

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5663
OFFERED BY MR. GEORGE MILLER**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Robert C. Byrd Miner Safety and Health Act of 2010”.

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

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

**TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION
AUTHORITY**

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

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

Sec. 201. Technical amendment.
Sec. 202. 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.
Sec. 206. GAO Study on MSHA Mine Plan Approval.

TITLE III—PENALTIES

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

TITLE IV—WORKER RIGHTS AND PROTECTIONS

- Sec. 401. Protection from retaliation.
- Sec. 402. Protection from loss of pay.
- Sec. 403. Underground coal miner employment standard for mines placed in pattern status.

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. Rules of application to certain mines.

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. Health Hazard Evaluations by the National Institute for Occupational Safety and Health.
- Sec. 709. 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.).

1 **TITLE I—ADDITIONAL INSPEC-**
2 **TION AND INVESTIGATION**
3 **AUTHORITY**

4 **SEC. 101. INDEPENDENT ACCIDENT INVESTIGATIONS.**

5 (a) IN GENERAL.—Section 103(b) (30 U.S.C.
6 813(b)) is amended by striking “(b) For the purpose” and
7 inserting the following:

8 “(b) ACCIDENT INVESTIGATIONS.—

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

11 “(A) determine why the accident occurred;

12 “(B) determine whether there were viola-
13 tions of law, mandatory health and safety
14 standards, or other requirements, and if such
15 violations are found, issue citations and pen-
16 alties, and in cases involving possible criminal
17 actions, the Secretary may refer such matters
18 to the Attorney General; and

19 “(C) make recommendations to avoid any
20 recurrence.

21 “(2) INDEPENDENT ACCIDENT INVESTIGA-
22 TIONS.—

23 “(A) IN GENERAL.—There shall be, in ad-
24 dition to an accident investigation under para-
25 graph (1), an independent investigation by an

1 independent investigation panel (referred to in
2 this subsection as the ‘Panel’) appointed under
3 subparagraph (B) for—

4 “(i) any accident involving 3 or more
5 deaths; or

6 “(ii) any accident that is of such se-
7 verity or scale for potential or actual harm
8 that, in the opinion of the Secretary of
9 Health and Human Services, the accident
10 merits an independent investigation.

11 “(B) APPOINTMENT.—

12 “(i) IN GENERAL.—As soon as prac-
13 ticable after an accident described in sub-
14 paragraph (A), the Secretary of Health
15 and Human Services shall appoint 5 mem-
16 bers for the Panel required under this
17 paragraph from among individuals who
18 have expertise in accident investigations,
19 mine engineering, or mine safety and
20 health that is relevant to the particular in-
21 vestigation.

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

1 occupational Safety and Health (referred to
2 in this subsection as NIOSH).

3 “(iii) CONFLICTS OF INTEREST.—
4 Panel members, and staff and consultants
5 assisting the Panel with an investigation,
6 shall be free from conflicts of interest with
7 regard to the investigation, and be subject
8 to the same standards of ethical conduct
9 for persons employed by the Secretary.

10 “(iv) COMPOSITION.—The Secretary
11 of Health and Human Services shall ap-
12 point as members of the Panel—

13 “(I) 1 operator of a mine or indi-
14 vidual representing mine operators,
15 and

16 “(II) 1 representative of a labor
17 organization that represents miners,
18 and may not appoint more than 1 of either
19 such individuals as members of the Panel.

20 “(v) STAFF AND EXPENSES.—The Di-
21 rector of NIOSH shall designate NIOSH
22 staff to facilitate the work of the Panel.
23 The Director may accept as staff personnel
24 on detail from other Federal agencies or
25 re-employ annuitants. The detail of per-

1 sonnel under this paragraph may be on a
2 non-reimbursable basis, and such detail
3 shall be without interruption or loss of civil
4 service status or privilege. The Director of
5 NIOSH shall have the authority to procure
6 on behalf of the Panel such materials, sup-
7 plies or services, including technical ex-
8 perts, as requested in writing by a majority
9 of the Panel.

10 “(vi) COMPENSATION AND TRAVEL.—
11 All members of the Panel who are officers
12 or employees of the United States shall
13 serve without compensation in addition to
14 that received for their services as officers
15 or employees of the United States. Each
16 Panel member who is not an officer or em-
17 ployee of the United States shall be com-
18 pensated at a rate equal to the daily equiv-
19 alent of the annual rate of basic pay pre-
20 scribed for level IV of the Executive Sched-
21 ule under section 5315 of title 5, United
22 States Code, for each day (including travel
23 time) during which such member is en-
24 gaged in the performance of duties of the
25 Panel. The members of the Panel shall be

1 allowed travel expenses, including per diem
2 in lieu of subsistence, at rates authorized
3 for employees of agencies under subchapter
4 1 of chapter 57 of title 5, United States
5 Code, while away from their homes or reg-
6 ular places of business in the performance
7 of services for the Panel.

8 “(C) DUTIES.—The Panel shall—

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

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

17 “(I) the operator;

18 “(II) any contractors or other
19 persons engaged in mining-related
20 functions at the site;

21 “(III) any State agency with
22 oversight responsibilities;

23 “(IV) any agency or office within
24 the Department of Labor; or

1 “(V) any other person or entity
2 (including equipment manufacturers);

3 “(iii) review the determinations and
4 recommendations by the Secretary under
5 paragraph (1);

6 “(iv) prepare a report that—

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

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

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

22 “(v) publish such findings and rec-
23 ommendations (excluding any portions
24 which the Attorney General requests that
25 the Secretary withhold in relation to a

1 criminal referral) and hold public meetings
2 to inform the mining community and fami-
3 lies of affected miners of the Panel's find-
4 ings and recommendations.

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

13 “(E) MEMORANDUM OF UNDER-
14 STANDING.—Not later than 90 days after the
15 date of enactment of the Robert C. Byrd Miner
16 Safety and Health Act of 2010, the Secretary
17 of Labor and the Secretary of Health and
18 Human Services shall conclude and publically
19 issue a memorandum of understanding that—

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

1 activities of the Panel, and establishes a
2 process to resolve any conflicts between
3 such investigations;

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

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

20 “(F) PROCEDURES.—Not later than 90
21 days after the date of enactment of the Robert
22 C. Byrd Miner Safety and Health Act of 2010,
23 the Secretary of Health and Human Services
24 shall establish procedures to ensure the consist-
25 ency and effectiveness of Panel investigations.

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

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

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

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

22 “(G) AUTHORIZATION OF APPROPRIA-
23 TIONS.—There is authorized to be appropriated
24 to carry out this subsection such sums as may
25 be necessary.

1 “(3) POWERS AND PROCESSES.—For the pur-
2 pose”.

3 (b) REPORTING REQUIREMENTS.—Section 511(a)
4 (30 U.S.C. 958(a)) is amended by inserting after “501,”
5 the following: “the status of implementation of rec-
6 ommendations from each independent investigation panel
7 under section 103(b) received in the preceding 5 years.”.

