

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 153

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. ROCKEFELLER (for himself, Mr. HARKIN, Mrs. MURRAY, and Mr. MANCHIN) 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 and occupational safety and health laws, empower workers to raise safety concerns, prevent future mine and other workplace tragedies, establish rights of families of victims of workplace accidents, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Robert C. Byrd Mine and Workplace Safety and Health  
6 Act of 2011”.

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

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

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION  
 AUTHORITY

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

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

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

TITLE III—PENALTIES

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

TITLE IV—WORKER RIGHTS AND PROTECTIONS

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

TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

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

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

- Sec. 601. Definitions.  
 Sec. 602. Assistance to States.  
 Sec. 603. Black lung medical reports.  
 Sec. 604. Study on workforce needs.  
 Sec. 605. Mine Safety and Health Administration strategic planning.

TITLE VII—AMENDMENTS TO THE OCCUPATIONAL SAFETY AND  
HEALTH ACT

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

1 **SEC. 2. REFERENCES.**

2 Except in title VII and as otherwise expressly pro-  
 3 vided, whenever in this Act an amendment is expressed  
 4 as an amendment to a section or other provision, the ref-  
 5 erence shall be considered to be made to a section or other  
 6 provision of the Federal Mine Safety and Health Act of  
 7 1977 (30 U.S.C. 801 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 by striking “(b) For the purpose” and  
 14 inserting the following:

15 “(b) ACCIDENT INVESTIGATIONS.—

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

18 “(A) determine why the accident occurred;

19 “(B) determine whether there were viola-  
 20 tions of law, mandatory health and safety

1 standards, or other requirements, and if such  
 2 violations are found, issue citations and pen-  
 3 alties, and in cases involving possible criminal  
 4 actions, refer such matters to the Attorney  
 5 General; 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.

22 “(iv) COMPOSITION.—The Secretary  
23 of Health and Human Services shall ap-  
24 point as members of the Panel—

1                   “(I) 1 operator of a mine or indi-  
2                   vidual representing mine operators,  
3                   and

4                   “(II) 1 member of a labor orga-  
5                   nization or other representative of  
6                   miners,

7                   and may not appoint more than 1 of either  
8                   such individuals as members of the Panel.

9                   “(v) STAFF AND EXPENSES.—The Di-  
10                  rector of NIOSH shall designate NIOSH  
11                  staff to facilitate the work of the Panel.  
12                  The Director may accept as staff personnel  
13                  on detail from other Federal agencies or  
14                  re-employ annuitants. The detail of per-  
15                  sonnel under this paragraph may be on a  
16                  non-reimbursable basis, and such detail  
17                  shall be without interruption or loss of civil  
18                  service status or privilege. The Director of  
19                  NIOSH shall have the authority to procure  
20                  on behalf of the Panel such materials, sup-  
21                  plies or services, including technical ex-  
22                  perts, as requested in writing by a majority  
23                  of the Panel.

24                  “(vi) COMPENSATION AND TRAVEL.—  
25                  All members of the Panel who are officers

1 or employees of the United States shall  
2 serve without compensation in addition to  
3 that received for their services as officers  
4 or employees of the United States. Each  
5 Panel member who is not an officer or em-  
6 ployee of the United States shall be com-  
7 pensated at a rate equal to the daily equiv-  
8 alent of the annual rate of basic pay pre-  
9 scribed for level IV of the Executive Sched-  
10 ule under section 5315 of title 5, United  
11 States Code, for each day (including travel  
12 time) during which such member is en-  
13 gaged in the performance of duties of the  
14 Panel. The members of the Panel shall be  
15 allowed travel expenses, including per diem  
16 in lieu of subsistence, at rates authorized  
17 for employees of agencies under subchapter  
18 1 of chapter 57 of title 5, United States  
19 Code, while away from their homes or reg-  
20 ular places of business in the performance  
21 of services for the Panel.

22 “(C) DUTIES.—The Panel shall—

23 “(i) assess and identify any factors  
24 that caused the accident, including defi-  
25 ciencies in safety management systems,

1 regulations, enforcement, industry prac-  
2 tices or guidelines, or organizational fail-  
3 ures;

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

6 “(I) the operator;

7 “(II) any contractors or other  
8 persons engaged in mining-related  
9 functions at the site;

10 “(III) any State agency with  
11 oversight responsibilities;

12 “(IV) any agency or office within  
13 the Department of Labor; or

14 “(V) any other person or entity  
15 (including equipment manufacturers);

16 “(iii) review the determinations and  
17 recommendations by the Secretary under  
18 paragraph (1);

19 “(iv) prepare a report that—

20 “(I) includes the findings regard-  
21 ing the causal factors described in  
22 clauses (i) and (ii);

23 “(II) identifies any strengths and  
24 weaknesses in the Secretary’s inves-  
25 tigation; and



1           “(III) includes recommendations,  
2           including interim recommendations  
3           where appropriate, to industry, labor  
4           organizations, State and Federal  
5           agencies, or Congress, regarding pol-  
6           icy, regulatory, enforcement, adminis-  
7           trative, or other changes, which in the  
8           judgment of the Panel, would prevent  
9           a recurrence at other mines; and

10           “(v) publish such findings and rec-  
11           ommendations (excluding any portions  
12           which the Attorney General requests that  
13           the Secretary withhold in relation to a  
14           criminal referral) and hold public meetings  
15           to inform the mining community and fami-  
16           lies of affected miners of the Panel’s find-  
17           ings and recommendations.

18           “(D) HEARINGS; APPLICABILITY OF CER-  
19           TAIN FEDERAL LAW.—The Panel shall have the  
20           authority to conduct public hearings or meet-  
21           ings, but shall not be subject to the Federal Ad-  
22           visory Committee Act. All public hearings of the  
23           Panel shall be subject to the requirements  
24           under section 552b of title 5, United States  
25           Code.

1           “(E)     MEMORANDUM     OF     UNDER-  
2     STANDING.—Not later than 90 days after the  
3     date of enactment of the Robert C. Byrd Mine  
4     and Workplace Safety and Health Act of 2011,  
5     the Secretary of Labor and the Secretary of  
6     Health and Human Services shall conclude and  
7     publically issue a memorandum of under-  
8     standing that—

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

18          “(ii) ensures that Panel members or  
19     staff will be able to participate in inves-  
20     tigation activities (such as mine inspections  
21     and interviews) related to the Secretary of  
22     Labor’s investigation and will have full ac-  
23     cess to documents that are assembled or  
24     produced in such investigation, and en-  
25     sures that the Secretary of Labor will

1           make all of the authority available to such  
2           Secretary under this section, including sub-  
3           poena authority, to obtain information and  
4           witnesses which may be requested by such  
5           Panel; and

6                   “(iii) establishes such other arrange-  
7                   ments as are necessary to implement this  
8                   paragraph.

9                   “(F) PROCEDURES.—Not later than 90  
10           days after the date of enactment of the Robert  
11           C. Byrd Mine and Workplace Safety and  
12           Health Act of 2011, the Secretary of Health  
13           and Human Services shall establish procedures  
14           to ensure the consistency and effectiveness of  
15           Panel investigations. In establishing such proce-  
16           dures, such Secretary shall consult with inde-  
17           pendent safety investigation agencies, sectors of  
18           the mining industry, representatives of miners,  
19           families of miners involved in fatal accidents,  
20           State mine safety agencies, and mine rescue or-  
21           ganizations. Such procedures shall include—

22                   “(i) authority for the Panel to use evi-  
23                   dence, samples, interviews, data, analyses,  
24                   findings, or other information gathered by

1 the Secretary of Labor, as the Panel deter-  
2 mines valid;

3 “(ii) provisions to ensure confiden-  
4 tiality if requested by any witness, to the  
5 extent permitted by law, and prevent con-  
6 flicts of interest in witness representation;  
7 and

8 “(iii) provisions for preservation of  
9 public access to the Panel’s records  
10 through the Secretary of Health and  
11 Human Services.

12 “(G) AUTHORIZATION OF APPROPRIA-  
13 TIONS.—There is authorized to be appropriated  
14 to carry out this subsection such sums as may  
15 be necessary.

16 “(3) POWERS AND PROCESSES.—For the pur-  
17 pose”.

