 days after such  
 21 assessment became a final order, the Secretary shall  
 22 send the operator a letter advising the operator of  
 23 the consequences under this subsection of such fail-  
 24 ure to pay. The letter shall also advise the operator  
 25 of the opportunity to enter into or modify a payment

1 plan with the Secretary based upon a demonstrated  
2 inability to pay, the procedure for entering into such  
3 plan, and the consequences of not entering into or  
4 not complying with such plan.

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

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

4 (2) APPLICABILITY AND EFFECTIVE DATE.—

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

16 **TITLE IV—MINERS’ RIGHTS AND**  
 17 **PROTECTIONS**

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

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

21 “(c) PROTECTION FROM RETALIATION.—

22 “(1) RETALIATION PROHIBITED.—

23 “(A) RETALIATION FOR COMPLAINT OR  
 24 TESTIMONY.—No person shall discharge, or in  
 25 any manner discriminate against, cause to be

1 discharged, cause discrimination against, or  
2 otherwise interfere with the exercise of the stat-  
3 utory rights of, any miner or other employee of  
4 an operator, representative of miners, or appli-  
5 cant for employment at a mine of such operator  
6 (including the spouse, sibling, child, or parent  
7 of such miner, employee, representative, or ap-  
8 plicant, if such spouse, sibling, child, or parent  
9 is employed or applying for employment at a  
10 mine under the control of such operator)—

11 “(i) because such miner, employee,  
12 representative, or applicant—

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

21 “(II) has instituted or caused to  
22 be instituted, or is about to institute  
23 or cause to be instituted, any pro-  
24 ceeding under or related to this Act;

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

7           “(IV) has exercised on behalf of  
8           any individual, including such miner,  
9           employee, representative, or applicant,  
10          any such statutory right;

11          “(V) has reported to such oper-  
12          ator or agent any injury or illness; or

13          “(VI) has refused to violate any  
14          provision of this Act, including any  
15          mandatory health or safety standard  
16          or regulation promulgated under this  
17          Act;

18          “(ii) because such miner is the subject  
19          of medical evaluations and potential trans-  
20          fer under a standard published pursuant to  
21          section 101; or

22          “(iii) where the discharge, discrimina-  
23          tion, or other interference was based on a  
24          suspicion or belief that such miner, em-  
25          ployee, representative, or applicant en-

1 gaged in, or is about to engage in, any of  
2 the activities described in clause (i).

3 “(B) RETALIATION FOR REFUSAL TO PER-  
4 FORM DUTIES.—

5 “(i) IN GENERAL.—No person shall  
6 discharge or in any manner discriminate  
7 against a miner or other employee of an  
8 operator, or applicant for employment at a  
9 mine of such operator, for refusing to per-  
10 form the duties of a miner, other employee,  
11 or applicant if such miner, other employee,  
12 or applicant has a good-faith and reason-  
13 able belief that performing such duties  
14 would pose a safety or health hazard to  
15 such miner, other employee, or applicant,  
16 or to any other miner or employee.

17 “(ii) STANDARD.—For purposes of  
18 clause (i), the circumstances causing the  
19 miner’s, other employee’s, or applicant’s  
20 good-faith belief that performing such du-  
21 ties would pose a safety or health hazard  
22 shall be of such a nature that a reasonable  
23 person, under the circumstances con-  
24 fronting the miner, other employee, or ap-  
25 plicant, would conclude that there is such

1 a hazard. In order to qualify for protection  
2 under this paragraph, the miner, other em-  
3 ployee, or applicant, when practicable, shall  
4 have communicated or attempted to com-  
5 municate the safety or health concern to  
6 the operator and have not received from  
7 the operator a response reasonably cal-  
8 culated to allay such concern.

9 “(2) COMPLAINT.—Any miner or other em-  
10 ployee of an operator, representative of miners, or  
11 applicant for employment at a mine of such operator  
12 who believes that he or she has been discharged, dis-  
13 ciplined, or otherwise discriminated against by any  
14 person in violation of paragraph (1) may file a com-  
15 plaint with the Secretary alleging such discrimina-  
16 tion not later than 180 days after the later of—

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

19 “(B) the date on which such miner, em-  
20 ployee, representative, or applicant knows or  
21 should reasonably have known that such alleged  
22 violation occurred.

23 “(3) INVESTIGATION AND HEARING.—

24 “(A) COMMENCEMENT OF INVESTIGATION  
25 AND INITIAL DETERMINATION.—Upon receipt

1 of a complaint under paragraph (2), the Sec-  
2 retary shall—

3 “(i) forward a copy of the complaint  
4 to the respondent;

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

8 “(iii) as soon as practicable after com-  
9 mencing the investigation under clause (ii),  
10 make the determination required under  
11 subparagraph (B).

12 “(B) REINSTATEMENT.—If the Secretary  
13 finds that a complaint under paragraph (2) was  
14 not frivolously brought, the Commission, on an  
15 expedited basis upon application of the Sec-  
16 retary, shall order the immediate reinstatement  
17 of the miner, employee, or representative de-  
18 scribed in such paragraph until there has been  
19 a final Commission order disposing of the un-  
20 derlying complaint. If either the Secretary or  
21 such miner, employee, or representative pursues  
22 the underlying complaint, such reinstatement  
23 shall remain in effect until the Commission has  
24 disposed of such complaint on the merits, re-  
25 gardless of whether the Secretary pursues such



1 complaint by filing a complaint under subpara-  
2 graph (D) or the miner or other employee pur-  
3 sues such complaint by filing an action under  
4 paragraph (4). If neither the Secretary nor  
5 such miner, employee, or representative pursues  
6 the underlying complaint within the periods  
7 specified in paragraph (4), such reinstatement  
8 shall remain in effect until such time as the  
9 Commission may, upon motion of the operator  
10 and after providing notice and an opportunity  
11 to be heard to the parties, vacate such com-  
12 plaint for failure to prosecute.

13 “(C) INVESTIGATION.—Such investigation  
14 shall include interviewing the complainant  
15 and—

16 “(i) providing the respondent an op-  
17 portunity to submit to the Secretary a  
18 written response to the complaint and to  
19 present statements from witnesses or pro-  
20 vide evidence; and

21 “(ii) providing the complainant an op-  
22 portunity to receive any statements or evi-  
23 dence provided to the Secretary and to  
24 provide additional information or evidence,  
25 or to rebut any statements or evidence.

1           “(D) ACTION BY THE SECRETARY.—If,  
2 upon such investigation, the Secretary deter-  
3 mines that the provisions of this subsection  
4 have been violated, the Secretary shall imme-  
5 diately file a complaint with the Commission,  
6 with service upon the alleged violator and the  
7 miner, employee, representative, or applicant  
8 described in paragraph (2) alleging such dis-  
9 crimination or interference and propose an  
10 order granting appropriate relief.

11           “(E) ACTION OF THE COMMISSION.—The  
12 Commission shall afford an opportunity for a  
13 hearing on the record (in accordance with sec-  
14 tion 554 of title 5, United States Code, but  
15 without regard to subsection (a)(3) of such sec-  
16 tion) and thereafter shall issue an order, based  
17 upon findings of fact, affirming, modifying, or  
18 vacating the Secretary’s proposed order, or di-  
19 recting other appropriate relief. Such order  
20 shall become final 30 days after its issuance.  
21 The complaining miner, employee, representa-  
22 tive, or applicant described in paragraph (2)  
23 may present additional evidence on his or her  
24 own behalf during any hearing held pursuant to  
25 this paragraph.