8 **SEC. 102. SUBPOENA AUTHORITY AND MINER RIGHTS DUR-**
9 **ING INSPECTIONS AND INVESTIGATIONS.**

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

13 “(4) ADDITIONAL POWERS.—For purposes of
14 making inspections and investigations, the Secretary
15 or the Secretary’s designee, may sign and issue sub-
16 poenas for the attendance and testimony of wit-
17 nesses and the production of information, including
18 all relevant data, papers, books, documents, and
19 items of physical evidence, and administer oaths.
20 Witnesses summoned shall be paid the same fees
21 that are paid witnesses in the courts of the United
22 States. In carrying out inspections and investiga-
23 tions under this subsection, authorized representa-
24 tives of the Secretary and attorneys representing the
25 Secretary are authorized to question any individual

1 privately. Under this section, any individual who is
2 willing to speak with or provide a statement to such
3 authorized representatives or attorneys representing
4 the Secretary may do so without the presence, in-
5 volvement, or knowledge of the operator or the oper-
6 ator's agents or attorneys. The Secretary shall keep
7 the identity of an individual providing such a state-
8 ment confidential to the extent permitted by law.
9 Nothing in this paragraph prevents any individual
10 from being represented by that individual's personal
11 attorney.”.

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

13 Section 103(f) (30 U.S.C. 813(f)) is amended by in-
14 serting before the last sentence the following: “If any
15 miner is entrapped or otherwise prevented as the result
16 of an accident in such mine from designating such a rep-
17 resentative directly, such miner's closest relative may act
18 on behalf of such miner in designating such a representa-
19 tive. If any miner is not currently working in such mine
20 as the result of an accident in such mine, but would be
21 currently working in such mine but for such accident, such
22 miner may designate such a representative. A representa-
23 tive of miners shall have the right to participate in any
24 accident investigation the Secretary initiates pursuant to
25 subsection (b), including the right to participate in inves-

1 tigative interviews and to review all relevant papers, books,
2 documents and records produced in connection with the
3 accident investigation, unless the Secretary in consultation
4 with the Attorney General excludes such representatives
5 from the investigation on the grounds that inclusion would
6 interfere with or adversely impact a criminal investigation
7 that is pending or under consideration.”.

8 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**
9 **SPECTIONS AND INVESTIGATIONS.**

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

17 (b) REVIEW OF MINE PATTERN STATUS.—Section
18 103(a) is further amended by inserting before the last sen-
19 tence the following: “The Secretary shall, upon request by
20 an operator, review with the appropriate mine officials the
21 Secretary’s most recent evaluation for pattern status (as
22 provided in section 104(e)) for that mine during the
23 course of a mine’s regular quarterly inspection of an un-
24 derground mine or a biannual inspection of a surface

1 mine, or, at the discretion of the Secretary, during the
2 pre inspection conference.”.

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 with respect to the miners in their employ or
9 under their direction or authority, and shall be maintained
10 separately for each mine and be reported at a frequency
11 determined by the Secretary, but at least annually. Inde-
12 pendent contractors (within the meaning of section 3(d))
13 shall be responsible for reporting accidents, occupational
14 injuries and illnesses, and man-hours worked for each
15 mine with respect to the miners in their employ or under
16 their direction or authority, and shall be reported at a fre-
17 quency determined by the Secretary, but not less than an-
18 nually.”.

19 (d) ORDERS FOLLOWING AN ACCIDENT.—Section
20 103(k) (30 U.S.C. 813(k)) is amended by striking “, when
21 present,”.

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

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

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

19 **SEC. 201. TECHNICAL AMENDMENT.**

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

22 (1) in the first sentence—

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

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

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

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

12 **SEC. 202. A PATTERN OF RECURRING NONCOMPLIANCE OR**
13 **ACCIDENTS.**

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

16 “(e) PATTERN OF RECURRING NONCOMPLIANCE OR
17 ACCIDENTS.—

18 “(1) PATTERN STATUS.—

19 “(A) IN GENERAL.—For purposes of this
20 subsection, a coal or other mine shall be placed
21 in pattern status if such mine has, as deter-
22 mined based on the regulations promulgated
23 under paragraph (8)—

24 “(i) a pattern of—

1 “(I) citations for significant and
2 substantial violations;

3 “(II) citations and withdrawal or-
4 ders issued for unwarrantable failure
5 to comply with mandatory health and
6 safety standards under section 104(d);

7 “(III) citations for flagrant viola-
8 tions within the meaning of section
9 110(b);

10 “(IV) withdrawal orders issued
11 under any other section of this Act
12 (other than orders issued under sub-
13 sections (j) or (k) of section 103); and

14 “(V) accidents and injuries; or

15 “(ii) a pattern consisting of any com-
16 bination of citations, orders, accidents, or
17 injuries described in subclauses (I) through
18 (V).

19 “(B) MITIGATING CIRCUMSTANCES.—Not-
20 withstanding subparagraph (A), if the Sec-
21 retary, after conducting an assessment of a coal
22 or other mine that otherwise qualifies for pat-
23 tern status, certifies that there are mitigating
24 circumstances wherein the operator has already
25 implemented remedial measures that have re-

1 duced risks to the health and safety of miners
2 to the point that such risks are no longer ele-
3 vated and has taken sufficient measures to en-
4 sure such elevated risk will not recur, the Sec-
5 retary may deem such mine to not be in pattern
6 status under this subsection. The Secretary
7 shall issue any such certification of such miti-
8 gating circumstances that would preclude the
9 placement of a mine in pattern status as a writ-
10 ten finding, which shall, not later than 10 days
11 after the certification is made, be—

12 “(i) made available on the public
13 website of the Mine Safety and Health Ad-
14 ministration; and

15 “(ii) transmitted to the Committee on
16 Education and Labor of the House of Rep-
17 resentatives and the Committee on Health,
18 Education, Labor, and Pensions of the
19 Senate.

20 “(C) FREQUENCY.—Not less frequently
21 than every 6 months, the Secretary shall iden-
22 tify any mines which meet the criteria set forth
23 in paragraph (8).

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 within 3 days;
13 and

14 “(D) require that the number of regular
15 inspections of such mine required under section
16 103 be increased to 8 per year while the mine
17 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, or 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 A 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 mine in pattern status every 90 days dur-
17 ing which the mine is producing and determine
18 if, for such 90-day period—

19 “(i) the rate of citations at such mine
20 for significant and substantial violations—

21 “(I) is in the top performing
22 35th percentile of such rates, respec-
23 tively, for all mines of similar size and
24 type; or

1 “(II) has been reduced by 70
2 percent from the date on which such
3 mine was placed in pattern status,
4 provided that the rate of such viola-
5 tions is not greater than the mean for
6 all mines of similar size and type;

7 “(ii) the accident and injury rates at
8 such mine are in the top performing 35th
9 percentile of such rates, respectively, for all
10 mines of similar size and type; and

11 “(iii) no citations or withdrawal or-
12 ders for a violation under section 104(d),
13 no withdrawal orders for imminent danger
14 under section 107 (issued in connection
15 with a citation), and no flagrant violations
16 within the meaning of section 110(b), were
17 issued for such mine.