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

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

3 Section 103(b) (as amended by section 101) (30  
4 U.S.C. 813(b)) is further amended by adding at the end  
5 the following:

6 “(4) **ADDITIONAL POWERS.**—For the purpose  
7 of enabling the Secretary to perform any of the  
8 functions under this Act, the Secretary or the Sec-  
9 retary’s designee, may sign and issue subpoenas for  
10 the attendance and testimony of witnesses and the  
11 production of information, including all relevant  
12 data, papers, books, documents, and items of phys-  
13 ical evidence, and administer oaths. Witnesses sum-  
14 moned shall be paid the same fees that are paid wit-  
15 nesses in the courts of the United States. In car-  
16 rying out inspections and investigations under this  
17 subsection, authorized representatives of the Sec-  
18 retary and attorneys representing the Secretary are  
19 authorized to question any individual privately.  
20 Under this section, any individual who is willing to  
21 speak with or provide a statement to such author-  
22 ized representatives or attorneys representing the  
23 Secretary may do so without the presence, involve-  
24 ment, or knowledge of the operator or the operator’s  
25 agents or attorneys. The Secretary shall keep the  
26 identity of an individual providing such a statement

1 confidential to the extent permitted by law. Nothing  
 2 in this paragraph prevents any individual from being  
 3 represented by that individual's personal attorney.".

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

5 Section 103(f) (30 U.S.C. 813(f)) is amended by in-  
 6 serting before the last sentence the following: "If any  
 7 miner is entrapped or otherwise prevented as the result  
 8 of an accident in such mine from designating such a rep-  
 9 resentative directly, such miner's closest relative may act  
 10 on behalf of such miner in designating such a representa-  
 11 tive. If any miner is not currently working in such mine  
 12 as the result of an accident in such mine, but would be  
 13 currently working in such mine but for such accident, such  
 14 miner may designate such a representative.".

15 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**  
 16 **SPECTIONS, INVESTIGATIONS, AND RECORD-**  
 17 **KEEPING.**

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

1 nized mining unit is producing, or customarily produces,  
2 coal on such section, then such inspection shall be con-  
3 ducted while such unit is producing coal at a rate that  
4 is reasonably consistent with the average rate of produc-  
5 tion at the mine during the previous quarter.”.

6 (b) CONFLICT OF INTEREST IN THE REPRESENTA-  
7 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) is  
8 further amended by adding at the end the following: “Dur-  
9 ing inspections and investigations under this section, and  
10 during any litigation under this Act, no attorney shall rep-  
11 resent or purport to represent both the operator of a coal  
12 or other mine and any other individual, unless such indi-  
13 vidual has knowingly and voluntarily waived all actual and  
14 reasonably foreseeable conflicts of interest resulting from  
15 such representation. The Secretary is authorized to take  
16 such actions as the Secretary considers appropriate to as-  
17 certain whether such individual has knowingly and volun-  
18 tarily waived all such conflicts of interest. If the Secretary  
19 finds that such an individual cannot be represented ade-  
20 quately by such an attorney due to such conflicts of inter-  
21 est, the Secretary may petition the appropriate United  
22 States District Court which shall have jurisdiction to dis-  
23 qualify such attorney as counsel to such individual in the  
24 matter. The Secretary may make such a motion as part

1 of an ongoing related civil action or as a miscellaneous  
2 action.”.

3 (c) INJURY AND ILLNESS REPORTING.—Section  
4 103(d) (30 U.S.C. 813(d)) is amended by striking the last  
5 sentence and inserting the following: “The records to be  
6 kept and made available by the operator of the mine shall  
7 include man-hours worked and occupational injuries and  
8 illnesses, and shall be maintained separately for each mine  
9 and be reported at a frequency determined by the Sec-  
10 retary, but at least annually. Operators shall be respon-  
11 sible for reporting on all miners working at such mine re-  
12 gardless of their employer, except that independent con-  
13 tractors (within the meaning of section 3(d)) shall only  
14 be responsible for reporting on miners in their employ or  
15 under their direction or authority.”.

16 (d) ORDERS FOLLOWING AN ACCIDENT.—Section  
17 103(k) (30 U.S.C. 813(k)) is amended by striking “, when  
18 present,”.

19 (e) ELECTRONIC DATABASE.—Section 103 (30  
20 U.S.C. 813) is amended by adding at the end the fol-  
21 lowing:

22 “(l) The Secretary shall establish and maintain a  
23 publicly available electronic database containing current  
24 and historical data on the safety records of each coal or  
25 other mine. Such database shall be user-friendly and



1 searchable, and shall have the ability to provide aggregate  
 2 data for each mine, each operator, and each controller of  
 3 a mine and the ability to compare safety data between  
 4 mines, operators, and controllers.”.

5 (f) OUTSIDE EXPERTS IN INVESTIGATIONS.—Section  
 6 112 (30 U.S.C. 822) is amended—

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

9 “(a) CIVIL LITIGATION REPRESENTATION.—Except  
 10 as provided”; and

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

12 “(b) MINING EXPERTS IN INVESTIGATIONS.—The  
 13 Attorney General shall designate 1 or more full-time em-  
 14 ployees with expertise in the mining industry to coordinate  
 15 with the Department of Labor and assist United States  
 16 attorneys in the investigation and prosecution of criminal  
 17 violations under this Act.”.

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

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

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

23 (1) in the first sentence—

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

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

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

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

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

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

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

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

3               “(1) PATTERN STATUS.—

4                       “(A) IN GENERAL.—For purposes of this  
5 subsection, an operator of a coal or other mine  
6 shall be in pattern status if the operator has,  
7 as determined based on the regulations promul-  
8 gated under paragraph (8)—

9                               “(i) a pattern of—

10                                       “(I) citations for significant and  
11 substantial violations;

12                                       “(II) citations and withdrawal or-  
13 ders issued for unwarrantable failure  
14 to comply with mandatory health and  
15 safety standards under section 104(d);

16                                       “(III) citations for flagrant viola-  
17 tions within the meaning of section  
18 110(b);

19                                       “(IV) withdrawal orders issued  
20 under any other section of this Act; or

21                                       “(V) accidents, injuries, or ill-  
22 nesses; or

23                                       “(ii) a pattern consisting of any com-  
24 bination of citations, orders, accidents, in-

1           juries, or illnesses described in subclauses  
2           (I) through (V).

3           “(B) MITIGATING CIRCUMSTANCES.—Not-  
4           withstanding subparagraph (A), if the Sec-  
5           retary, after conducting an assessment of a coal  
6           or other mine that otherwise qualifies for pat-  
7           tern status, certifies that there are mitigating  
8           circumstances wherein the operator has elimi-  
9           nated any elevated risk to the health or safety  
10          of miners and has taken sufficient measures to  
11          ensure such elevated risk will not recur, the  
12          Secretary may deem such mine to not be in pat-  
13          tern status under this subsection. The Sec-  
14          retary shall issue any such certification of such  
15          mitigating circumstances that would preclude  
16          the placement of a mine in pattern status as a  
17          written finding, which shall, not later than 10  
18          days after the certification is made, be—

19                   “(i) published in the Federal Register;

20                   and

21                   “(ii) transmitted to the Committee on  
22                   Education and the Workforce of the House  
23                   of Representatives and the Committee on  
24                   Health, Education, Labor, and Pensions of  
25                   the Senate.

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

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

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

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

13           “(D) require that the number of regular  
14 inspections of such mine required under section  
15 103 be increased to 8 per year for an under-  
16 ground mine and 4 per year for a surface mine  
17 while the mine is in pattern status.

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

22           “(3) REMEDIATION ORDER.—

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

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

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

8 “(ii) Institute and implement an effec-  
9 tive health and safety management pro-  
10 gram approved by the Secretary, includ-  
11 ing—

12 “(I) the employment of safety  
13 professionals, certified persons, and  
14 adequate numbers of personnel for the  
15 mine, as may be required by the Sec-  
16 retary;

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

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

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

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

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

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

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

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

13           “(5) PERFORMANCE EVALUATION.—

14           “(A) PERFORMANCE BENCHMARKS.—The  
15 Secretary shall evaluate the performance of  
16 each operator whose mine is in pattern status  
17 every 90 days during which the mine is pro-  
18 ducing and determine if, for such 90-day pe-  
19 riod—

20           “(i) the operator’s rate of citations for  
21 significant and substantial violations—

22           “(I) are, on average, in the top  
23 performing 35th percentile of such  
24 rates, respectively, for all mines of  
25 similar size and type; or



1                   “(II) have been reduced by 70  
2                   percent since such mine was placed on  
3                   pattern status;

4                   “(ii) the operator’s accident and in-  
5                   jury rates are, on average, in the top per-  
6                   forming 35th percentile of such rates, re-  
7                   spectively, for all mines of similar size and  
8                   type; and

9                   “(iii) no citation or withdrawal order  
10                  for a violation under section 104(d), no  
11                  withdrawal order for imminent danger  
12                  under section 107 arising from a signifi-  
13                  cant and substantial violation, and no fla-  
14                  grant violations within the meaning of sec-  
15                  tion 110(b), were issued for such mine.