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

7           “(i) the rehiring or reinstatement of  
8 the miner, employee, or representative de-  
9 scribed in paragraph (2) with back pay  
10 and interest and without loss of position or  
11 seniority, and restoration of the terms,  
12 rights, conditions, and privileges associated  
13 with the complainant’s employment;

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

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

1           the complaint to any person whom the  
2           complainant reasonably believes may have  
3           received such unfavorable information.

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

6           “(A) NOTICE TO COMPLAINANT.—Not  
7           later than 90 days after the receipt of a com-  
8           plaint filed under paragraph (2), the Secretary  
9           shall notify, in writing, the miner, employee,  
10          representative, or applicant described in para-  
11          graph (2) of the determination of such Sec-  
12          retary on whether a violation has occurred.

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

22          “(C) HEARING AND DECISION.—The Com-  
23          mission shall afford an opportunity for a hear-  
24          ing on the record (in accordance with section  
25          554 of title 5, United States Code, but without

1 regard to subsection (a)(3) of such section),  
2 and thereafter shall issue an order, based upon  
3 findings of fact, dismissing or sustaining the  
4 complainant's charges and, if the charges are  
5 sustained, granting such relief as it deems ap-  
6 propriate as described in paragraph (3)(F).  
7 Such order shall become final 30 days after its  
8 issuance.

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

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

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

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

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

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

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

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

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

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

7 “(a) PROTECTION FROM LOSS OF PAY.—

8 “(1) WITHDRAWAL ORDERS.—

9 “(A) SHIFTS AT TIME OF ORDER.—If a  
10 coal or other mine, or an area of such mine, is  
11 closed by an order issued under section 103,  
12 104, 107, 108, or 110, all miners working dur-  
13 ing the shift when such order was issued who  
14 are idled by such order shall be entitled, regard-  
15 less of the result of any review of such order,  
16 to full compensation by the operator at their  
17 regular rates of pay for the period during which  
18 they are so idled, but for not more than the bal-  
19 ance of such shift.

20 “(B) SUBSEQUENT SHIFTS.—If such order  
21 is not terminated prior to the working shift suc-  
22 ceeding the shift described in subparagraph  
23 (A), all miners assigned to such succeeding  
24 shift who are idled by such order shall be enti-  
25 tled to compensation by the operator at their

1 regular rates of pay for the period during which  
2 they are so idled, but not for more than one  
3 half of the hours of such shift, or 4 hours of  
4 such shift, whichever is greater.

5 “(C) EXTENDED CLOSURES.—If a coal or  
6 other mine, or an area of such mine, is closed  
7 by an order issued under section 103, 104, 107,  
8 108, or 110, all miners who are idled by such  
9 order, for a shift succeeding the shift described  
10 in subparagraph (B), shall be entitled, regard-  
11 less of the result of any review of such order,  
12 to full compensation by the operator at their  
13 regular rates of pay and in accordance with  
14 their regular schedules of pay for the period for  
15 which they are idled, but not for more than 60  
16 days.

17 “(2) CLOSURE IN ADVANCE OF ORDER.—

18 “(A) IN GENERAL.—If the Secretary deter-  
19 mines that a coal or other mine, or an area of  
20 such mine, was closed by the operator in antici-  
21 pation of the issuance of an order described in  
22 paragraph (1), all miners who are idled by such  
23 closure shall be entitled, subject to subpara-  
24 graph (B), to full compensation by the operator  
25 at their regular rates of pay and in accordance



1 with their regular schedules of pay, from the  
2 time of such closure until such time as the Sec-  
3 retary authorizes reopening of such mine or  
4 such area, but not for more than 60 days.

5 “(B) EXCEPTION.—The entitlement under  
6 subparagraph (A) shall not apply if an operator  
7 promptly withdraws miners upon discovery of a  
8 hazard and notifies the Secretary, where re-  
9 quired and within the prescribed time period.

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

22 “(b) ENFORCEMENT.—

23 “(1) COMMISSION ORDERS.—The Commission  
24 shall have authority to order compensation due  
25 under this section upon the filing of a complaint by

1 a miner or his representative and after opportunity  
2 for hearing on the record subject to section 554 of  
3 title 5, United States Code. Whenever the Commis-  
4 sion issues an order sustaining the complaint under  
5 this subsection in whole or in part, the Commission  
6 shall award the complainant reasonable attorneys'  
7 fees and costs.

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

18 “(c) EXPEDITED REVIEW.—If an order is issued that  
19 results in a payment to a miner under subsection (a), the  
20 operator shall have the right to an expedited review before  
21 the Commission in the same manner as the procedure  
22 under section 316(b)(2)(G)(ii) (including the deadlines  
23 under such section).”.

1 **SEC. 403. UNDERGROUND COAL MINER EMPLOYMENT**  
2 **STANDARD FOR MINES WITH PATTERNS OF**  
3 **VIOLATIONS.**

4 Title I (30 U.S.C. 811 et seq.) is further amended  
5 by adding at the end the following:

6 **“SEC. 117. UNDERGROUND COAL MINER EMPLOYMENT**  
7 **STANDARD FOR MINES WITH PATTERNS OF**  
8 **VIOLATIONS.**

9 “(a) IN GENERAL.—For the purpose of ensuring the  
10 health and safety of miners and the right of miners to  
11 raise health or safety concerns, an operator of an under-  
12 ground coal mine who has received notice of a pattern of  
13 violations under section 104(e) in such mine, for 3 years  
14 after receipt of such notice, may not discharge or con-  
15 structively discharge a miner employed at such mine with-  
16 out reasonable grounds based on a failure of such miner  
17 to satisfactorily perform the duties required for work as  
18 a miner, including compliance with the provisions of this  
19 Act, regulations promulgated under this Act, mandatory  
20 health or safety standards under any other law, or any  
21 other legitimate business reason, if—

22 “(1) the miner is paid on an hourly basis; and

23 “(2) the miner has completed the employer’s  
24 probationary period, which in no case shall exceed 6  
25 months.

1 “(b) CAUSE OF ACTION.—A miner aggrieved by a  
 2 violation of subsection (a) may file a complaint in the  
 3 United States district court in the district where the mine  
 4 is located not later than 1 year after such violation.

5 “(c) REMEDIES.—For a miner who prevails under  
 6 subsection (b), the appropriate United States district  
 7 court shall provide remedies to further the objectives of  
 8 this Act, which may include reinstatement of such miner  
 9 to the former position of such miner with back pay and  
 10 compensatory damages. Such remedies shall include rea-  
 11 sonable attorneys’ fees and costs.

12 “(d) PRE-DISPUTE WAIVER PROHIBITED.—The  
 13 right of a miner to a cause of action under this section  
 14 may not be waived with respect to any dispute that has  
 15 not arisen as of the time of the waiver.