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

1 modify the remediation order, as necessary, to
2 protect the health and safety of miners.

3 “(6) TERMINATION OF PATTERN STATUS.—

4 “(A) PERFORMANCE BENCHMARKS.—The
5 Secretary shall remove a coal or other mine
6 from pattern status if, for a 1-year period dur-
7 ing which the mine is producing—

8 “(i) the rate of citations at such mine
9 for significant and substantial violations—

10 “(I) is in the top performing
11 25th percentile of such rates, respec-
12 tively, for all mines of similar size and
13 type; or

14 “(II) has been reduced by 80
15 percent from the date on which such
16 mine was placed in pattern status,
17 provided that the rate of such viola-
18 tions is not greater than the mean for
19 all mines of similar size and type;

20 “(ii) the accident and injury rates at
21 such mine are in the top performing 25th
22 percentile of such rates, respectively, for all
23 mines of similar size and type; and

24 “(iii) no citations or withdrawal or-
25 ders for violations under section 104(d), no

1 withdrawal orders for imminent danger
2 under section 107 (issued in connection
3 with a citation), and no flagrant violations
4 within the meaning of section 110(b), were
5 issued for such mine.

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

12 “(C) CONSTRUCTION.—A withdrawal order
13 issued as the result of a condition that was en-
14 tirely beyond the operator’s ability to prevent or
15 control shall not preclude the operator from
16 being removed from pattern status, provided
17 the operator did not cause or allow miners to
18 be exposed to the condition in violation of any
19 provision of this Act or a mandatory health or
20 safety standard or regulation promulgated
21 under this Act.

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

1 “(8) REGULATIONS.—

2 “(A) IN GENERAL.—Not later than 120
3 days after the date of enactment of the Robert
4 C. Byrd Miner Safety and Health Act of 2010,
5 the Secretary shall issue interim final regula-
6 tions that shall define—

7 “(i) the threshold benchmarks to trig-
8 ger pattern status under paragraph (1)
9 and cause a withdrawal order to be issued
10 or reissued; and

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

13 “(B) THRESHOLD BENCHMARKS.—In es-
14 tablishing threshold benchmarks to trigger pat-
15 tern status for mines with significantly poor
16 compliance that contributes to unsafe or
17 unhealthy conditions, the Secretary—

18 “(i) shall—

19 “(I) consider rates of citations
20 and orders described in paragraph
21 (1)(A) and rates of reportable acci-
22 dents and injuries within the pre-
23 ceding 180-day period; and

24 “(II) assign appropriate weight
25 to various types of citations, orders,

1 accidents, injuries, or other factors;
2 and

3 “(ii) may include—

4 “(I) factors such as mine type,
5 production levels, number of miners,
6 hours worked by miners, number of
7 mechanized mining units (or similar
8 production characteristics), and the
9 presence of a representative of miners
10 at the mine for purposes of collective
11 bargaining;

12 “(II) the mine’s history of cita-
13 tions, violations, orders, and other en-
14 forcement actions, or rates of report-
15 able accidents and injuries, over any
16 period determined relevant by the Sec-
17 retary; and

18 “(III) other factors the Secretary
19 may determine appropriate to protect
20 the safety and health of miners.

21 “(C) FINAL REGULATION.—Not later than
22 2 years after the date of enactment of the Rob-
23 ert C. Byrd Miner Safety and Health Act of
24 2010, the Secretary shall promulgate a final
25 regulation implementing this paragraph.

1 “(9) PUBLIC DATABASE AND INFORMATION.—
2 The Secretary shall establish and maintain a pub-
3 lically available electronic database containing the
4 data used to determine pattern status for all coal or
5 other mines which shall be updated as frequently as
6 practicable. Such database shall be searchable and
7 have the capacity to provide comparative data about
8 the health and safety at mines of similar sizes and
9 types. The Secretary shall also make publicly avail-
10 able—

11 “(A) a list of all mines the Secretary
12 places in pattern status, updated within 7 days
13 of placing an additional mine in pattern status;

14 “(B) the metrics, including percentile in-
15 formation, used for the purposes of the per-
16 formance benchmarks and threshold bench-
17 marks described in paragraphs (5), (6), and
18 (8); and

19 “(C) guidance for the use of such metrics
20 and benchmarks to assist operators in deter-
21 mining the performance their mines under cri-
22 teria established by the Secretary.

23 “(10) OPERATOR FEES FOR ADDITIONAL IN-
24 SPECTIONS.—

1 “(A) ASSESSMENT AND COLLECTION.—Be-
2 ginning 120 days after the date of enactment of
3 the Robert C. Byrd Miner Safety and Health
4 Act of 2010, the Secretary shall assess and col-
5 lect fees, in accordance with this paragraph,
6 from each coal or other mine in pattern status
7 for the costs of additional inspections under
8 this subsection. The Secretary shall issue, by
9 rule, a schedule of fees to be assessed against
10 coal or other mines of varying types and sizes,
11 and shall collect and assess amounts under this
12 paragraph based on the schedule.

13 “(B) USE.—Amounts collected as provided
14 in subparagraph (A) shall only be available to
15 the Secretary for making expenditures to carry
16 out the additional inspections required under
17 paragraph (2)(D).

18 “(C) AUTHORIZATION OF APPROPRIA-
19 TIONS.—In addition to any other amounts au-
20 thorized to be appropriated under this Act,
21 there is authorized to be appropriated to the
22 Assistant Secretary for Mine Safety and Health
23 for each fiscal year in which fees are collected
24 under subparagraph (A) an amount equal to
25 the total amount of fees collected under such

1 subparagraph during that fiscal year. Such
2 amounts are authorized to remain available
3 until expended. If on the first day of a fiscal
4 year a regular appropriation to the Commission
5 has not been enacted, the Commission shall
6 continue to collect fees (as offsetting collec-
7 tions) under this subsection at the rate in effect
8 during the preceding fiscal year, until 5 days
9 after the date such regular appropriation is en-
10 acted.

11 “(D) COLLECTION AND CREDITING OF
12 FEES.—Fees authorized and collected under
13 this paragraph shall be deposited and credited
14 as offsetting collections to the account providing
15 appropriations to the Mine Safety and Health
16 Administration and shall not be collected for
17 any fiscal year except to the extent and in the
18 amount provided in advance in appropriation
19 Acts.”.

20 **SEC. 203. INJUNCTIVE AUTHORITY.**

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

1 or of mandatory health and safety standards or regula-
2 tions under this Act.”.

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

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

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

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

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

10 “(1) REVOCATION.—If the Secretary finds that
11 any program or plan of an operator, or part thereof,
12 that was approved by the Secretary under this Act
13 is based on inaccurate information or that cir-
14 cumstances that existed when such plan was ap-
15 proved have materially changed and that continued
16 operation of such mine under such plan constitutes
17 a hazard to the safety or health of miners, the Sec-
18 retary shall revoke the approval of such program or
19 plan.