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

25                  “(6) TERMINATION OF PATTERN STATUS.—

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

5                   “(i) the operator’s rate of citations for  
6 significant and substantial violations—

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

11                           “(II) have been reduced by 80  
12 percent since such mine was placed on  
13 pattern status;

14                   “(ii) the operator’s accident and in-  
15 jury rates are, on average, in the top per-  
16 forming 25th percentile of such rates, re-  
17 spectively, for all mines of similar size and  
18 type; and

19                   “(iii) no citation or withdrawal orders  
20 for violations under section 104(d), no  
21 withdrawal orders for imminent danger  
22 under section 107 arising from a signifi-  
23 cant and substantial violation, and no fla-  
24 grant violations within the meaning of sec-  
25 tion 110(b), were issued for such mine.

1           “(B) CONTINUATION OF PATTERN STA-  
2           TUS.—Should the mine operator fail to meet  
3           the performance benchmarks described in sub-  
4           paragraph (A), the Secretary shall extend the  
5           mine’s placement in pattern status until such  
6           benchmarks are achieved.

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

11          “(8) REGULATIONS; INFORMATION ON PER-  
12          FORMANCE.—

13                 “(A) IN GENERAL.—Not later than 120  
14                 days after the date of enactment of the Robert  
15                 C. Byrd Mine and Workplace Safety and  
16                 Health Act of 2011, the Secretary shall issue  
17                 interim final regulations that shall define—

18                         “(i) the threshold criteria to trigger  
19                         pattern status under paragraph (1) and  
20                         cause a withdrawal order to be issued or  
21                         reissued; and

22                         “(ii) the performance benchmarks de-  
23                         scribed in paragraphs (5)(A) and (6)(A).

24                 “(B) THRESHOLD CRITERIA.—In estab-  
25                 lishing threshold criteria to trigger pattern sta-

1           tus for mines with significantly poor compliance  
2           that contributes to unsafe or unhealthy condi-  
3           tions, the Secretary—

4                   “(i) shall consider frequency and rates  
5                   of citations described in paragraph (1)(A)  
6                   and rates of reportable accidents and inju-  
7                   ries within the preceding 180-day period;

8                   “(ii) may include factors such as mine  
9                   type, production levels, number of miners,  
10                  hours worked by miners, number of mecha-  
11                  nized mining units (or similar production  
12                  characteristics), and the designation of a  
13                  representative of miners at the mine;

14                  “(iii) may include the mine’s history  
15                  of citations, violations, orders, and other  
16                  enforcement actions, or rates of reportable  
17                  accidents and injuries, over any period de-  
18                  termined relevant by the Secretary;

19                  “(iv) may assign weight to various  
20                  types of citations, orders, accidents, inju-  
21                  ries, illnesses, or other factors; and

22                  “(v) may include other factors the  
23                  Secretary may determine appropriate to  
24                  protect the safety and health of miners.

1           “(C) FINAL REGULATION.—Not later than  
2           2 years after the date of enactment of the Rob-  
3           ert C. Byrd Mine and Workplace Safety and  
4           Health Act of 2011, the Secretary shall promul-  
5           gate final regulations implementing this para-  
6           graph.

7           “(D) GOVERNMENT ACCOUNTABILITY OF-  
8           FICE STUDY.—Not later than 2 years after the  
9           promulgation of the final regulations under sub-  
10          paragraph (C), the Comptroller General of the  
11          United States shall study the effectiveness of  
12          the threshold criteria established in this para-  
13          graph and issue to the Committee on Health,  
14          Education, Labor, and Pensions of the Senate  
15          and to the Committee on Education and the  
16          Workforce of the House of Representative a re-  
17          port on the results of the study. In conducting  
18          this study, the Comptroller General shall con-  
19          sult with all appropriate stakeholders.

20          “(9) PUBLIC DATABASE AND INFORMATION.—  
21          The Secretary shall establish and maintain a pub-  
22          lically available electronic database containing the  
23          data used to determine pattern status for all coal or  
24          other mines. Such database shall be searchable, shall  
25          have the capacity to provide comparative data about

1 the health and safety at mines of similar sizes and  
2 types. The Secretary shall also make publicly avail-  
3 able—

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

7 “(B) the metrics, including percentile in-  
8 formation, used for the purposes of the per-  
9 formance benchmarks and threshold criteria de-  
10 scribed in paragraphs (5), (6), and (8).

11 “(10) OPERATOR FEES FOR ADDITIONAL IN-  
12 SPECTIONS.—

13 “(A) ASSESSMENT AND COLLECTION.—Be-  
14 ginning 120 days after the date of enactment of  
15 the Robert C. Byrd Mine and Workplace Safety  
16 and Health Act of 2011, the Secretary shall as-  
17 sess and collect fees, in accordance with this  
18 paragraph, from each coal or other mine in pat-  
19 tern status for the costs of additional inspec-  
20 tions under this subsection. The Secretary shall  
21 issue, by rule, a schedule of fees to be assessed  
22 against coal or other mines of varying types  
23 and sizes, and shall collect and assess amounts  
24 under this paragraph based on the schedule.

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

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

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

1 amounts are authorized to remain available  
2 until expended.

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

8 **SEC. 203. INJUNCTIVE AUTHORITY.**

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

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

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

18 (1) by redesignating subsection (d) as sub-  
19 section (e); and

20 (2) by inserting after subsection (e) the fol-  
21 lowing:

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

23 “(1) REVOCATION.—If the Secretary finds that  
24 any program or plan of an operator, or part thereof,  
25 that was approved by the Secretary under this Act



1 is based on inaccurate information or that cir-  
 2 cumstances that existed when such plan was ap-  
 3 proved have materially changed and that continued  
 4 operation of such mine under such plan constitutes  
 5 a hazard to the safety or health of miners, the Sec-  
 6 retary shall revoke the approval of such program or  
 7 plan.

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

16 **SEC. 205. CHALLENGING A DECISION TO APPROVE, MOD-**  
 17 **IFY, OR REVOKE A COAL OR OTHER MINE**  
 18 **PLAN.**

19 Section 105(e) (as redesignated by section 204(1))  
 20 (30 U.S.C. 815(e)) is amended by adding at the end the  
 21 following: “In any proceeding in which a party challenges  
 22 the Secretary’s decision to approve, modify, or revoke a  
 23 coal or other mine plan under this Act, the Commission  
 24 and the courts shall affirm the Secretary’s decision unless  
 25 the challenging party establishes that such decision was

1 arbitrary, capricious, an abuse of discretion, or otherwise  
2 not in accordance with law.”.

### 3 **TITLE III—PENALTIES**

#### 4 **SEC. 301. CIVIL PENALTIES.**

5 (a) **MAXIMUM CIVIL PENALTIES.**—Section 110(a)(1)  
6 (30 U.S.C. 820(a)(1)) is amended—

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

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

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

16 “(3) Notwithstanding any other provision of this Act,  
17 an operator of a coal or other mine that is in pattern sta-  
18 tus under section 104(e) and that fails to meet the per-  
19 formance benchmarks set forth by the Secretary under  
20 section 104(e)(5)(A) during any performance review of the  
21 mine following the first performance review shall be as-  
22 sessed an increased civil penalty for any violation of this  
23 Act, including any mandatory health or safety standard  
24 or regulation promulgated under this Act. Such increased  
25 penalty shall be twice the amount that would otherwise

1 be assessed for the violation under this Act, including the  
2 regulations promulgated under this Act, subject to the  
3 maximum civil penalty established for the violation under  
4 this Act. This paragraph shall apply to violations at such  
5 mine that occur during the period beginning after the  
6 failed performance review following the first performance  
7 review, and ending when the Secretary determines at a  
8 subsequent performance review that the mine meets the  
9 performance benchmarks.”.