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

20 **TITLE V—MODERNIZING**  
 21 **HEALTH AND SAFETY STAND-**  
 22 **ARDS**

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

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

1       “(3)(A) Not later than 30 days after the issuance of  
2 the interim final rules promulgated under subparagraph  
3 (B), each operator of an underground coal mine shall im-  
4 plement a communication program at the underground  
5 coal mine to ensure that each miner (prior to traveling  
6 to or arriving at the work area of such miner and com-  
7 mencing the assigned tasks of such miner) is orally briefed  
8 on and made aware of—

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

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

16       “(B) Not later than 180 days after the date of enact-  
17       ment of the Robert C. Byrd Mine Safety Protection Act  
18       of 2017, the Secretary shall promulgate interim final rules  
19       implementing the requirements of subparagraph (A).

20       “(C) Not later than 2 years after the promulgation  
21       of the interim final rules under subparagraph (B), the  
22       Secretary shall issue a final rule implementing the require-  
23       ments of subparagraph (A).”.

1 **SEC. 502. ROCK DUST STANDARDS.**

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

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

6 “(1) IN GENERAL.—Where rock”;

7 (2) by striking “65 per centum” and all that  
8 follows through the period and inserting “80 per-  
9 cent. Where methane is present in any ventilating  
10 current, the percentage of incombustible content of  
11 such combined dusts shall be increased 0.4 percent  
12 for each 0.1 percent of methane.”; and

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

14 “(2) METHODS OF MEASUREMENT.—

15 “(A) IN GENERAL.—Each operator of an  
16 underground coal mine shall take accurate and  
17 representative samples that shall measure the  
18 total incombustible content of combined coal  
19 dust, rock dust, and other dust in such mine to  
20 ensure that the coal dust is kept below explosive  
21 levels through the appropriate application of  
22 rock dust.

23 “(B) DIRECT READING MONITORS.—In  
24 order to ensure timely assessment and compli-  
25 ance, the Secretary shall, not later than 180  
26 days after the date of enactment of the Robert

1 C. Byrd Mine Safety Protection Act of 2017,  
2 require operators to measure total incombustible  
3 content (or an equivalent measure of  
4 explosibility) in samples of combined coal dust,  
5 rock dust, and other dust, using direct reading  
6 monitors that the Secretary has approved for  
7 use in an underground coal mine, such as coal  
8 dust explosibility monitors.

9 “(C) REGULATIONS.—The Secretary shall,  
10 not later than 180 days after the date of enact-  
11 ment of the Robert C. Byrd Mine Safety Pro-  
12 tection Act of 2017, promulgate an interim  
13 final rule that prescribes methods for operator  
14 sampling of total incombustible content (or an  
15 equivalent measure of explosibility) in samples  
16 of combined coal dust, rock dust, and other  
17 dust using direct reading monitors and that in-  
18 cludes requirements for locations, methods, and  
19 intervals for mandatory operator sampling.

20 “(D) RECOMMENDATIONS.—Not later than  
21 1 year after the date of enactment of the Rob-  
22 ert C. Byrd Mine Safety Protection Act of  
23 2017, the Secretary of Health and Human  
24 Services shall, based upon the latest research,  
25 recommend to the Secretary of Labor any revi-

1           sions to the mandatory operator sampling loca-  
2           tions, methods, and intervals included in the in-  
3           terim final rule described in subparagraph (C)  
4           that may be warranted in light of such re-  
5           search.

6           “(3) LIMITATION.—Until the Secretary promul-  
7           gates a final rule under paragraph (4)(B), any  
8           measurement taken by a direct reading monitor de-  
9           scribed in paragraph (2)(B) shall not be admissible  
10          to establish a violation in an enforcement action  
11          under this Act.

12          “(4) REPORT AND RULEMAKING AUTHORITY.—

13                 “(A) REPORT.—Not later than 2 years  
14                 after the date of enactment of the Robert C.  
15                 Byrd Mine Safety Protection Act of 2017, the  
16                 Secretary of Health and Human Services, in  
17                 consultation with the Secretary of Labor, shall  
18                 prepare and submit, to the Committee on Edu-  
19                 cation and the Workforce of the House of Rep-  
20                 resentatives and the Committee on Health,  
21                 Education, Labor, and Pensions of the Senate,  
22                 a report—

23                         “(i) regarding whether any direct  
24                         reading monitor described in paragraph  
25                         (2)(B) is sufficiently reliable and accurate



1 for the enforcement of the mandatory  
2 health or safety standards by the Secretary  
3 of Labor under this Act, and whether addi-  
4 tional improvement to such direct reading  
5 monitor, or additional verification regard-  
6 ing reliability and accuracy, would be need-  
7 ed for enforcement purposes; and

8 “(ii) identifying any limitations or im-  
9 pediments for such use in underground  
10 coal mines.

11 “(B) AUTHORITY.—If the Secretary deter-  
12 mines, following a report under subparagraph  
13 (A) (or an update to such report), that any di-  
14 rect reading monitor described in paragraph  
15 (2)(B) is sufficiently reliable and accurate for  
16 the enforcement of mandatory health or safety  
17 standards under this Act, the Secretary shall,  
18 after the submission of such report or update,  
19 promulgate a final rule authorizing the use of  
20 such direct reading monitor for purposes of  
21 compliance with, and enforcement of, such  
22 standards and authorizing the use of other  
23 methods for determining total incombustible  
24 content. Such final rule shall specify mandatory

1 operator sampling locations, methods, and in-  
2 tervals.”.

3 (b) ROCK DUST RECORDKEEPING.—Section 304 (30  
4 U.S.C. 864) is further amended—

5 (1) by redesignating subsection (e) as sub-  
6 section (f);

7 (2) by inserting after subsection (d) the fol-  
8 lowing:

9 “(e) ROCK DUST RECORDKEEPING.—The operator of  
10 each coal mine shall maintain and continuously update a  
11 record of the amount of rock dust purchased for each such  
12 mine.”; and

13 (3) in subsection (f), as so redesignated, by  
14 striking “Subsections (b) through (d)” and inserting  
15 “Subsections (b) through (e)”.

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

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

19 “(u) ATMOSPHERIC MONITORING SYSTEMS.—

20 “(1) GENERAL REGULATIONS.—Not later than  
21 1 year after the date of enactment of the Robert C.  
22 Byrd Mine Safety Protection Act of 2017, the Sec-  
23 retary shall, following consultation with the Director  
24 of the National Institute for Occupational Safety  
25 and Health, promulgate regulations requiring that

1 each operator of an underground coal mine install  
2 atmospheric monitoring systems that—

3 “(A) protect miners where the miners nor-  
4 mally work and travel;

5 “(B) assist in mine emergency response  
6 and the conduct of accident investigations;

7 “(C) provide real-time information regard-  
8 ing methane, oxygen, and carbon monoxide lev-  
9 els, and airflow direction, as appropriate, with  
10 sensing, annunciating, and recording capabili-  
11 ties; and

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

14 “(2) ADDITIONAL REGULATIONS.—The regula-  
15 tions promulgated under paragraph (1) shall, if de-  
16 termined appropriate after an evaluation by the Sec-  
17 retary, include—

18 “(A) the installation of atmospheric moni-  
19 toring and recording devices for mining equip-  
20 ment;

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

1           “(C) the implementation of other tech-  
2           nologies available to conduct continuous atmos-  
3           pheric monitoring.”.