20 “(2) WITHDRAWAL ORDERS.—Upon revocation
21 of the approval of a program or plan under sub-
22 section (a), the Secretary may immediately issue an
23 order requiring the operator to cause all persons, ex-
24 cept those persons referred to in section 104(e), to
25 be withdrawn from such mine or an area of such

1 mine, and to be prohibited from entering such mine
2 or such area, until the operator has submitted and
3 the Secretary has approved a new plan.”.

4 **SEC. 205. CHALLENGING A DECISION TO APPROVE, MOD-**
5 **IFY, OR REVOKE A COAL OR OTHER MINE**
6 **PLAN.**

7 Section 105(e) (as redesignated by section 204(1))
8 (30 U.S.C. 815(e)) is amended by adding at the end the
9 following: “In any proceeding in which a party challenges
10 the Secretary’s decision to approve, modify, or revoke a
11 coal or other mine plan under this Act, the Commission
12 and the courts shall affirm the Secretary’s decision unless
13 the challenging party establishes that such decision was
14 arbitrary, capricious, an abuse of discretion, or otherwise
15 not in accordance with law.”.

16 **SEC. 206. GAO STUDY ON MSHA MINE PLAN APPROVAL.**

17 Not later than 1 year after the date of enactment
18 of this Act, the Comptroller General shall provide a report
19 to Congress on the timeliness of the Mine Safety and
20 Health Administration’s approval of underground coal
21 mines’ required plans and plan amendments, including—

22 (1) factors that contribute to any delays in the
23 approval of these plans; and

1 (2) as appropriate, recommendations for im-
2 proving timeliness of plan review and for achieving
3 prompt decisions.

4 **TITLE III—PENALTIES**

5 **SEC. 301. CIVIL PENALTIES.**

6 (a) **TECHNICAL CORRECTION.**—Section 110(a)(1)
7 (30 U.S.C. 820(a)(1)) is amended by inserting “including
8 any regulation promulgated under this Act,” after “this
9 Act,”.

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

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

1 this Act. This paragraph shall apply to violations at such
2 mine that occur during the time period after the operator
3 fails to meet the performance benchmarks in this para-
4 graph, and ending when the Secretary determines at a
5 subsequent performance review that the mine meets the
6 performance benchmarks under section 104(e)(5)(A).”.

7 (c) CIVIL PENALTY FOR RETALIATION.—Section
8 110(a) (30 U.S.C. 820(a)) is further amended—

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

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

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

19 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**
20 **RECTORS, AND AGENTS.**

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

23 “(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS,
24 DIRECTORS, AND AGENTS.—Whenever an operator vio-
25 lates a provision of this Act, including any mandatory

1 health or safety standard or regulation promulgated under
2 this Act, or knowingly violates or fails or refuses to comply
3 with any order issued under this Act or any order incor-
4 porated in a final decision issued under this Act, any di-
5 rector, officer, or agent of such operator who knowingly
6 authorized, ordered, or carried out such violation, failure,
7 or refusal, or any policy or practice that resulted in such
8 violation, failure, or refusal, shall be subject to the same
9 civil penalties, fines, and imprisonment that may be im-
10 posed upon a person under this section.”.

11 **SEC. 303. CRIMINAL PENALTIES.**

12 (a) IN GENERAL.—Section 110(d) (30 U.S.C.
13 820(d)) is amended—

14 (1) by inserting “(1)” before “Any operator”;

15 (2) by striking “willfully” and inserting “know-
16 ingly”; and

17 (3) by striking “by a fine of not more than”
18 and all that follows and inserting “as follows:

19 “(A) By a fine of not more than \$250,000,
20 or by imprisonment for not more than 1 year,
21 or both.

22 “(B) If the conviction is for a violation
23 committed after a previous conviction of such
24 operator for a violation of the same mandatory
25 health or safety standard, by a fine of not more

1 than \$1,000,000, or by imprisonment for not
2 more than 5 years, or both.

3 “(C) If the conviction is for a violation
4 committed after a previous conviction of such
5 operator for a violation of an order, by a fine
6 of not more than \$1,000,000, or by imprison-
7 ment for not more than 5 years, or both.

8 “(D) If the operator’s actions knowingly
9 exposed miners to a significant risk of serious
10 injury or illness or death, by a fine of not more
11 than \$1,000,000, or by imprisonment for not
12 more than 5 years, or both.

13 “(E) If the operator knowingly tampered
14 with or disabled a required safety device which
15 exposed miners to a significant risk of serious
16 injury or illness or death, or if the conviction is
17 for a violation described in subparagraph (D)
18 committed after a previous conviction of such
19 operator for a such a violation, by a fine of not
20 more than \$2,000,000, or by imprisonment for
21 not more than 10 years, or both.”.

22 (b) CRIMINAL PENALTY FOR RETALIATION.—Section
23 110(d) (as amended by subsection (a)) is further amended
24 by adding at the end the following:

1 “(2) Whoever knowingly takes any action that is di-
2 rectly or indirectly harmful to any person, including action
3 that interferes with the lawful employment or livelihood
4 of any person, because such person has provided an au-
5 thorized representative of the Secretary, a State or local
6 mine safety or health officer or official, or any other law
7 enforcement officer with any information related to the ex-
8 istence of a health or safety violation or an unhealthful
9 or unsafe condition, policy, or practice under this Act shall
10 be fined under title 18, United States Code, imprisoned
11 for not more than 10 years, or both.”.

12 (c) ADVANCE NOTICE OF INSPECTIONS.—

13 (1) IN GENERAL.—Section 110(e) (30 U.S.C.
14 820(e)) is amended to read as follows:

15 “(e) Unless otherwise authorized by this Act, any per-
16 son that knowingly gives, causes to give, or attempts to
17 give or cause to give, advance notice of any inspection con-
18 ducted under this Act with the intention of impeding,
19 interfering with, or adversely affecting the results of such
20 inspection, shall be fined under title 18, United States
21 Code, imprisoned for not more than 5 years, or both.”.

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

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

7 “(1) that giving, causing to give, or attempting
8 to give or cause to give advance notice of any inspec-
9 tion to be conducted under this Act with the inten-
10 tion of impeding, interfering with, or adversely af-
11 fecting the results of such inspection is unlawful
12 pursuant to section 110(e); and

13 “(2) the maximum penalties for a violation
14 under such subsection.”.

15 **SEC. 304. COMMISSION REVIEW OF PENALTY ASSESS-**
16 **MENTS.**

17 Section 110(i) (30 U.S.C. 820(i)) is amended by
18 striking “In assessing civil monetary penalties, the Com-
19 mission shall consider” and inserting the following: “In
20 any review of a citation and proposed penalty assessment
21 contested by an operator, the Commission shall assess not
22 less than the penalty derived by using the same method-
23 ology (including any point system) prescribed in regula-
24 tions under this Act, so as to ensure consistency in oper-
25 ator penalty assessments, except that the Commission may

1 assess a penalty for less than the amount that would result
2 from the utilization of such methodology if the Commis-
3 sion finds that there are extraordinary circumstances. If
4 there is no such methodology prescribed for a citation or
5 there are such extraordinary circumstances, the Commis-
6 sion shall assess the penalty by considering”.