10 (c) CIVIL PENALTY FOR RETALIATION.—Section  
11 110(a) (30 U.S.C. 820(a)) is further amended—

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

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

16 “(4) If any person violates section 105(c), the Sec-  
17 retary shall propose, and the Commission shall assess, a  
18 civil penalty of not less than \$10,000 or more than  
19 \$100,000 for the first occurrence of such violation, and  
20 not less than \$20,000 or more than \$200,000 for any sub-  
21 sequent violation, during any 3-year period.”.

22 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**  
23 **RECTORS, AND AGENTS.**

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

1       “(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS,  
2 DIRECTORS, AND AGENTS.—Whenever an operator vio-  
3 lates a provision of this Act, including any mandatory  
4 health or safety standard or regulation promulgated under  
5 this Act, or knowingly violates or fails or refuses to comply  
6 with any order issued under this Act or any order incor-  
7 porated in a final decision issued under this Act, any di-  
8 rector, officer, or agent of such operator who knowingly  
9 authorized, ordered, or carried out such violation, failure,  
10 or refusal, or any policy or practice that contributed to  
11 the occurrence of such violation, failure, or refusal, shall  
12 be subject to the same civil penalties, fines, and imprison-  
13 ment that may be imposed upon a person under this sec-  
14 tion.”.

15 **SEC. 303. CRIMINAL PENALTIES.**

16       (a) INTENT REQUIREMENTS FOR CRIMINAL PEN-  
17 ALTY STANDARDS.—Section 110(d) (30 U.S.C. 820(d)) is  
18 amended—

19           (1) by striking “willfully” and inserting “know-  
20 ingly”;

21           (2) by striking “\$250,000, or by imprisonment  
22 for not more than one year” and inserting  
23 “\$1,000,000, or by imprisonment for not more than  
24 5 years”; and

1           (3) by striking “\$500,000, or by imprisonment  
2           for not more than five years” and inserting  
3           “\$2,000,000, or by imprisonment for not more than  
4           10 years”.

5           (b) CRIMINAL PENALTY FOR RETALIATION.—Section  
6 110(d) is further amended—

7           (1) by inserting “(1)” before “Any operator”;  
8           and

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

10          “(2) Whoever knowingly takes any action that is di-  
11 rectly or indirectly harmful to any person, including action  
12 that interferes with the lawful employment or livelihood  
13 of any person, because such person has provided an au-  
14 thorized representative of the Secretary or another law en-  
15 forcement officer with any information related to the exist-  
16 ence of a health or safety violation or an unhealthful or  
17 unsafe condition, policy, or practice under this Act shall  
18 be fined under title 18, United States Code, imprisoned  
19 for not more than 10 years, or both.”.

20          (c) ADVANCE NOTICE OF INSPECTIONS.—

21           (1) IN GENERAL.—Section 110(e) (30 U.S.C.  
22 820(e)) is amended—

23           (A) by striking “Unless” and inserting  
24           “(1) Unless”; and

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

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

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

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

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

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

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 PAYMENTS 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 90 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(n) of  
 12 the Federal Mine Safety and Health Act of 1977 (as  
 13 amended) (30 U.S.C. 820(n)) shall be calculated as  
 14 beginning on the date of enactment of this Act in-  
 15 stead of on the date of the final order.

## 16 **TITLE IV—WORKER 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 or cause to be

1 discharged or 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, because—

6 “(i) such miner or other employee,  
7 representative, or applicant for employ-  
8 ment—

9 “(I) has filed or made a com-  
10 plaint, including a complaint notifying  
11 the operator or the operator’s agent,  
12 or the representative of the miners at  
13 the coal or other mine of an alleged  
14 danger or safety or health violation in  
15 a coal or other mine;

16 “(II) instituted or caused to be  
17 instituted any proceeding under or re-  
18 lated to this Act or has testified or is  
19 about to testify in any such pro-  
20 ceeding or because of the exercise by  
21 such miner or other employee, rep-  
22 resentative, or applicant for employ-  
23 ment on behalf of him or herself or  
24 others of any right afforded by this  
25 Act;

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

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

7                   “(ii) such miner is the subject of med-  
8                   ical evaluations and potential transfer  
9                   under a standard published pursuant to  
10                  section 101.

11                  “(B) RETALIATION FOR REFUSAL TO PER-  
12                  FORM DUTIES.—

13                   “(i) IN GENERAL.—No person shall  
14                   discharge or in any manner discriminate  
15                   against a miner or other employee of an  
16                   operator for refusing to perform the min-  
17                   er’s or other employee’s duties if the miner  
18                   or other employee has a good-faith and  
19                   reasonable belief that performing such du-  
20                   ties would pose a safety or health hazard  
21                   to the miner or other employee or to any  
22                   other miner or employee.

23                   “(ii) STANDARD.—For purposes of  
24                   clause (i), the circumstances causing the  
25                   miner’s or other employee’s good-faith be-

1            lief that performing such duties would pose  
2            a safety or health hazard shall be of such  
3            a nature that a reasonable person, under  
4            the circumstances confronting the miner or  
5            other employee, would conclude that there  
6            is such a hazard. In order to qualify for  
7            protection under this paragraph, the miner  
8            or other employee, when practicable, shall  
9            have communicated or attempted to com-  
10          municate the safety or health concern to  
11          the operator and have not received from  
12          the operator a response reasonably cal-  
13          culated to allay such concern.

14            “(2) COMPLAINT.—Any miner or other em-  
15          ployee or representative of miners or applicant for  
16          employment who believes that he or she has been  
17          discharged, disciplined, or otherwise discriminated  
18          against by any person in violation of paragraph (1)  
19          may file a complaint with the Secretary alleging  
20          such discrimination not later than 180 days after  
21          the later of the last date on which an alleged viola-  
22          tion of paragraph (1) occurs or the date on which  
23          the miner or other employee or representative knows  
24          or should reasonably have known that such alleged  
25          violation occurred.

1           “(3) INVESTIGATION AND HEARING.—

2                   “(A) COMMENCEMENT OF INVESTIGATION  
3           AND INITIAL DETERMINATION.—Upon receipt  
4           of such complaint, the Secretary shall forward  
5           a copy of the complaint to the respondent, and  
6           shall commence an investigation within 15 days  
7           of the Secretary’s receipt of the complaint, and,  
8           as soon as practicable after commencing such  
9           investigation, make the determination required  
10          under subparagraph (B) regarding the rein-  
11          statement of the miner or other employee.

12                   “(B) REINSTATEMENT.—If the Secretary  
13          finds that such complaint was not frivolously  
14          brought, the Commission, on an expedited basis  
15          upon application of the Secretary, shall order  
16          the immediate reinstatement of the miner or  
17          other employee until there has been a final  
18          Commission order disposing of the underlying  
19          complaint of the miner or other employee. If ei-  
20          ther the Secretary or the miner or other em-  
21          ployee pursues the underlying complaint, such  
22          reinstatement shall remain in effect until the  
23          Commission has disposed of such complaint on  
24          the merits, regardless of whether the Secretary  
25          pursues such complaint by filing a complaint

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

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

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

20 “(ii) providing the complainant an op-  
21 portunity to receive any statements or evi-  
22 dence provided to the Secretary and rebut  
23 any statements or evidence.

24 “(D) ACTION BY THE SECRETARY.—If,  
25 upon such investigation, the Secretary deter-

1 mines that the provisions of this subsection  
2 have been violated, the Secretary shall imme-  
3 diately file a complaint with the Commission,  
4 with service upon the alleged violator and the  
5 miner or other employee or representative of  
6 miners alleging such discrimination or inter-  
7 ference and propose an order granting appro-  
8 priate relief.