4 **SEC. 504. STUDY ON RESPIRABLE DUST STANDARDS.**

5           (a) STUDY.—Beginning one month after the date of  
6 enactment of this Act, the Secretary of Labor shall under-  
7 take a retrospective study on the effectiveness of the final  
8 rule of the Department of Labor entitled “Lowering Min-  
9 ers’ Exposure to Respirable Coal Mine Dust, Including  
10 Continuous Personal Dust Monitors”, published at 79  
11 Fed. Reg. 24814 (May 1, 2014), and evaluate the data  
12 regarding the use of continuous personal dust monitors,  
13 to determine whether—

14           (1) the 1.5 mg/m<sup>3</sup> respirable dust standard that  
15           was included in such final rule should be further  
16           lowered to better protect the health of miners;

17           (2) the frequency of sampling continuous per-  
18           sonal dust monitors should be increased;

19           (3) engineering controls and work practices  
20           used by mine operators to achieve and maintain the  
21           required respirable coal mine dust levels should be  
22           modified; and

23           (4) samples taken on shifts longer than 8 hours  
24           should be converted to an 8-hour equivalent con-  
25           centration to protect miners who work longer shifts.

1 (b) REPORT.—

2 (1) INITIAL REPORT.—Upon beginning the  
3 study under subsection (a), the Secretary of Labor  
4 shall transmit a copy of such study to Congress, no-  
5 tifying Congress that such study has commenced.

6 (2) ANNUAL REPORTS.—For each year after  
7 the commencement of the study under subsection (a)  
8 and until such study is completed, the Secretary of  
9 Labor shall transmit a report to Congress on the  
10 progress of such study.

11 (3) FINAL REPORT.—Upon completion of the  
12 study under subsection (a), the Secretary of Labor  
13 shall submit a final report of such study to Con-  
14 gress.

15 **SEC. 505. REFRESHER TRAINING ON MINERS' RIGHTS AND**  
16 **RESPONSIBILITIES.**

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

19 “(3) all miners shall receive no less than 9  
20 hours of refresher training, no less frequently than  
21 once every 12 months. Such training shall include  
22 one hour of training on the statutory rights and re-  
23 sponsibilities of miners and their representatives  
24 under this Act, and other applicable Federal and  
25 State law, and shall be through a program of in-

1 instruction developed by the Secretary and delivered  
2 by an employee of the Administration (or a trainer  
3 approved by the Administration) that is a party  
4 independent from the operator;”.

5 (b) NATIONAL HAZARD REPORTING HOTLINE.—Sec-  
6 tion 115 (30 U.S.C. 825), as so amended, is further  
7 amended—

8 (1) by redesignating subsections (e) through (e)  
9 as subsections (d) through (f), respectively; and

10 (2) by inserting after subsection (b) the fol-  
11 lowing:

12 “(c) Any health and safety training program of in-  
13 struction provided under this section shall include dis-  
14 tribution to miners of information regarding the rights of  
15 such miners under this Act and a toll-free hotline tele-  
16 phone number, which the Secretary shall maintain to re-  
17 ceive complaints from miners and the public regarding  
18 hazardous conditions, discrimination, safety or health vio-  
19 lations, or other mine safety or health concerns. Informa-  
20 tion regarding such hotline shall be provided in a portable,  
21 convenient format, such as a durable wallet card, to enable  
22 miners to keep such information on their person.”.

23 (c) TIMING OF INITIAL STATUTORY RIGHTS TRAIN-  
24 ING.—Notwithstanding section 115 of the Federal Mine  
25 Safety and Health Act of 1977 (30 U.S.C. 825) (as so

1 amended) or the health and safety training program ap-  
2 proved under such section, an operator shall ensure that  
3 all miners already employed by the operator on the date  
4 of enactment of this Act shall receive the one hour of stat-  
5 utory rights and responsibilities training described in sec-  
6 tion 115(a)(3) of such Act, not later than 180 days after  
7 such date.

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

9 (a) IN GENERAL.—Section 115 (30 U.S.C. 825), as  
10 so amended, is further amended—

11 (1) by redesignating subsections (e) and (f) (as  
12 so redesignated) as subsections (f) and (g), respec-  
13 tively; and

14 (2) by inserting after subsection (d) (as so re-  
15 designated) the following:

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

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

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

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

9           “(iii) an operator has a history of failing to  
10          adequately train miners, as required by this Act  
11          or the regulations promulgated under this Act;  
12          and

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

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

24          (b) CONFORMING AMENDMENTS.—Section 104(g)(2)  
25 (30 U.S.C. 814(g)(2)) is amended by striking “under



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

3 **SEC. 507. 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 (30 U.S.C. 811 et seq.),  
11 as so amended, is further amended by adding at the end  
12 the following:

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

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

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 Safety Protection Act of 2017, the Secretary shall  
6 issue mandatory standards to establish—

7           “(A) requirements for the certification,  
8 registration, qualification, or other approval de-  
9 scribed in subsection (a), including the experi-  
10 ence, examinations, and references that may be  
11 required as appropriate;

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

17           “(C) procedures and criteria for revoking  
18 such certification, registration, qualification, or  
19 other approval, including procedures that en-  
20 sure that—

21           “(i) the Secretary (or a State agency,  
22 as applicable) responds to requests for rev-  
23 ocation; and

24           “(ii) the names of individuals, whose  
25 certification, registration, qualification, or

1           other approval has been revoked, are pro-  
2           vided to and maintained by the Secretary,  
3           and are made available to appropriate  
4           State agencies through an electronic data-  
5           base.

6           “(2) COORDINATION WITH STATES.—In devel-  
7           oping the standards required under paragraph (1),  
8           the Secretary shall consult with States that have  
9           miner certification programs to ensure effective co-  
10          ordination with existing State standards and re-  
11          quirements for certification. The standards required  
12          under paragraph (1) shall provide that the certifi-  
13          cation, registration, qualification, or other approval  
14          of the State in which the coal or other mine is lo-  
15          cated satisfies the requirement of subsection (a) if  
16          the State’s program of certification, registration,  
17          qualification, or other approval is no less stringent  
18          than the standards established by the Secretary  
19          under paragraph (1).

20          “(c) OPERATOR FEES FOR CERTIFICATION.—

21                 “(1) ASSESSMENT AND COLLECTION.—Begin-  
22                 ning 180 days after the date of enactment of the  
23                 Robert C. Byrd Mine Safety Protection Act of 2017,  
24                 the Secretary shall assess and collect fees, in accord-  
25                 ance with this subsection, from each operator for

1 each person certified under this section. Fees shall  
2 be assessed and collected in amounts determined by  
3 the Secretary as necessary to fund certification pro-  
4 grams that meet the standards established under  
5 this section.

6 “(2) USE.—Amounts collected under paragraph  
7 (1) shall only be available to the Secretary, in ac-  
8 cordance with paragraph (3), for making expendi-  
9 tures to carry out the certification programs estab-  
10 lished under this section.

11 “(3) AUTHORIZATION OF APPROPRIATIONS.—In  
12 addition to funds authorized to be appropriated  
13 under section 114, there is authorized to be appro-  
14 priated to the Secretary for each fiscal year in which  
15 fees are collected under paragraph (1) an amount  
16 equal to the total amount of fees collected under  
17 paragraph (1) during that fiscal year. Such amounts  
18 are authorized to remain available until expended. If  
19 on the first day of a fiscal year a regular appropria-  
20 tion to the Administration has not been enacted, the  
21 Administration shall continue to collect fees (as off-  
22 setting collections) under this subsection at the rate  
23 in effect during the preceding fiscal year, until 5  
24 days after the date on which such regular appropria-  
25 tion is enacted.