7 **SEC. 305. DELINQUENT PAYMENTS AND PREJUDGMENT IN-**
8 **TEREST.**

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

24 (b) ENSURING PAYMENT OF PENALTIES.—

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

3 (A) by redesignating subsection (l) as sub-
4 section (m); and

5 (B) by inserting after subsection (k) the
6 following:

7 “(1) ENSURING PAYMENT OF PENALTIES.—

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

21 “(2) WITHDRAWAL ORDERS FOLLOWING FAIL-
22 URE TO PAY.—If an operator that receives a letter
23 under paragraph (1) has not paid the assessment by
24 the date that is 180 days after such assessment be-
25 came a final order and has not entered into a pay-

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

20 (2) APPLICABILITY AND EFFECTIVE DATE.—

21 The amendments made by paragraph (1) shall apply
22 to all unpaid civil penalty assessments under the
23 Federal Mine Safety and Health Act of 1977 (30
24 U.S.C. 801 et seq.), except that, for any unpaid civil
25 penalty assessment that became a final order of the

1 Commission or a court before the date of enactment
2 of this Act, the time periods under section 110(n) of
3 the Federal Mine Safety and Health Act of 1977 (as
4 amended) (30 U.S.C. 820(n)) shall be calculated as
5 beginning on the date of enactment of this Act in-
6 stead of on the date of the final order.

7 **TITLE IV—WORKER RIGHTS AND**
8 **PROTECTIONS**

9 **SEC. 401. PROTECTION FROM RETALIATION.**

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

12 “(c) PROTECTION FROM RETALIATION.—

13 “(1) RETALIATION PROHIBITED.—

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

22 “(i) such miner or other employee,
23 representative, or applicant for employ-
24 ment—

1 “(I) has filed or made a com-
2 plaint, or is about to file or make a
3 complaint, including a complaint noti-
4 fying the operator or the operator’s
5 agent, or the representative of the
6 miners at the coal or other mine of an
7 alleged danger or safety or health vio-
8 lation in a coal or other mine;

9 “(II) instituted or caused to be
10 instituted, or is about to institute or
11 cause to be instituted, any proceeding
12 under or related to this Act or has
13 testified or is about to testify in any
14 such proceeding or because of the ex-
15 ercise by such miner or other em-
16 ployee, representative, or applicant for
17 employment on behalf of him or her-
18 self or others of any right afforded by
19 this Act, or has reported any injury or
20 illness to an operator or agent;

21 “(III) has testified or is about to
22 testify before Congress or any Federal
23 or State proceeding related to safety
24 or health in a coal or other mine; or

1 “(IV) refused to violate any pro-
2 vision of this Act, including any man-
3 datory health and safety standard or
4 regulation; or

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

9 “(B) RETALIATION FOR REFUSAL TO PER-
10 FORM DUTIES.—

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

21 “(ii) STANDARD.—For purposes of
22 clause (i), the circumstances causing the
23 miner’s or other employee’s good-faith be-
24 lief that performing such duties would pose
25 a safety or health hazard shall be of such

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

12 “(2) COMPLAINT.—Any miner or other em-
13 ployee or representative of miners or applicant for
14 employment who believes that he or she has been
15 discharged, disciplined, or otherwise discriminated
16 against by any person in violation of paragraph (1)
17 may file a complaint with the Secretary alleging
18 such discrimination not later than 180 days after
19 the later of—

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

22 “(B) the date on which the miner or other
23 employee or representative knows or should rea-
24 sonably have known that such alleged violation
25 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 after receiving notice of the Sec-
15 retary’s determination, to file an action in his
16 or her own behalf before the Commission,
17 charging discrimination or interference in viola-
18 tion of paragraph (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)(D). 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 ORDERS.—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 working during the shift, all miners working
7 during the shift when such order was issued who are
8 idled by such order shall be entitled, regardless of
9 the result of any review of such order, to full com-
10 pensation by the operator at their regular rates of
11 pay for the period they are idled, but for not more
12 than the balance of such shift. If such order is not
13 terminated prior to the next working shift, all min-
14 ers on that shift who are idled by such order shall
15 be entitled to full compensation by the operator at
16 their regular rates of pay for the period they are
17 idled, but for not more than four hours of such shift.
18 If a coal or other mine or area of such mine is
19 closed by an order issued under section 104, 107 (in
20 connection with a citation), 108, or 110, all miners
21 who are idled by such order shall be entitled, regard-
22 less of the result of any review of such order, to full
23 compensation by the operator at their regular rates
24 of pay and in accordance with their regular sched-
25 ules of pay for the entire period for which they are
26 idled, not to exceed 60 days.

1 “(2) CLOSURE IN ADVANCE OF ORDER.—If the
2 Secretary finds that such mine or such area of a
3 mine was closed by the operator in anticipation of
4 the issuance of such an order, all miners who are
5 idled by such closure shall be entitled to full com-
6 pensation by the operator at their regular rates of
7 pay and in accordance with their regular schedules
8 of pay, from the time of such closure until such time
9 as the Secretary authorizes reopening of such mine
10 or such area of the mine, not to exceed 60 days, ex-
11 cept where an operator promptly withdraws miners
12 upon discovery of a hazard, and notifies the Sec-
13 retary where required, and within the prescribed
14 time period.

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

1 such order was issued and ending when such order
2 is complied with, vacated, or terminated.

3 “(b) ENFORCEMENT.—

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

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

14 Consistent with the authority of the Secretary to
15 order miners withdrawn from a mine under this Act,
16 the Secretary shall order a mine that has been sub-
17 ject to a withdrawal order under section 103, 104,
18 107, 108, or 110, and has reopened, to be closed
19 again if compensation in accordance with the provi-
20 sions of this section is not paid by the end of the
21 next regularly scheduled payroll period following the
22 lifting of a withdrawal order.

23 “(c) EXPEDITED REVIEW.—If an order is issued
24 which results in payments to miners under subsection (a),
25 the operators shall have the right to an expedited review

1 before the Commission using timelines and procedures es-
2 tablished pursuant to section 316(b)(2)(G)(ii).”.

3 **SEC. 403. UNDERGROUND COAL MINER EMPLOYMENT**
4 **STANDARD FOR MINES PLACED IN PATTERN**
5 **STATUS.**

6 The Federal Mine Safety and Health Act of 1977 is
7 further amended by adding at the end of title I the fol-
8 lowing:

9 **“SEC. 117. UNDERGROUND COAL MINER EMPLOYMENT**
10 **STANDARD FOR MINES PLACED IN PATTERN**
11 **STATUS.**

12 “(a) IN GENERAL.— For purposes of ensuring min-
13 ers’ health and safety and miners’ right to raise concerns
14 thereof, when an underground coal mine is placed in pat-
15 tern status pursuant to section 104(e), and for 3 years
16 after such placement, the operator of such mine may not
17 discharge or constructively discharge a miner who is paid
18 on an hourly basis and employed at such underground coal
19 mine without reasonable job-related grounds based on a
20 failure to satisfactorily perform job duties, including com-
21 pliance with this Act and with mandatory health and safe-
22 ty standards or other regulations issued under this Act,
23 or other legitimate business reason, where the miner has
24 completed the employer’s probationary period, not to ex-
25 ceed 6 months.