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

23 “(F) RELIEF.—The Commission shall have  
24 authority in such proceedings to require a per-  
25 son committing a violation of this subsection to



1 take such affirmative action to abate the viola-  
2 tion and prescribe a remedy as the Commission  
3 considers appropriate, including—

4 “(i) the rehiring or reinstatement of  
5 the miner or other employee with back pay  
6 and interest and without loss of position or  
7 seniority, and restoration of the terms,  
8 rights, conditions, and privileges associated  
9 with the complainant’s employment;

10 “(ii) any other compensatory and con-  
11 sequential damages sufficient to make the  
12 complainant whole, and exemplary dam-  
13 ages where appropriate; and

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

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

3           “(A) NOTICE TO COMPLAINANT.—Not  
4           later than 90 days of the receipt of a complaint  
5           filed under paragraph (2), the Secretary shall  
6           notify, in writing, the miner or other employee,  
7           applicant for employment, or representative of  
8           miners of his determination whether a violation  
9           has occurred.

10           “(B) ACTION OF COMPLAINANT.—If the  
11           Secretary, upon investigation, determines that  
12           the provisions of this subsection have not been  
13           violated, the complainant shall have the right,  
14           within 30 days notice of the Secretary’s deter-  
15           mination, to file an action in his or her own be-  
16           half before the Commission, charging discrimi-  
17           nation or interference in violation of paragraph  
18           (1).

19           “(C) HEARING AND DECISION.—The Com-  
20           mission shall afford an opportunity for a hear-  
21           ing (in accordance with section 554 of title 5,  
22           United States Code, but without regard to sub-  
23           section (a)(3) of such section), and thereafter  
24           shall issue an order, based upon findings of  
25           fact, dismissing or sustaining the complainant’s

1 charges and, if the charges are sustained,  
2 granting such relief as it deems appropriate as  
3 described in paragraph (3)(F). Such order shall  
4 become final 30 days after its issuance.

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

17 “(6) ATTORNEYS’ FEES.—Whenever an order is  
18 issued sustaining the complainant’s charges under  
19 this subsection, a sum equal to the aggregate  
20 amount of all costs and expenses, including attor-  
21 ney’s fees, as determined by the Commission to have  
22 been reasonably incurred by the complainant for, or  
23 in connection with, the institution and prosecution of  
24 such proceedings shall be assessed against the per-  
25 son committing such violation. The Commission

1 shall determine whether such costs and expenses  
2 were reasonably incurred by the complainant without  
3 reference to whether the Secretary also participated  
4 in the proceeding.

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

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

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

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

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

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

2 “(a) PROTECTION FROM LOSS OF PAY.—

3 “(1) WITHDRAWAL ORDER.—If a coal or other  
4 mine or area of such mine is closed by an order  
5 issued under section 103, 104, 107, 108, or 110, all  
6 miners who are idled by such order shall be entitled,  
7 regardless of the result of any review of such order,  
8 to full compensation by the operator at their regular  
9 rates of pay and in accordance with their regular  
10 schedules of pay for the entire period for which they  
11 are idled.

12 “(2) CLOSURE IN ADVANCE OF ORDER.—If the  
13 Secretary finds that such mine or such area of a  
14 mine was closed by the operator in anticipation of  
15 the issuance of such an order, all miners who are  
16 idled by such closure shall be entitled to full com-  
17 pensation by the operator at their regular rates of  
18 pay and in accordance with their regular schedules  
19 of pay, from the time of such closure until such time  
20 as the Secretary authorizes reopening of such mine  
21 or such area of the mine.

22 “(3) REFUSAL TO COMPLY.—Whenever an op-  
23 erator violates or fails or refuses to comply with any  
24 order issued under section 103, 104, 107, 108, or  
25 110, all miners employed at the affected mine who  
26 would have been withdrawn from, or prevented from

1 entering, such mine or area thereof as a result of  
2 such order shall be entitled to full compensation by  
3 the operator at their regular rates of pay, in addi-  
4 tion to pay received for work performed after such  
5 order was issued, for the period beginning when  
6 such order was issued and ending when such order  
7 is complied with, vacated, or terminated.

8 “(b) ENFORCEMENT.—

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

18 “(2) FAILURE TO PAY COMPENSATION DUE.—

19 Consistent with the authority of the Secretary to  
20 order miners withdrawn from a mine under this Act,  
21 the Secretary shall order a mine that has been sub-  
22 ject to a withdrawal order under section 103, 104,  
23 107, 108, or 110, and has reopened, to be closed  
24 again if compensation in accordance with the provi-  
25 sions of this section is not paid by the end of the

1 next regularly scheduled payroll period following the  
2 lifting of a withdrawal order.”.

3 **TITLE V—MODERNIZING**  
4 **HEALTH AND SAFETY STAND-**  
5 **ARDS**

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

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

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

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

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

21 “(B) In an effort to facilitate the communications de-  
22 scribed in subparagraph (A), each agent of the operator  
23 who is responsible for ensuring the safe and healthful  
24 working conditions at the mine, including mine foremen,  
25 assistant mine foremen, and mine examiners, shall, upon

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

15 “(C) Not later than 90 days after the date of enact-  
16 ment of the Robert C. Byrd Mine and Workplace Safety  
17 and Health Act of 2011, the Secretary shall promulgate  
18 interim final rules implementing the requirements of sub-  
19 paragraphs (A) and (B).”

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

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

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

25 “(1) IN GENERAL.—Where rock”;



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

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

8           “(2) METHODS OF MEASUREMENT.—

9           “(A) IN GENERAL.—Each operator of an  
10 underground coal mine shall take accurate sam-  
11 ples of the amount of coal dust, including float  
12 coal dust deposited on rock-dusted surfaces,  
13 loose coal, and other combustible materials in  
14 the active workings of such mines, to ensure  
15 that the coal dust is kept below explosive levels  
16 through the appropriate application of rock  
17 dusting.

18           “(B) DIRECT READING MONITORS.—By  
19 the later of June 15, 2012, or the date that is  
20 30 days after the Secretary of Health and  
21 Human Services has certified in writing that di-  
22 rect reading monitors are commercially avail-  
23 able to measure total incombustible content in  
24 coal dust and the Department of Labor has ap-  
25 proved such monitors for use in underground

1 coal mines, the Secretary shall require opera-  
2 tors to take coal dust samples using direct  
3 reading monitors.

4 “(C) REGULATIONS.—The Secretary shall,  
5 not later than 180 days after the date of enact-  
6 ment of the Robert C. Byrd Mine and Work-  
7 place Safety and Health Act of 2011 promul-  
8 gate an interim final rule that prescribes meth-  
9 ods for sampling of total incombustible content  
10 of coal dust using direct reading monitors and  
11 includes requirements for locations, methods,  
12 and intervals for mandatory operator sampling.

13 “(D) RECOMMENDATIONS.—Not later than  
14 1 year after the date of enactment of the Rob-  
15 ert C. Byrd Mine and Workplace Safety and  
16 Health Act of 2011, the Secretary of Health  
17 and Human Services shall, based upon the lat-  
18 est research, recommend to the Secretary of  
19 Labor any revisions to the mandatory operator  
20 sampling locations, methods, and intervals in-  
21 cluded in the interim final rule described in  
22 subparagraph (C) that may be warranted in  
23 light of such research.”.

24 (b) REPORT.—Not later than 2 years after the date  
25 of enactment of this Act, the Secretary of Health and

1 Human Services, in consultation with the Secretary of  
2 Labor, shall prepare and submit, to the Committee on  
3 Education and the Workforce of the House of Representa-  
4 tives and the Committee on Health, Education, Labor,  
5 and Pensions of the Senate, a report—

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

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

18 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

21           “(u) ATMOSPHERIC MONITORING SYSTEMS.—

22           “(1) NIOSH RECOMMENDATIONS.—Not later  
23 than 6 months after the date of enactment of the  
24 Robert C. Byrd Mine and Workplace Safety and  
25 Health Act of 2011, the Director of the National In-

1       stitute for Occupational Safety and Health, acting  
2       through the Office of Mine Safety and Health Re-  
3       search, shall issue recommendations to the Secretary  
4       regarding—

5               “(A) how to ensure that atmospheric moni-  
6               toring systems are utilized in the underground  
7               coal mining industry to maximize the health  
8               and safety of underground coal miners; and

9               “(B) the implementation of redundant sys-  
10              tems, such as the bundle tubing system, that  
11              can continuously monitor the mine atmosphere  
12              following incidents such as fires, explosions, en-  
13              trapments, and inundations.