1           “(4) COLLECTING AND CREDITING OF FEES.—  
2           Fees authorized and collected under this subsection  
3           shall be deposited and credited as offsetting collec-  
4           tions to the account providing appropriations to the  
5           Administration and shall not be collected for any fis-  
6           cal year except to the extent and in the amount pro-  
7           vided in advance in appropriation Acts.

8           “(d) CITATION; WITHDRAWAL ORDER.—Any oper-  
9           ator who permits a person to perform any of the duties  
10          or provide any training described in subsection (a) without  
11          a current certification, registration, qualification, or other  
12          approval that meets the requirements of this section shall  
13          be considered to have committed an unwarrantable failure  
14          under section 104(d)(1), and the Secretary shall issue an  
15          order requiring that such person be withdrawn or reas-  
16          signed to duties that do not require such certification, reg-  
17          istration, qualification, or other approval.”.

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

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

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

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

4           (4) by redesignating subsections (c) through (l)  
5           as paragraphs (1) through (10), respectively.

6 **SEC. 509. ELECTRONIC RECORDS REQUIREMENT.**

7           Section 103 (30 U.S.C. 802) is amended by adding  
8           at the end the following:

9           “(l) **ELECTRONIC RECORDS.**—Not later than 180  
10          days after the date of enactment of the Robert C. Byrd  
11          Mine Safety Protection Act of 2017, the Secretary shall  
12          promulgate regulations requiring that mine operators re-  
13          tain records and data required by this Act, or otherwise  
14          required by the Secretary, that are created, stored, or  
15          transmitted in electronic form. Such records shall include  
16          records pertaining to miner safety and health, tracking  
17          and communications, atmospheric monitoring of methane,  
18          carbon monoxide, oxygen, coal dust and other mine condi-  
19          tions, equipment usage history and operating parameters,  
20          equipment calibration and maintenance, and other infor-  
21          mation relevant to compliance with Federal mine health  
22          or safety laws and regulations. Not later than 2 years  
23          after the date of enactment of such Act, the Secretary  
24          shall promulgate a regulation regarding the minimum nec-

1 essary capabilities of equipment to retain, store, and re-  
 2 cover data created or transmitted in electronic form.”.

3 **TITLE VI—ADDITIONAL MINE**  
 4 **SAFETY PROVISIONS**

5 **SEC. 601. DEFINITIONS.**

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

8 “(d) ‘operator’ means—

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

11 “(A) operates or supervises a coal or  
 12 other mine; or

13 “(B) controls such mine by making or  
 14 having the authority to make management  
 15 or operational decisions that affect, directly  
 16 or indirectly, the health or safety at such  
 17 mine; or

18 “(2) any independent contractor per-  
 19 forming services or construction at such mine;”.

20 (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.  
 21 802(e)) is amended by striking “the miners” and inserting  
 22 “any miner”.

23 (c) DEFINITION OF IMMINENT DANGER.—Section  
 24 3(j) (30 U.S.C. 802(j)) is amended—

1           (1) by striking “means the” and inserting  
2           “means—

3           “(1) the”;

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

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

7           “(2) the existence of multiple conditions or  
8           practices (regardless of whether related to each  
9           other) that, when considered in the aggregate, could  
10          reasonably be expected to cause death or serious  
11          physical harm before such conditions or practices  
12          can be abated;”.

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

19          (e) DEFINITION OF SIGNIFICANT AND SUBSTANTIAL  
20          VIOLATIONS.—Section 3 (30 U.S.C. 802), as so amended,  
21          is further amended—

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

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



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

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

4           “(p) ‘significant and substantial violation’  
5 means a violation of this Act, including any manda-  
6 tory health or safety standard or regulation promul-  
7 gated under this Act, that is of such nature as could  
8 significantly and substantially contribute to the  
9 cause and effect of a coal or other mine safety or  
10 health hazard as described in section 104(d).”.

11 **SEC. 602. ASSISTANCE TO STATES.**

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

13           (1) in subsection (a)—

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

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

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

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

23           “(4) to assist such State in developing and im-  
24 plementing any certification program for coal or

1 other mines required for compliance with section  
2 118.”; and

3 (2) in subsection (h), by striking “\$3,000,000  
4 for fiscal year 1970, and \$10,000,000 annually in  
5 each succeeding fiscal year” and inserting  
6 “\$20,000,000 for each fiscal year”.

7 **SEC. 603. 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.

24 (2) **CONTENTS OF PLAN.**—The succession plan  
25 developed under this subsection 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) implement tracking systems to assure  
10 that staffing levels of authorized representatives  
11 and technical specialists do not fall below the  
12 minimum required to conduct necessary inspec-  
13 tions, thoroughly review mine plans, and con-  
14 duct accident and special investigations; and

15 (E) identify resources necessary to imple-  
16 ment such plan.

17 (3) UPDATES TO PLAN.—The succession plan  
18 under this subsection shall be updated biennially.

19 **TITLE VII—AMENDMENTS TO**  
20 **THE OCCUPATIONAL SAFETY**  
21 **AND HEALTH ACT OF 1970**

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

23 (a) IN GENERAL.—Section 3(5) of the Occupational  
24 Safety and Health Act of 1970 (29 U.S.C. 652(5)) is  
25 amended by striking “but does not include” and all that

1 follows through the period at the end and inserting “in-  
2 cluding the United States, a State, or a political subdivi-  
3 sion of a State.”.

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

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

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

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

17 “(A) such”;

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

20 “(B) such employee has”;

21 (3) by striking “in any such proceeding or be-  
22 cause of the exercise” and inserting the following:  
23 “before Congress or in any Federal or State pro-  
24 ceeding related to safety or health;

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

3           “(D) of the exercise”; and

4           (4) by inserting before the period at the end the  
5           following: “, including the reporting of any injury,  
6           illness, or unsafe condition to the employer, agent of  
7           the employer, safety and health committee involved,  
8           or employee safety and health representative in-  
9           volved”.

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

13          “(2)(A) No person shall discharge, or cause to be dis-  
14 charged, or in any manner discriminate against, or cause  
15 to be discriminated against, an employee for refusing to  
16 perform the employee’s duties if the employee has a rea-  
17 sonable apprehension that performing such duties would  
18 result in serious injury to, or serious impairment of the  
19 health of, the employee or other employees.

20          “(B) For purposes of subparagraph (A), the cir-  
21 cumstances causing the employee’s good-faith belief that  
22 performing such duties would pose a safety or health haz-  
23 ard shall be of such a nature that a reasonable person,  
24 under the circumstances confronting the employee, would  
25 conclude that there is such a hazard. In order to qualify

1 for protection under this paragraph, the employee, when  
2 practicable, shall have communicated or attempted to com-  
3 municate the safety or health concern to the employer and  
4 have not received from the employer a response reasonably  
5 calculated to allay such concern.”.

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

9 “(3) COMPLAINT.—Any employee who believes  
10 that the employee has been discharged, disciplined,  
11 or otherwise discriminated against by any person in  
12 violation of paragraph (1) or (2) may seek relief for  
13 such violation by filing a complaint with the Sec-  
14 retary under paragraph (5).