1 “(b) CAUSE OF ACTION.—A miner aggrieved by a
2 violation of subsection (a) may file a complaint in Federal
3 district court in the district where the mine is located
4 within 1 year of such violation.

5 “(c) REMEDIES.—In an action under subsection (b),
6 for any prevailing miner the court shall take affirmative
7 action to further the purposes of the Act, which may in-
8 clude reinstatement with backpay and compensatory dam-
9 ages. Reasonable attorneys’ fees and costs shall be award-
10 ed to any prevailing miner under this section.

11 “(d) PRE-DISPUTE WAIVER PROHIBITED.—A min-
12 er’s right to a cause of action under this section may not
13 be waived with respect to disputes that have not arisen
14 as of the time of the waiver.

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

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

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

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

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

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

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

16 “(B) Not later than 180 days after the date of enact-
17 ment of the Robert C. Byrd Miner Safety and Health Act
18 of 2010, the Secretary shall promulgate interim final rules
19 implementing the requirements of subparagraph (A). The
20 Secretary shall issue a final rule not later than 2 years
21 after such date.”.

22 **SEC. 502. ROCK DUST STANDARDS.**

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

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

3 “(1) IN GENERAL.—Where rock”;

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

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

11 “(2) METHODS OF MEASUREMENT.—

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

20 “(B) DIRECT READING MONITORS.—By
21 the later of June 15, 2011, or the date that is
22 30 days after the Secretary of Health and
23 Human Services has certified in writing that di-
24 rect reading monitors are commercially avail-
25 able to measure total incombustible content in

1 samples of combined coal dust, rock dust, and
2 other dust and the Department of Labor has
3 approved such monitors for use in underground
4 coal mines, the Secretary shall require opera-
5 tors to take such dust samples using direct
6 reading monitors.

7 “(C) REGULATIONS.—The Secretary shall,
8 not later than 180 days after the date of enact-
9 ment of the Robert C. Byrd Miner Safety and
10 Health Act of 2010, promulgate an interim
11 final rule that prescribes methods for operator
12 sampling of total incombustible content in sam-
13 ples of combined coal dust, rock dust, and other
14 dust using direct reading monitors and includes
15 requirements for locations, methods, and inter-
16 vals for mandatory operator sampling.

17 “(D) RECOMMENDATIONS.—Not later than
18 1 year after the date of enactment of the Rob-
19 ert C. Byrd Miner Safety and Health Act of
20 2010, the Secretary of Health and Human
21 Services shall, based upon the latest research,
22 recommend to the Secretary of Labor any revi-
23 sions to the mandatory operator sampling loca-
24 tions, methods, and intervals included in the in-
25 terim final rule described in subparagraph (B)

1 that may be warranted in light of such re-
2 search.

3 “(3) LIMITATION.—Until a final rule is issued
4 by the Secretary under section 502(b)(2) of the Rob-
5 ert C. Byrd Miner Safety and Health Act of 2010,
6 any measurement taken by a direct reading monitor
7 described in paragraph (2) shall not be admissible to
8 establish a violation in an enforcement action under
9 this Act.”.

10 (b) REPORT AND RULEMAKING AUTHORITY.—

11 (1) REPORT.—Not later than 2 years after the
12 date of enactment of this Act, the Secretary of
13 Health and Human Services, in consultation with
14 the Secretary of Labor, shall prepare and submit, to
15 the Committee on Education and Labor of the
16 House of Representatives and the Committee on
17 Health, Education, Labor, and Pensions of the Sen-
18 ate, a report—

19 (A) regarding whether any direct reading
20 monitor described in section 304(d)(2)(B) of
21 the Federal Mine Safety and Health Act of
22 1977 (30 U.S.C. 864(d)(2)(B)) is sufficiently
23 reliable and accurate for the enforcement of the
24 mandatory health or safety standards by the
25 Secretary of Labor under such Act, and wheth-

1 er additional improvement to such direct read-
2 ing monitor, or additional verification regarding
3 reliability and accuracy, would be needed for
4 enforcement purposes; and

5 (B) identifying any limitations or impedi-
6 ments for such use in underground coal mines.

7 (2) **AUTHORITY.**—If the Secretary determines
8 that such direct reading monitor is sufficiently reli-
9 able and accurate for the enforcement of mandatory
10 health and safety standards under the Federal
11 Mines Safety and Health Act of 1977 following such
12 report or any update thereto, the Secretary shall
13 promulgate a final rule authorizing the use of such
14 direct reading monitor for purposes of compliance
15 and enforcement, in addition to other methods for
16 determining total incombustible content. Such rule
17 shall specify mandatory operator sampling locations,
18 methods, and intervals.

19 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

22 “(u) **ATMOSPHERIC MONITORING SYSTEMS.**—

23 “(1) **NIOSH RECOMMENDATIONS.**—Not later
24 than 1 year after the date of enactment of the Rob-
25 ert C. Byrd Miner Safety and Health Act of 2010,

1 the Director of the National Institute for Occupa-
2 tional Safety and Health, acting through the Office
3 of Mine Safety and Health Research, in consulta-
4 tion, including through technical working groups,
5 with operators, vendors, State mine safety agencies,
6 the Secretary, and labor representatives of miners,
7 shall issue recommendations to the Secretary regard-
8 ing—

9 “(A) how to ensure that atmospheric moni-
10 toring systems are utilized in the underground
11 coal mining industry to maximize the health
12 and safety of underground coal miners;

13 “(B) the implementation of redundant sys-
14 tems, such as the bundle tubing system, that
15 can continuously monitor the mine atmosphere
16 following incidents such as fires, explosions, en-
17 trapments, and inundations; and

18 “(C) other technologies available to con-
19 duct continuous atmospheric monitoring.

20 “(2) ATMOSPHERIC MONITORING SYSTEM REG-
21 ULATIONS.—Not later than 1 year following the re-
22 ceipt of the recommendations described in paragraph
23 (1), the Secretary shall promulgate regulations re-
24 quiring that each operator of an underground coal

1 mine install atmospheric monitoring systems, con-
2 sistent with such recommendations, that—

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

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

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

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

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

13 (1) by striking “of Health and Human Serv-
14 ices”; and

15 (2) by striking the second sentence and insert-
16 ing the following: “Not later than 2 years after the
17 date of enactment of the Robert C. Byrd Miner
18 Safety and Health Act of 2010, the Secretary shall
19 promulgate final regulations that require operators,
20 beginning on the date such regulations are issued, to
21 provide coal miners with the maximum feasible pro-
22 tection from respirable dust, including coal and silica
23 dust, that is achievable through environmental con-
24 trols, and that meet the applicable standards.”.