14             “(2) ATMOSPHERIC MONITORING SYSTEM REG-  
15             ULATIONS.—Not later than 270 days following the  
16             receipt of the recommendations described in para-  
17             graph (1), the Secretary shall promulgate regula-  
18             tions requiring that each operator of an under-  
19             ground coal mine install atmospheric monitoring sys-  
20             tems, consistent with such recommendations, that—

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

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

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

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

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

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

7                   (1) by striking “of Health and Human Serv-  
8           ices”; and

9                   (2) by striking the second sentence and insert-  
10          ing the following: “Not later than 2 years after the  
11          date of enactment of the Robert C. Byrd Mine and  
12          Workplace Safety and Health Act of 2011, the Sec-  
13          retary shall promulgate final regulations that require  
14          operators, beginning on the date such regulations  
15          are issued, to provide coal miners with the maximum  
16          feasible protection from respirable dust, including  
17          coal and silica dust, that is achievable through envi-  
18          ronmental controls.”.

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

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

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

1       clude one hour of training on the statutory rights  
2       and responsibilities of miners and their representa-  
3       tives under this Act and other applicable Federal  
4       and State law, pursuant to a program of instruction  
5       developed by the Secretary and delivered by an em-  
6       ployee of the Administration or by a trainer ap-  
7       proved by the Administration that is a party inde-  
8       pendent from the operator;”.

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

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

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

23       “(e) **AUTHORITY TO MANDATE ADDITIONAL TRAIN-**  
24 **ING.**—

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

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

9           “(ii) such mine has experienced accident  
10 and injury rates, citations for violations of this  
11 Act (including mandatory health or safety  
12 standards or regulations promulgated under  
13 this Act), citations for significant and substan-  
14 tial violations, or withdrawal orders issued  
15 under this Act at a rate above the average for  
16 mines of similar size and type; and

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

19           “(2) WITHDRAWAL ORDER.—If the operator  
20 fails to provide training ordered under paragraph  
21 (1) within the specified time, the Secretary shall  
22 issue an order requiring such operator to cause all  
23 affected persons, except those persons referred to in  
24 section 104(c), to be withdrawn, and to be prohib-

1       ited from entering such mine, until such operator  
2       has provided such training.”.

3       (b) CONFORMING AMENDMENTS.—Section 104(g)(2)  
4 (30 U.S.C. 814(g)(2)) is amended by striking “under  
5 paragraph (1)” both places it appears and inserting  
6 “under paragraph (1) or under section 115(e)”.

7 **SEC. 507. CERTIFICATION OF PERSONNEL.**

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

10 **“SEC. 117. CERTIFICATION OF PERSONNEL.**

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

23       “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-  
24 MENTS AND PROCEDURES.—



1           “(1) IN GENERAL.—Not later than 1 year after  
2 the date of enactment of the Robert C. Byrd Mine  
3 and Workplace Safety and Health Act of 2011, the  
4 Secretary shall issue mandatory standards to estab-  
5 lish—

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

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

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

19           “(2) COORDINATION WITH STATES.—In devel-  
20 oping such standards, the Secretary shall consult  
21 with States that have miner certification programs  
22 to ensure effective coordination with existing State  
23 standards and requirements for certification. The  
24 standards required under paragraph (1) may provide  
25 that the certification, registration, qualification, or

1 other approval of the State in which the coal or  
2 other mine is located satisfies the requirement of  
3 subsection (a) if the State's program of certification,  
4 registration, qualification, or other approval is no  
5 less stringent than the standards established by the  
6 Secretary under paragraph (1).

7 “(c) OPERATOR FEES FOR CERTIFICATION.—

8 “(1) ASSESSMENT AND COLLECTION.—Begin-  
9 ning 180 days after the date of enactment of the  
10 Robert C. Byrd Mine and Workplace Safety and  
11 Health Act of 2011, the Secretary shall assess and  
12 collect fees, in accordance with this subsection, from  
13 each operator for each person certified under this  
14 section. Fees shall be assessed and collected in  
15 amounts determined by the Secretary as necessary  
16 to fund the certification programs established under  
17 this section.

18 “(2) MINE SAFETY AND HEALTH CERTIFI-  
19 CATION FUND.—There is established in the Treasury  
20 of the United States a separate account for the de-  
21 posit of fees collected under this subsection to be  
22 known as the Mine Safety and Health Certification  
23 Fund. The Secretary shall deposit any fees collected  
24 pursuant to paragraph (1) into the fund.

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

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

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

21          “(d) CITATION; WITHDRAWAL ORDER.—Any oper-  
22          ator who permits a person to perform any of the health  
23          or safety related functions described in subsection (a)  
24          without a current certification which meets the require-  
25          ments of this section shall be considered to have com-

1 mitted an unwarrantable failure under section 104(d)(1),  
 2 and the Secretary shall issue an order requiring that the  
 3 miner be withdrawn or reassigned to duties that do not  
 4 require such certification.”.

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

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

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

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

14 (4) by redesignating subsections (e) through (j)  
 15 as paragraphs (1) through (8), respectively.

16 **TITLE VI—ADDITIONAL MINE**  
 17 **SAFETY PROVISIONS**

18 **SEC. 601. DEFINITIONS.**

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

21 “(d) ‘operator’ means—

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

23 “(A) operates or supervises a coal or other  
 24 mine; or

1           “(B) controls such mine by making or hav-  
2           ing the authority to make management or oper-  
3           ational decisions that affect, directly or indi-  
4           rectly, the health or safety at such mine; or

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

7           (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.  
8           802(e)) is amended by striking “the miners” and inserting  
9           “any miner”.

10          (c) DEFINITION OF MINER.—Section 3(g) (30 U.S.C.  
11           802(g)) is amended by inserting after “or other mine” the  
12           following: “, and includes any individual who is not cur-  
13           rently working in a coal or other mine but would be cur-  
14           rently working in such mine, but for an accident in such  
15           mine”.

16          (d) DEFINITION OF SIGNIFICANT AND SUBSTANTIAL  
17           VIOLATIONS.—Section 3 (30 U.S.C. 802) is further  
18           amended—

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

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

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

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

1       “(p) ‘significant and substantial violation’ means a  
2 violation of this Act, including any mandatory health or  
3 safety standard or regulation promulgated under this Act,  
4 that is of such nature as could significantly and substan-  
5 tially contribute to the cause and effect of a coal or other  
6 mine safety or health hazard as described in section  
7 104(d).”.

8 **SEC. 602. ASSISTANCE TO STATES.**

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

10           (1) in subsection (a)—

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

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

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

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

20                   “(4) to assist such State in developing and im-  
21                   plementing any certification program for coal or  
22                   other mines required for compliance with section  
23                   117.”; and

24                   (2) in subsection (h), by striking “\$3,000,000  
25                   for fiscal year 1970, and \$10,000,000 in each suc-

1       ceeding fiscal year” and inserting “\$20,000,000 for  
2       each fiscal year”.

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

4       Title IV of the Black Lung Benefits Act (30 U.S.C.  
5       901 et seq.) is amended by adding at the end the fol-  
6       lowing:

7       **“SEC. 435. MEDICAL REPORTS.**

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

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

20      (a) IN GENERAL.—Not later than 18 months after  
21      the date of enactment of this Act, the Comptroller General  
22      of the United States shall conduct a study on the work-  
23      force needs of the mining industry and Federal and State  
24      enforcement agencies, including the need for engineers  
25      and mine safety and health professionals.

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

3 (1) an analysis of the training and expertise of  
4 the mine engineers and the safety and health work-  
5 force; and

6 (2) the need for a highly trained workforce of  
7 engineers and safety and health professionals with-  
8 in—

9 (A) the mining industry;

10 (B) the Mine Safety Health Administra-  
11 tion; and

12 (C) State enforcement agencies responsible  
13 for mine safety and health.

14 (c) REPORT.—The Comptroller General of the United  
15 States shall prepare and submit to the Committee on  
16 Health, Education, Labor, and Pensions of the Senate and  
17 to the Committee on Education and the Workforce of the  
18 House of Representatives a report on the study in sub-  
19 section (a).

20 (d) RECOMMENDATIONS.—As needed, the Comp-  
21 troller General of the United States shall provide rec-  
22 ommendations for improvement in the report in subsection  
23 (c).