15 “(4) STATUTE OF LIMITATIONS.—

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

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

21 “(ii) the date on which the employee  
22 knows or should reasonably have known  
23 that such alleged violation occurred.

24 “(B) REPEAT VIOLATION.—With respect  
25 to an alleged repeat violation, except in a case

1 when the employee has been discharged, a viola-  
2 tion of paragraph (1) or (2) shall be considered  
3 to have occurred on the last date the alleged re-  
4 peat violation occurred.

5 “(5) INVESTIGATION.—

6 “(A) IN GENERAL.—An employee may,  
7 within the time period required under para-  
8 graph (4), file a complaint with the Secretary  
9 alleging a violation of paragraph (1) or (2). If  
10 the complaint alleges a prima facie case, the  
11 Secretary shall conduct an investigation of the  
12 allegations in the complaint, which—

13 “(i) shall include—

14 “(I) interviewing the complain-  
15 ant;

16 “(II) providing the respondent an  
17 opportunity to—

18 “(aa) submit to the Sec-  
19 retary a written response to the  
20 complaint; and

21 “(bb) meet with the Sec-  
22 retary to present statements from  
23 witnesses or provide evidence;  
24 and

1                   “(III) providing the complainant  
2                   an opportunity to—

3                   “(aa) receive any statements  
4                   or evidence provided to the Sec-  
5                   retary;

6                   “(bb) meet with the Sec-  
7                   retary; and

8                   “(cc) rebut any statements  
9                   or evidence; and

10                  “(ii) may include issuing subpoenas  
11                  for the purposes of such investigation.

12                  “(B) DECISION.—Not later than 90 days  
13                  after the filing of the complaint, the Secretary  
14                  shall—

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

18                  “(ii) issue a decision granting or de-  
19                  nying relief.

20                  “(6) PRELIMINARY ORDER FOLLOWING INVES-  
21                  TIGATION.—If, after completion of an investigation  
22                  under paragraph (5)(A), the Secretary finds reason-  
23                  able cause to believe that a violation of paragraph  
24                  (1) or (2) has occurred, the Secretary shall issue a  
25                  preliminary order providing relief authorized under



1 paragraph (14) at the same time the Secretary  
2 issues a decision under paragraph (5)(B). If a de  
3 novo hearing is not requested within the time period  
4 required under paragraph (7)(A)(i), such prelimi-  
5 nary order shall be deemed a final order of the Sec-  
6 retary and is not subject to judicial review.

7 “(7) HEARING.—

8 “(A) REQUEST FOR HEARING.—

9 “(i) IN GENERAL.—A de novo hearing  
10 on the record before an administrative law  
11 judge may be requested—

12 “(I) by the complainant or re-  
13 spondent within 30 days after receiv-  
14 ing notification of a decision granting  
15 or denying relief issued under para-  
16 graph (5)(B) or a preliminary order  
17 under paragraph (6) respectively;

18 “(II) by the complainant within  
19 30 days after the date the complaint  
20 is dismissed without investigation by  
21 the Secretary under paragraph (5)(A);  
22 or

23 “(III) by the complainant within  
24 120 days after the date of filing the  
25 complaint, if the Secretary has not

1           issued a decision under paragraph  
2           (5)(B).

3           “(ii) REINSTATEMENT ORDER.—The  
4           request for a hearing shall not operate to  
5           stay any preliminary reinstatement order  
6           issued under paragraph (6).

7           “(B) PROCEDURES.—

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

14          “(ii) SUBPOENAS; PRODUCTION OF  
15          EVIDENCE.—In conducting any such hear-  
16          ing, the administrative law judge may issue  
17          subpoenas. The respondent or complainant  
18          may request the issuance of subpoenas  
19          that require the deposition of, or the at-  
20          tendance and testimony of, witnesses and  
21          the production of any evidence (including  
22          any books, papers, documents, or record-  
23          ings) relating to the matter under consid-  
24          eration.

1                   “(iii) DECISION.—The administrative  
2                   law judge shall issue a decision not later  
3                   than 90 days after the date on which a  
4                   hearing was requested under this para-  
5                   graph and promptly notify, in writing, the  
6                   parties and the Secretary of such decision,  
7                   including the findings of fact and conclu-  
8                   sions of law. If the administrative law  
9                   judge finds that a violation of paragraph  
10                  (1) or (2) has occurred, the judge shall  
11                  issue an order for relief under paragraph  
12                  (14). If review under paragraph (8) is not  
13                  timely requested, such order shall be  
14                  deemed a final order of the Secretary that  
15                  is not subject to judicial review.

16                  “(8) ADMINISTRATIVE APPEAL.—

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

1           “(B) STANDARD OF REVIEW.—In review-  
2           ing the decision and order of the administrative  
3           law judge, the review board shall affirm the de-  
4           cision and order if it is determined that the fac-  
5           tual findings set forth therein are supported by  
6           substantial evidence and the decision and order  
7           are made in accordance with applicable law.

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

20          “(9) SETTLEMENT IN THE ADMINISTRATIVE  
21          PROCESS.—

22                 “(A) IN GENERAL.—At any time before  
23                 issuance of a final order, an investigation or  
24                 proceeding under this subsection may be termi-

1 nated on the basis of a settlement agreement  
2 entered into by the parties.

3 “(B) PUBLIC POLICY CONSIDERATIONS.—  
4 Neither the Secretary, an administrative law  
5 judge, or review board conducting a hearing  
6 under this subsection shall accept a settlement  
7 that contains conditions conflicting with the  
8 rights protected under this Act or that are con-  
9 trary to public policy, including a restriction on  
10 a complainant’s right to future employment  
11 with employers other than the specific employ-  
12 ers named in a complaint.

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

15 “(A) IN GENERAL.—The complainant may  
16 bring a de novo action described in subpara-  
17 graph (B) if—

18 “(i) an administrative law judge has  
19 not issued a decision and order within the  
20 90-day time period required under para-  
21 graph (7)(B)(iii); or

22 “(ii) the review board has not issued  
23 a decision and order within the 90-day  
24 time period required under paragraph  
25 (8)(C).

1           “(B) DE NOVO ACTION.—Such de novo ac-  
2           tion may be brought at law or equity in the  
3           United States district court for the district  
4           where a violation of paragraph (1) or (2) alleg-  
5           edly occurred or where the complainant resided  
6           on the date of such alleged violation. The court  
7           shall have jurisdiction over such action without  
8           regard to the amount in controversy and to  
9           order appropriate relief under paragraph (14).  
10          Such action shall, at the request of either party  
11          to such action, be tried by the court with a  
12          jury.

13          “(11) JUDICIAL REVIEW.—

14               “(A) TIMELY APPEAL TO THE COURT OF  
15               APPEALS.—Any party adversely affected or ag-  
16               grieved by a final decision and order issued  
17               under this subsection may obtain review of such  
18               decision and order in the United States Court  
19               of Appeals for the circuit where the violation,  
20               with respect to which such final decision and  
21               order was issued, allegedly occurred or where  
22               the complainant resided on the date of such al-  
23               leged violation. To obtain such review, a party  
24               shall file a petition for review not later than 60  
25               days after the final decision and order was

1 issued. Such review shall conform to chapter 7  
2 of title 5, United States Code. The commence-  
3 ment of proceedings under this subparagraph  
4 shall not, unless ordered by the court, operate  
5 as a stay of the final decision and order.