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

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

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

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

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

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

5 “(e) AUTHORITY TO MANDATE ADDITIONAL TRAIN-
6 ING.—

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

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

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

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

25 “(2) WITHDRAWAL ORDER.—If the operator
26 fails to provide training ordered under paragraph

1 (1) within the specified time, the Secretary shall
2 issue an order requiring such operator to cause all
3 affected persons, except those persons referred to in
4 section 104(c), to be withdrawn, and to be prohib-
5 ited from entering such mine, until such operator
6 has provided such training.”.

7 (b) CONFORMING AMENDMENTS.—Section 104(g)(2)
8 (30 U.S.C. 814(g)(2)) is amended by striking “under
9 paragraph (1)” both places it appears and inserting
10 “under paragraph (1) or under section 115(e)”.

11 **SEC. 507. CERTIFICATION OF PERSONNEL.**

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

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

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

1 such training consistent with the requirements of this sec-
2 tion.

3 “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-
4 MENTS AND PROCEDURES.—

5 “(1) IN GENERAL.—Not later than 1 year after
6 the date of enactment of the Robert C. Byrd Miner
7 Safety and Health Act of 2010, the Secretary shall
8 issue mandatory standards to establish—

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

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

17 “(C) procedures and criteria for revoking
18 such certification, registration, qualification, or
19 other approval, including procedures that en-
20 sure that the Secretary (or a State agency, as
21 applicable) responds to requests for revocation
22 and that the names of individuals whose certifi-
23 cation or other approval has been revoked are
24 provided to and maintained by the Secretary,

1 and are made available to appropriate State
2 agencies through an electronic database.

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

16 “(c) OPERATOR FEES FOR CERTIFICATION.—

17 “(1) ASSESSMENT AND COLLECTION.—Begin-
18 ning 180 days after the date of enactment of the
19 Robert C. Byrd Miner Safety and Health Act of
20 2010, the Secretary shall assess and collect fees, in
21 accordance with this subsection, from each operator
22 for each person certified under this section. Fees
23 shall be assessed and collected in amounts deter-
24 mined by the Secretary as necessary to fund the cer-
25 tification programs established under this section.

1 “(2) USE.—Amounts collected as provided in
2 paragraph (1) shall only be available to the Sec-
3 retary, as provided in paragraph (3), for making ex-
4 penditures to carry out the certification programs
5 established under this subsection.

6 “(3) AUTHORIZATION OF APPROPRIATIONS.—In
7 addition to funds authorized to be appropriated
8 under section 114, there is authorized to be appro-
9 priated to the Assistant Secretary for Mine Safety
10 and Health for each fiscal year in which fees are col-
11 lected under paragraph (1) an amount equal to the
12 total amount of fees collected under paragraph (1)
13 during that fiscal year. Such amounts are authorized
14 to remain available until expended. If on the first
15 day of a fiscal year a regular appropriation to the
16 Commission has not been enacted, the Commission
17 shall continue to collect fees (as offsetting collec-
18 tions) under this subsection at the rate in effect dur-
19 ing the preceding fiscal year, until 5 days after the
20 date such regular appropriation is enacted.

21 “(4) COLLECTING AND CREDITING OF FEES.—
22 Fees authorized and collected under this subsection
23 shall be deposited and credited as offsetting collec-
24 tions to the account providing appropriations to the
25 Mine Safety and Health Administration and shall

1 not be collected for any fiscal year except to the ex-
2 tent and in the amount provided in advance in ap-
3 propriation Acts.

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

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

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

16 (2) in subsection (c), by redesignating para-
17 graphs (1) through (3) as subparagraphs (A)
18 through (C), respectively;

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

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

1 **TITLE VI—ADDITIONAL MINE**
2 **SAFETY PROVISIONS**

3 **SEC. 601. DEFINITIONS.**

4 (a) **DEFINITION OF OPERATOR.**—Section 3(d) is
5 amended to read as follows:

6 “(d) ‘operator’ means—

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

8 “(A) operates or supervises a coal or other
9 mine; or

10 “(B) controls such mine by making or hav-
11 ing the authority to make management or oper-
12 ational decisions that affect, directly or indi-
13 rectly, the health or safety at such mine; or

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

16 (b) **DEFINITION OF AGENT.**—Section 3(e) (30 U.S.C.
17 802(e)) is amended by striking “the miners” and inserting
18 “any miner”.

19 (c) **DEFINITION OF MINER.**—Section 3(g) (30 U.S.C.
20 802(g)) is amended by inserting after “or other mine” the
21 following: “, and includes any individual who is not cur-
22 rently working in a coal or other mine but would be cur-
23 rently working in such mine, but for an accident in such
24 mine”.

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

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

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

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

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

11 “(p) ‘significant and substantial violation’ means a
12 violation of this Act, including any mandatory health or
13 safety standard or regulation promulgated under this Act,
14 that is of such nature as could significantly and substan-
15 tially contribute to the cause and effect of a coal or other
16 mine safety or health hazard as described in section
17 104(d).”.

18 **SEC. 602. ASSISTANCE TO STATES.**

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

20 (1) in subsection (a)—

21 (A) in the matter preceding paragraph (1),
22 by striking “, in coordination with the Sec-
23 retary of Health, Education, and Welfare and
24 the Secretary of the Interior,”;

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

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

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

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

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

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

15 Title IV of the Black Lung Benefits Act (30 U.S.C.
16 901 et seq.) is amended by adding at the end the fol-
17 lowing:

18 **“SEC. 435. MEDICAL REPORTS.**

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

1 out in detail the examiner's findings, including any diag-
2 noses and conclusions and the results of any diagnostic
3 imaging techniques and tests that were performed on the
4 miner.”.

5 **SEC. 604. RULES OF APPLICATION TO CERTAIN MINES.**

6 (a) INAPPLICABILITY OF AMENDMENTS TO CERTAIN
7 MINES.—

8 (1) SPECIAL RULE.—The amendments made by
9 this Act shall not apply to—

10 (A) surface mines, except for surface facili-
11 ties or impoundments physically connected to—

12 (i) underground coal mines; or

13 (ii) other underground mines which
14 are gassy mines; or

15 (B) underground mines which are neither
16 coal mines nor gassy mines.

17 (2) DEFINITION.—For purposes of this section,
18 the term “gassy mine” means a mine, tunnel, or
19 other underground workings in which a flammable
20 mixture has been ignited, or has been found with a
21 permissible flame safety lamp, or has been deter-
22 mined by air analysis to contain 0.25 percent or
23 more (by volume) of methane in any open workings
24 when tested at a point not less than 12 inches from
25 the roof, face of rib.

1 (b) RULE OF CONSTRUCTION RELATING TO APPLICA-
2 BILITY OF CERTAIN PROVISIONS TO SURFACE MINES.—
3 Title I is further amended by adding at the end the fol-
4 lowing:

5 **“SEC. 119. APPLICABILITY OF CERTAIN PROVISIONS TO**
6 **CERTAIN MINES.**

7 “(a) RULE OF CONSTRUCTION.—With respect to the
8 mines described in subsection (b), this Act as in effect on
9 the date before the date of enactment of the Robert C.
10 Byrd Miner Safety and Health Act of 2010, shall continue
11 to apply to such mines as then in effect.