1 **SEC. 605. MINE SAFETY AND HEALTH ADMINISTRATION**  
2 **STRATEGIC PLANNING.**

3 (a) STRATEGIC PLAN.—Not later than December 31,  
4 2011, the Secretary of Labor, acting through the Assist-  
5 ant Secretary of Labor for Mine Safety and Health, shall  
6 submit to the Director of the Office of Management and  
7 Budget and to the Congress and post on the public website  
8 of the Mine Safety and Health Administration, a 5-year  
9 strategic plan for program activities. Such plan shall be—

10 (1) prepared in accordance with the require-  
11 ments for agency strategic plans under section 306  
12 of title 5, United States Code, except as otherwise  
13 provided in this section;

14 (2) aligned with the strategic plan of the De-  
15 partment of Labor; and

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

17 (b) ANNUAL PERFORMANCE PLAN.—Beginning with  
18 the Mine Safety and Health Administration budget sub-  
19 mission for fiscal year 2013, the Secretary of Labor, act-  
20 ing through the Assistant Secretary of Labor for Mine  
21 Safety and Health, shall submit to the Director of the Of-  
22 fice of Management and Budget an annual performance  
23 plan covering each program activity set forth in the budget  
24 of the Mine Safety and Health Administration. Such plan  
25 shall—

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

5           (2) be consistent with the strategic plan of the  
6           Mine Safety and Health Administration under sub-  
7           section (a); and

8           (3) include a strategic workforce plan that pro-  
9           vides a clear line of sight between the performance  
10          goals and objectives of the Mine Safety and Health  
11          Administration and the human capital strategies em-  
12          ployed to meet such goals and objectives.

13          (c) REPORT.—Not later than 150 days after the end  
14          of a fiscal year, beginning with fiscal year 2013, the Sec-  
15          retary of Labor, acting through the Assistant Secretary  
16          of Labor for Mine Safety and Health, shall prepare and  
17          submit to the President and the Congress and post on the  
18          public website of the Mine Safety and Health Administra-  
19          tion, a report on the program performance for the previous  
20          fiscal year. Such report shall—

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

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

4 **TITLE VII—AMENDMENTS TO**  
5 **THE OCCUPATIONAL SAFETY**  
6 **AND HEALTH ACT**

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

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

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

16           “(A) such”;

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

19           “(B) such employee has”;

20           (3) by striking “such proceeding or because of  
21 the exercise” and inserting the following: “before  
22 Congress or in any Federal or State proceeding re-  
23 lated to safety or health;

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

1           “(D) of the exercise”; and

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

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

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

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

1 municate the safety or health concern to the employer and  
2 have not received from the employer a response reasonably  
3 calculated to allay such concern.”.

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

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

13 “(4) STATUTE OF LIMITATIONS.—

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

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

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

22 “(B) REPEAT VIOLATION.—Except in  
23 cases when the employee has been discharged,  
24 a violation of paragraph (1) or (2) shall be con-

1           sidered to have occurred on the last date an al-  
2           leged repeat violation occurred.

3           “(5) INVESTIGATION.—

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

11                   “(i) shall include—

12                           “(I) interviewing the complain-  
13                           ant;

14                           “(II) providing the respondent an  
15                           opportunity to—

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

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

23                           “(III) providing the complainant  
24                           an opportunity to—

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

4                   “(bb) meet with the Sec-  
5                   retary; and

6                   “(cc) rebut any statements  
7                   or evidence; and

8                   “(ii) may include issuing subpoenas  
9                   for the purposes of such investigation.

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

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

16                         “(ii) issue a decision granting or de-  
17                         nying relief.

18                  “(6) PRELIMINARY ORDER FOLLOWING INVES-  
19                  TIGATION.—If, after completion of an investigation  
20                  under paragraph (5)(A), the Secretary finds reason-  
21                  able cause to believe that a violation of paragraph  
22                  (1) or (2) has occurred, the Secretary shall issue a  
23                  preliminary order providing relief authorized under  
24                  paragraph (14) at the same time the Secretary  
25                  issues a decision under paragraph (5)(B). If a de

1        novo hearing is not requested within the time period  
2        required under paragraph (7)(A)(i), such prelimi-  
3        nary order shall be deemed a final order of the Sec-  
4        retary and is not subject to judicial review.

5            “(7) HEARING.—

6                    “(A) REQUEST FOR HEARING.—

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

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

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

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



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

5           “(B) PROCEDURES.—

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

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

23           “(iii) DECISION.—The administrative  
24 law judge shall issue a decision not later  
25 than 90 days after the date on which a

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

13 “(8) ADMINISTRATIVE APPEAL.—

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

22 “(B) STANDARD OF REVIEW.—In review-  
23 ing the decision and order of the administrative  
24 law judge, the review board shall affirm the de-  
25 cision and order if it is determined that the fac-

1           tual findings set forth therein are supported by  
2           substantial evidence and the decision and order  
3           are made in accordance with applicable law.

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

16          “(9) SETTLEMENT IN THE ADMINISTRATIVE  
17          PROCESS.—

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

23                 “(B) PUBLIC POLICY CONSIDERATIONS.—  
24                 Neither the Secretary, an administrative law  
25                 judge, or review board conducting a hearing

1 under this subsection shall accept a settlement  
2 that contains conditions conflicting with the  
3 rights protected under this Act or that are con-  
4 trary to public policy, including a restriction on  
5 a complainant's right to future employment  
6 with employers other than the specific employ-  
7 ers named in a complaint.

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

10 “(A) IN GENERAL.—The complainant may  
11 bring a de novo action described in subpara-  
12 graph (B) if—

13 “(i) an administrative law judge has  
14 not issued a decision and order within the  
15 90-day time period required under para-  
16 graph (7)(B)(iii); or

17 “(ii) the review board has not issued  
18 a decision and order within the 90-day  
19 time period required under paragraph  
20 (8)(C).

21 “(B) DE NOVO ACTION.—Such de novo ac-  
22 tion may be brought at law or equity in the  
23 United States district court for the district  
24 where a violation of paragraph (1) or (2) alleg-  
25 edly occurred or where the complainant resided

1 on the date of such alleged violation. The court  
2 shall have jurisdiction over such action without  
3 regard to the amount in controversy and to  
4 order appropriate relief under paragraph (14).  
5 Such action shall, at the request of either party  
6 to such action, be tried by the court with a  
7 jury.

8 “(11) JUDICIAL REVIEW.—

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

1           “(B) LIMITATION ON COLLATERAL AT-  
2           TACK.—An order and decision with respect to  
3           which review may be obtained under subpara-  
4           graph (A) shall not be subject to judicial review  
5           in any criminal or other civil proceeding.

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

17          “(13) BURDENS OF PROOF.—

18                 “(A) CRITERIA FOR DETERMINATION.—In  
19                 making a determination or adjudicating a com-  
20                 plaint pursuant to this subsection, the Sec-  
21                 retary, administrative law judge, review board,  
22                 or a court may determine that a violation of  
23                 paragraph (1) or (2) has occurred only if the  
24                 complainant demonstrates that any conduct de-  
25                 scribed in paragraph (1) or (2) with respect to

1 the complainant was a contributing factor in  
2 the adverse action alleged in the complaint.

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

11 “(14) RELIEF.—

12 “(A) ORDER FOR RELIEF.—If the Sec-  
13 retary, administrative law judge, review board,  
14 or a court determines that a violation of para-  
15 graph (1) or (2) has occurred, the Secretary or  
16 court, respectively, shall have jurisdiction to  
17 order all appropriate relief, including injunctive  
18 relief, compensatory and exemplary damages,  
19 including—

20 “(i) affirmative action to abate the  
21 violation;

22 “(ii) reinstatement without loss of po-  
23 sition or seniority, and restoration of the  
24 terms, rights, conditions, and privileges as-  
25 sociated with the complainant’s employ-

1           ment, including opportunities for pro-  
2           motions to positions with equivalent or bet-  
3           ter compensation for which the complain-  
4           ant is qualified;

5           “(iii) compensatory and consequential  
6           damages sufficient to make the complain-  
7           ant whole, (including back pay, prejudg-  
8           ment interest, and other damages); and

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

20          “(B) ATTORNEYS’ FEES AND COSTS.—If  
21          the Secretary or an administrative law judge,  
22          review board, or court grants an order for relief  
23          under subparagraph (A), the Secretary, admin-  
24          istrative law judge, review board, or court, re-



1           spectively, shall assess, at the request of the  
2           employee against the employer—

3                   “(i) reasonable attorneys’ fees; and

4                   “(ii) costs (including expert witness  
5                   fees) reasonably incurred, as determined  
6                   by the Secretary, administrative law judge,  
7                   review board, or court, respectively, in con-  
8                   nection with bringing the complaint upon  
9                   which the order was issued.