6 “(B) LIMITATION ON COLLATERAL AT-  
7 TACK.—An order and decision with respect to  
8 which review may be obtained under subpara-  
9 graph (A) shall not be subject to judicial review  
10 in any criminal or other civil proceeding.

11 “(12) ENFORCEMENT OF ORDER.—If a re-  
12 spondent fails to comply with an order issued under  
13 this subsection, the Secretary or the complainant on  
14 whose behalf the order was issued may file a civil ac-  
15 tion for enforcement in the United States district  
16 court for the district in which the violation was  
17 found to occur to enforce such order. If both the  
18 Secretary and the complainant file such action, the  
19 action of the Secretary shall take precedence. The  
20 district court shall have jurisdiction to grant all ap-  
21 propriate relief described in paragraph (14).

22 “(13) BURDENS OF PROOF.—

23 “(A) CRITERIA FOR DETERMINATION.—In  
24 making a determination or adjudicating a com-  
25 plaint pursuant to this subsection, the Sec-

1           retary, administrative law judge, review board,  
2           or a court may determine that a violation of  
3           paragraph (1) or (2) has occurred only if the  
4           complainant demonstrates that any conduct de-  
5           scribed in paragraph (1) or (2) with respect to  
6           the complainant was a contributing factor in  
7           the adverse action alleged in the complaint.

8           “(B) PROHIBITION.—Notwithstanding sub-  
9           paragraph (A), a decision or order that is favor-  
10          able to the complainant shall not be issued in  
11          any administrative or judicial action pursuant  
12          to this subsection if the respondent dem-  
13          onstrates by clear and convincing evidence that  
14          the respondent would have taken the same ad-  
15          verse action in the absence of such conduct.

16          “(14) RELIEF.—

17                 “(A) ORDER FOR RELIEF.—If the Sec-  
18                 retary, administrative law judge, review board,  
19                 or a court determines that a violation of para-  
20                 graph (1) or (2) has occurred, the Secretary,  
21                 administrative law judge, review board, or  
22                 court, respectively, shall have jurisdiction to  
23                 order all appropriate relief, including injunctive  
24                 relief, and compensatory and exemplary dam-  
25                 ages, including—



1           “(i) affirmative action to abate the  
2 violation;

3           “(ii) reinstatement without loss of po-  
4 sition or seniority, and restoration of the  
5 terms, rights, conditions, and privileges as-  
6 sociated with the complainant’s employ-  
7 ment, including opportunities for pro-  
8 motions to positions with equivalent or bet-  
9 ter compensation for which the complain-  
10 ant is qualified;

11           “(iii) compensatory and consequential  
12 damages sufficient to make the complain-  
13 ant whole (including back pay, prejudg-  
14 ment interest, and other damages); and

15           “(iv) expungement of all warnings,  
16 reprimands, or derogatory references that  
17 have been placed in paper or electronic  
18 records or databases of any type relating  
19 to the actions by the complainant that  
20 gave rise to the unfavorable personnel ac-  
21 tion, and, at the complainant’s direction,  
22 transmission of a copy of the decision on  
23 the complaint to any person whom the  
24 complainant reasonably believes may have  
25 received such unfavorable information.

1           “(B) ATTORNEYS’ FEES AND COSTS.—If  
2           the Secretary or an administrative law judge,  
3           review board, or court grants an order for relief  
4           under subparagraph (A), the Secretary, admin-  
5           istrative law judge, review board, or court, re-  
6           spectively, shall assess, at the request of the  
7           employee against the employer—

8                   “(i) reasonable attorneys’ fees; and

9                   “(ii) costs (including expert witness  
10                  fees) reasonably incurred, as determined  
11                  by the Secretary, administrative law judge,  
12                  review board, or court, respectively, in con-  
13                  nection with bringing the complaint upon  
14                  which the order was issued.

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

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

25           “(17) ELECTION OF VENUE.—

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

6                   “(i) the Secretary under paragraph  
7 (5); or

8                   “(ii) a State plan administrator in  
9 such State.

10           “(B) REFERRALS.—If—

11                   “(i) the Secretary receives a complaint  
12 pursuant to subparagraph (A)(i), the Sec-  
13 retary shall not refer such complaint to a  
14 State plan administrator for resolution; or

15                   “(ii) a State plan administrator re-  
16 ceives a complaint pursuant to subpara-  
17 graph (A)(ii), the State plan administrator  
18 shall not refer such complaint to the Sec-  
19 retary for resolution.”.

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

1 **SEC. 703. VICTIMS' RIGHTS.**

2 The Occupational Safety and Health Act of 1970 (29  
3 U.S.C. 651 et seq.) is amended by inserting after section  
4 9 (29 U.S.C. 658) the following:

5 **“SEC. 9A. VICTIMS' RIGHTS.**

6 “(a) RIGHTS BEFORE THE SECRETARY.—A victim or  
7 the representative of a victim shall be afforded the right,  
8 with respect to an inspection or investigation conducted  
9 under section 8, to—

10 “(1) meet with the Secretary regarding the in-  
11 spection or investigation conducted under such sec-  
12 tion before the Secretary's decision to issue a cita-  
13 tion or take no action;

14 “(2) receive, at no cost, a copy of any citation  
15 or report, issued as a result of such inspection or in-  
16 vestigation, at the same time as the employer re-  
17 ceives such citation or report;

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

21 “(4) be provided notification of the date and  
22 time or any proceedings, service of pleadings, and  
23 other relevant documents, and an explanation of the  
24 rights of the employer, employee and employee rep-  
25 resentative, and victim to participate in proceedings  
26 conducted under section 10(c).

1       “(b) RIGHTS BEFORE THE COMMISSION.—Upon re-  
2 quest, a victim or representative of a victim shall be af-  
3 forded the right with respect to a work-related bodily in-  
4 jury or death to—

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

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

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

12       “(c) MODIFICATION OF CITATION.—Before entering  
13 into an agreement to withdraw or modify a citation issued  
14 as a result of an inspection or investigation of an incident  
15 under section 8, the Secretary shall notify a victim or rep-  
16 resentative of a victim and provide the victim or represent-  
17 ative of a victim with an opportunity to appear and make  
18 a statement before the parties conducting settlement nego-  
19 tiations. In lieu of an appearance, the victim or represent-  
20 ative of the victim may elect to submit a letter to the Sec-  
21 retary and the parties.

22       “(d) SECRETARY PROCEDURES.—The Secretary shall  
23 establish procedures—

24               “(1) to inform victims of their rights under this  
25 section; and

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

3           “(e) COMMISSION PROCEDURES AND CONSIDER-  
4 ATIONS.—The Commission shall—

5           “(1) establish procedures relating to the rights  
6 of victims to be heard in proceedings before the  
7 Commission; and

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

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

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

18          “(2) assist victims in asserting their rights  
19 under this section.

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

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

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

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

7                   “(B) the victim sustains a work-related in-  
8 jury or illness that is the subject of an inspec-  
9 tion or investigation conducted under section 8,  
10 and the victim, because of incapacity, cannot  
11 reasonably exercise the rights under this sec-  
12 tion.”.

13 **SEC. 704. CORRECTION OF SERIOUS, WILLFUL, OR RE-**  
14 **PEATED VIOLATIONS PENDING CONTEST AND**  
15 **PROCEDURES FOR A STAY.**

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

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

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

24           For each violation which the Secretary designates as  
25 serious, willful, or repeated, the period permitted for

1 the correction of the violation shall begin to run  
2 upon receipt of the citation.

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

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

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

11 “(3) CRITERIA AND RULES OF PROCEDURE FOR  
12 STAYS.—

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

17 “(B) CRITERIA.—In determining whether  
18 a stay should be issued on the basis of a motion  
19 filed under subparagraph (A), the Commission  
20 shall consider whether—

21 “(i) the employer has demonstrated a  
22 substantial likelihood of success on its con-  
23 test to the citation;

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



1                   “(iii) a stay will adversely affect the  
2                   health or safety of workers.

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

8                   “(i) That a hearing before an admin-  
9                   istrative law judge shall occur not later  
10                  than 15 days following the filing of the  
11                  motion for a stay (unless extended at the  
12                  request of the employer), and shall provide  
13                  for a decision on the motion not later than  
14                  15 days following the hearing (unless ex-  
15                  tended at the request of the employer).

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

19                  “(iii) That if a party is aggrieved by  
20                  a decision issued by an administrative law  
21                  judge regarding the stay, such party has  
22                  the right to file an objection with the Com-  
23                  mission not later than 5 days after receipt  
24                  of the administrative law judge’s decision.  
25                  Within 10 days after receipt of the objec-

1           tion, a Commissioner, if a quorum is seat-  
2           ed pursuant to section 12(f), shall decide  
3           whether to grant review of the objection.  
4           If, within 10 days after receipt of the ob-  
5           jection, no decision is made on whether to  
6           review the decision of the administrative  
7           law judge, the Commission declines to re-  
8           view such decision, or no quorum is seated,  
9           the decision of the administrative law  
10          judge shall become a final order of the  
11          Commission. If the Commission grants re-  
12          view of the objection, the Commission shall  
13          issue a decision regarding the stay not  
14          later than 30 days after receipt of the ob-  
15          jection. If the Commission fails to issue  
16          such decision within 30 days, the decision  
17          of the administrative law judge shall be-  
18          come a final order of the Commission.

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

1 **SEC. 705. CONFORMING AMENDMENTS.**

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

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

22 **SEC. 706. CIVIL PENALTIES.**

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

26 (1) in subsection (a)—

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

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

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

19 (2) in subsection (b)—

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

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

1           \$50,000 for each such violation, but not less  
2           than \$20,000 for each such violation, except  
3           that for an employer with 25 or fewer employ-  
4           ees such penalty shall not be less than \$10,000  
5           for each such violation.”;

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

8           (4) in subsection (d), as amended by section  
9           705, by striking “\$7,000” each place it occurs and  
10          inserting “\$12,000”;

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

13          (6) in subsection (j) (as redesignated by para-  
14          graph (5)), by striking “\$7,000” and inserting  
15          “\$12,000;”.

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

19                 “(e) Amounts provided under this section for civil  
20          penalties shall be adjusted by the Secretary at least once  
21          during each 4-year period beginning January 1 after the  
22          date of enactment of the Robert C. Byrd Mine Safety Pro-  
23          tection Act of 2017, to account for the percentage increase  
24          or decrease in the Consumer Price Index for all urban con-  
25          sumers during such period.”.

1 **SEC. 707. CRIMINAL PENALTIES.**

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

5 (1) by amending subsection (f), as so redesign-  
6 nated, to read as follows:

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

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

22 (2) in subsection (g), as so redesignated, by  
23 striking “fine of not more than \$1,000 or by impris-  
24 onment for not more than six months,” and insert-  
25 ing “fine in accordance with title 18, United States

1 Code, or by imprisonment for not more than 2  
2 years,”;

3 (3) in subsection (h), as so redesignated, by  
4 striking “fine of not more than \$10,000, or by im-  
5 prisonment for not more than six months,” and in-  
6 sserting “fine in accordance with title 18, United  
7 States Code, or by imprisonment for not more than  
8 5 years,”;

9 (4) by redesignating subsections (j) through  
10 (m), as so redesignated, as subsections (k) through  
11 (n), respectively; and

12 (5) by inserting after subsection (i) the fol-  
13 lowing:

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

1 States Code, by imprisonment for not more than 10 years,  
2 or by both.

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

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

9 “(A) a substantial risk of death;

10 “(B) protracted unconsciousness;

11 “(C) protracted and obvious physical disfigure-  
12 ment; or

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

16 (b) JURISDICTION FOR PROSECUTION UNDER STATE  
17 AND LOCAL CRIMINAL LAWS.—Section 17 of such Act (29  
18 U.S.C. 666) (as amended by this Act) is further amended  
19 by adding at the end the following:

20 “(o) Nothing in this Act shall preclude a State or  
21 local law enforcement agency from conducting criminal  
22 prosecutions in accordance with the laws of such State or  
23 locality.”.



1 **SEC. 708. PENALTIES.**

2 Subsection (n) of section 17 the Occupational Safety  
3 and Health Act of 1970 (29 U.S.C. 666), as redesignated  
4 by sections 706 and 707, is amended by adding at the  
5 end the following: “Pre-final order interest on such pen-  
6 alties shall begin to accrue on the date the party contests  
7 a citation issued under this Act, and shall end upon the  
8 issuance of the final order. Such pre-final order interest  
9 shall be calculated at the current underpayment rate de-  
10 termined by the Secretary of the Treasury pursuant to  
11 section 6621 of the Internal Revenue Code of 1986, and  
12 shall be compounded daily. Post-final order interest shall  
13 begin to accrue 30 days after the date a final order of  
14 the Commission or the court is issued, and shall be  
15 charged at the rate of 8 percent per year.”.

16 **SEC. 709. AUTHORIZATION OF COOPERATIVE AGREEMENTS**

17 **BY NIOSH OFFICE OF MINE SAFETY AND**  
18 **HEALTH.**

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

21 (1) in subparagraph (B), by striking “and” at  
22 the end;

23 (2) by redesignating subparagraph (C) as sub-  
24 paragraph (D); and

25 (3) by inserting after subparagraph (B) the fol-  
26 lowing:

1           “(C) enter into cooperative agreements or  
2           contracts with international institutions and  
3           private entities to improve mine safety and  
4           health through the development and evaluation  
5           of new interventions; and”.

6 **SEC. 710. EFFECTIVE DATE.**

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

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

14               (1) A State that has a State plan approved  
15               under section 18 of the Occupational Safety and  
16               Health Act of 1970 (29 U.S.C. 667) shall amend its  
17               State plan to conform with the requirements of this  
18               title, and the amendments made by this title, not  
19               later than 12 months after the date of the enact-  
20               ment of this Act. The Secretary of Labor may ex-  
21               tend the period for a State to make such amend-  
22               ments to its State plan by not more than 12 months,  
23               if the State’s legislature is not in session during the  
24               12-month period beginning with the date of the en-  
25               actment of this Act. Such amendments to the State

1 plan shall take effect not later than 90 days after  
2 the adoption of such amendments by such State.

3 (2) This title and the amendments made by this  
4 Act shall take effect not later than 36 months after  
5 the date of the enactment of this Act with respect  
6 to a workplace of a State, or a political subdivision  
7 of a State, that does not have a State plan approved  
8 under such section 18 (29 U.S.C. 667).

○