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

15           “(16) SAVINGS.—Nothing in this subsection  
16           shall be construed to diminish the rights, privileges,  
17           or remedies of any employee who exercises rights  
18           under any Federal or State law or common law, or  
19           under any collective bargaining agreement.

20           “(17) ELECTION OF VENUE.—

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

1                   “(i) the Secretary under paragraph  
2                   (5); or

3                   “(ii) a State plan administrator in  
4                   such State.

5                   “(B) REFERRALS.—If—

6                   “(i) the Secretary receives a complaint  
7                   pursuant to subparagraph (A)(i), the Sec-  
8                   retary shall not refer such complaint to a  
9                   State plan administrator for resolution; or

10                   “(ii) a State plan administrator re-  
11                   ceives a complaint pursuant to subpara-  
12                   graph (A)(ii), the State plan administrator  
13                   shall not refer such complaint to the Sec-  
14                   retary for resolution.”.

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

19 **SEC. 702. VICTIMS’ RIGHTS.**

20                   The Occupational Safety and Health Act of 1970 (29  
21 U.S.C. 651 et seq.) is amended by inserting after section  
22 9 (29 U.S.C. 658) the following:

23 **“SEC. 9A. VICTIMS’ RIGHTS.**

24                   “(a) RIGHTS BEFORE THE SECRETARY.—A victim or  
25 the representative of a victim, shall be afforded the right,

1 with respect to an inspection or investigation conducted  
2 under section 8 to—

3 “(1) meet with the Secretary regarding the in-  
4 spection or investigation conducted under such sec-  
5 tion before the Secretary’s decision to issue a cita-  
6 tion or take no action;

7 “(2) receive, at no cost, a copy of any citation  
8 or report, issued as a result of such inspection or in-  
9 vestigation, at the same time as the employer re-  
10 ceives such citation or report;

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

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

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

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

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

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

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

16          “(d) SECRETARY PROCEDURES.—The Secretary shall  
17          establish procedures—

18                 “(1) to inform victims of their rights under this  
19                 section; and

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

22          “(e) COMMISSION PROCEDURES AND CONSIDER-  
23          ATIONS.—The Commission shall—

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

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

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

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

14           “(2) assist victims in asserting their rights  
15 under this section.

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

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

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

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

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

9 **SEC. 703. CORRECTION OF SERIOUS, WILLFUL, OR RE-**  
10 **PEATED VIOLATIONS PENDING CONTEST AND**  
11 **PROCEDURES FOR A STAY.**

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

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

18           “(1) PERIOD PERMITTED FOR CORRECTION OF  
19 SERIOUS, WILLFUL, OR REPEATED VIOLATIONS.—  
20 For each violation which the Secretary designates as  
21 serious, willful, or repeated, the period permitted for  
22 the correction of the violation shall begin to run  
23 upon receipt of the citation.

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

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

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

7           “(3) CRITERIA AND RULES OF PROCEDURE FOR  
8           STAYS.—

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

13          “(B) CRITERIA.—In determining whether  
14          a stay should be issued on the basis of a motion  
15          filed under subparagraph (A), the Commission  
16          shall consider whether—

17                 “(i) the employer has demonstrated a  
18                 substantial likelihood of success on its con-  
19                 test to the citation;

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

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

24          “(C) RULES OF PROCEDURE.—The Com-  
25          mission shall develop rules of procedure for con-

1           ducting a hearing on a motion filed under sub-  
2           paragraph (A) on an expedited basis. At a min-  
3           imum, such rules shall provide:

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

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

15                  “(iii) That if a party is aggrieved by  
16                  a decision issued by an administrative law  
17                  judge regarding the stay, such party has  
18                  the right to file an objection with the Com-  
19                  mission not later than 5 days after receipt  
20                  of the administrative law judge’s decision.  
21                  Within 10 days after receipt of the objec-  
22                  tion, a Commissioner, if a quorum is seat-  
23                  ed pursuant to section 12(f), shall decide  
24                  whether to grant review of the objection.  
25                  If, within 10 days after receipt of the ob-



1           jection, no decision is made on whether to  
2           review the decision of the administrative  
3           law judge, the Commission declines to re-  
4           view such decision, or no quorum is seated,  
5           the decision of the administrative law  
6           judge shall become a final order of the  
7           Commission. If the Commission grants re-  
8           view of the objection, the Commission shall  
9           issue a decision regarding the stay not  
10          later than 30 days after receipt of the ob-  
11          jection. If the Commission fails to issue  
12          such decision within 30 days, the decision  
13          of the administrative law judge shall be-  
14          come a final order of the Commission.

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

21 **SEC. 704. CONFORMING AMENDMENTS.**

22          (a) SECTION 17.—Section 17(d) of the Occupational  
23          Safety and Health Act of 1970 (29 U.S.C. 666(d)) is  
24          amended to read as follows:

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

18 **SEC. 705. CIVIL PENALTIES.**

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

22               (1) in subsection (a)—

23                       (A) by striking “\$70,000” and inserting  
24                       “\$120,000”;

1 (B) by striking “\$5,000” and inserting  
2 “\$8,000”; and

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

17 (2) in subsection (b)—

18 (A) by striking “\$7,000” and inserting  
19 “\$12,000”; and

20 (B) by adding at the end the following: “If  
21 such a violation caused or contributed to the  
22 death of an employee, such civil penalty  
23 amounts shall be increased to not more than  
24 \$50,000 for each such violation, but not less  
25 than \$20,000 for each such violation, except

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

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

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

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

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

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

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

22          **SEC. 706. CRIMINAL PENALTIES.**

23          (a) IN GENERAL.—Section 17 (29 U.S.C. 666) (as  
24          amended by section 705) is further amended—

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

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

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

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

23          (3) in subsection (h), by striking “fine of not  
24          more than \$10,000, or by imprisonment for not  
25          more than six months,” and inserting “fine in ac-

1 cordance with title 18, United States Code, or by  
2 imprisonment for not more than 5 years,”;

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

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

7 “(j)(1) Any employer who knowingly violates any  
8 standard, rule, or order promulgated under section 6, or  
9 any regulation prescribed under this Act, and that viola-  
10 tion causes or contributes to serious bodily harm to any  
11 employee but does not cause death to any employee, shall,  
12 upon conviction, be punished by a fine in accordance with  
13 title 18, United States Code, or by imprisonment for not  
14 more than 5 years, or by both, except that if the conviction  
15 is for a violation committed after a first conviction of such  
16 person under this subsection or subsection (e), punishment  
17 shall be by a fine in accordance with title 18, United  
18 States Code, or by imprisonment for not more than 10  
19 years, or by both.

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

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

1           “(A) a substantial risk of death;

2           “(B) protracted unconsciousness;

3           “(C) protracted and obvious physical disfigure-  
4           ment; or

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

8           (b) JURISDICTION FOR PROSECUTION UNDER STATE  
9           AND LOCAL CRIMINAL LAWS.—Section 17 (29 U.S.C.  
10          666) (as amended by section 705 and subsection (a)) is  
11          further amended by adding at the end the following:

12          “(o) Nothing in this Act shall preclude a State or  
13          local law enforcement agency from conducting criminal  
14          prosecutions in accordance with the laws of such State or  
15          locality.”.

16          **SEC. 707. PENALTIES.**

17          Section 17(n) (as redesignated by section 706(a)(4))  
18          (29 U.S.C. 666(n)) is amended by adding at the end the  
19          following: “Pre-final order interest on such penalties shall  
20          begin to accrue on the date the party contests a citation  
21          issued under this Act, and shall end upon the issuance  
22          of the final order. Such pre-final order interest shall be  
23          calculated at the current underpayment rate determined  
24          by the Secretary of the Treasury pursuant to section 6621  
25          of the Internal Revenue Code of 1986, and shall be com-

1   pounded daily. Post-final order interest shall begin to ac-  
2   crue 30 days after the date a final order of the Commis-  
3   sion or the court is issued, and shall be charged at the  
4   rate of 8 percent per year.”.

5   **SEC. 708. EFFECTIVE DATE.**

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

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

○