12 “(b) APPLICABLE MINES.—

13 “(1) IN GENERAL.—The mines referred to in
14 subsection (a) are—

15 “(A) surface mines, except for surface fa-
16 cilities or impoundments physically connected
17 to—

18 “(i) underground coal mines; or

19 “(ii) other underground mines which
20 are gassy mines; and

21 “(B) underground mines which are neither
22 coal mines nor gassy mines.

23 “(2) DEFINITION.—As used in paragraph (1),
24 the term ‘gassy mine’ means a mine, tunnel, or
25 other underground workings in which a flammable

1 mixture has been ignited, or has been found with a
2 permissible flame safety lamp, or has been deter-
3 mined by air analysis to contain 0.25 percent or
4 more (by volume) of methane in any open workings
5 when tested at a point not less than 12 inches from
6 the roof, face of rib.

7 “(c) SAVINGS PROVISION.—Nothing in this section
8 shall impact the authority of the Secretary to promulgate
9 or modify regulations pursuant to the authority under any
10 such provisions as in effect on the date before the date
11 of enactment of the Robert C. Byrd Miner Safety and
12 Health Act of 2010, or shall be construed to alter or mod-
13 ify precedent with regards to the Commission or courts.”.

14 **TITLE VII—AMENDMENTS TO**
15 **THE OCCUPATIONAL SAFETY**
16 **AND HEALTH ACT**

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

18 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the
19 Occupational Safety and Health Act of 1970 (29 U.S.C.
20 660(c)(1)) is amended—

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

1 “(A) such”;

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

4 “(B) such employee has”;

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

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

11 “(D) of the exercise”; and

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

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

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

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

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

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

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

23 “(4) STATUTE OF LIMITATIONS.—

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

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

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

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

14 “(5) INVESTIGATION.—

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

22 “(i) shall include—

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

1 “(II) providing the respondent an
2 opportunity to—
3 “(aa) submit to the Sec-
4 retary a written response to the
5 complaint; and
6 “(bb) meet with the Sec-
7 retary to present statements from
8 witnesses or provide evidence;
9 and
10 “(III) providing the complainant
11 an opportunity to—
12 “(aa) receive any statements
13 or evidence provided to the Sec-
14 retary;
15 “(bb) meet with the Sec-
16 retary; and
17 “(cc) rebut any statements
18 or evidence; and
19 “(ii) may include issuing subpoenas
20 for the purposes of such investigation.
21 “(B) DECISION.—Not later than 90 days
22 after the filing of the complaint, the Secretary
23 shall—

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

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

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

18 “(7) HEARING.—

19 “(A) REQUEST FOR HEARING.—

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

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

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

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

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

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

18 “(B) PROCEDURES.—

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

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

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

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

3 “(8) ADMINISTRATIVE APPEAL.—

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

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

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

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

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

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

13 “(B) PUBLIC POLICY CONSIDERATIONS.—
14 Neither the Secretary, an administrative law
15 judge, nor the review board conducting a hear-
16 ing under this subsection shall accept a settle-
17 ment that contains conditions conflicting with
18 the rights protected under this Act or that are
19 contrary to public policy, including a restriction
20 on a complainant’s right to future employment
21 with employers other than the specific employ-
22 ers named in a complaint.

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

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

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

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

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

24 “(11) JUDICIAL REVIEW.—

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

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

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

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

9 “(13) BURDENS OF PROOF.—

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

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

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

3 “(14) RELIEF.—

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

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

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

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

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

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

19 “(i) reasonable attorneys’ fees; and

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

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

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

11 “(17) ELECTION OF VENUE.—

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

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

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

21 “(B) REFERRALS.—If—

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

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

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

10 **SEC. 702. VICTIMS’ RIGHTS.**

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

14 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 703. CORRECTION OF SERIOUS, WILLFUL, OR RE-**
2 **PEATED VIOLATIONS PENDING CONTEST AND**
3 **PROCEDURES FOR A STAY.**

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

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

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

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

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

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

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

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

1 “(A) MOTION FOR A STAY.—An employer
2 that receives a citation alleging a violation des-
3 ignated as serious, willful, or repeated and that
4 files a notice of contest to the citation asserting
5 that the time set for abatement of the alleged
6 violation is unreasonable or challenging the ex-
7 istence of the alleged violation may file with the
8 Commission a motion to stay the period for the
9 abatement of the violation.

10 “(B) CRITERIA.—In determining whether
11 a stay should be issued on the basis of a motion
12 filed under subparagraph (A), the Commission
13 may grant a stay only if the employer has dem-
14 onstrated—

15 “(i) a substantial likelihood of success
16 on the areas contested under subparagraph
17 (A); and

18 “(ii) that a stay will not adversely af-
19 fect the health and safety of workers.

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

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

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

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

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

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

18 **SEC. 704. CONFORMING AMENDMENTS.**

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

22 “(d) Any employer who fails to correct a violation
23 designated by the Secretary as serious, willful, or repeated
24 and for which a citation has been issued under section 9(a)
25 within the period permitted for its correction (and a stay

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

14 **SEC. 705. CIVIL PENALTIES.**

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

18 (1) in subsection (a)—

19 (A) by striking “\$70,000” and inserting
20 “\$120,000”;

21 (B) by striking “\$5,000” and inserting
22 “\$8,000”; and

23 (C) by adding at the end the following: “In
24 determining whether a violation is repeated, the
25 Secretary or the Commission shall consider the

1 employer's history of violations under this Act
2 and under State occupational safety and health
3 plans established under section 18. If such a
4 willful or repeated violation caused or contrib-
5 uted to the death of an employee, such civil
6 penalty amounts shall be increased to not more
7 than \$250,000 for each such violation, but not
8 less than \$50,000 for each such violation, ex-
9 cept that for an employer with 25 or fewer em-
10 ployees such penalty shall not be less than
11 \$25,000 for each such violation.”;

12 (2) in subsection (b)—

13 (A) by striking “\$7,000” and inserting
14 “\$12,000”; and

15 (B) by adding at the end the following: “If
16 such a violation caused or contributed to the
17 death of an employee, such civil penalty
18 amounts shall be increased to not more than
19 \$50,000 for each such violation, but not less
20 than \$20,000 for each such violation, except
21 that for an employer with 25 or fewer employ-
22 ees such penalty shall not be less than \$10,000
23 for each such violation.”;

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

1 (4) in subsection (d), as amended, by striking
2 “\$7,000” each place it occurs and inserting
3 “\$12,000”;

4 (5) by redesignating subsections (e) through (i)
5 as subsections (f) through (j), and subsections (j)
6 through (l) as subsections (l) through
7 (n) respectively; and

8 (6) in subsection (j) (as so redesignated) by
9 striking “\$7,000” and inserting “\$12,000”.

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

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

18 **SEC. 706. CRIMINAL PENALTIES.**

19 (a) IN GENERAL.—Section 17 of the Occupational
20 Safety and Health Act of 1970 (29 U.S.C. 666) (as
21 amended by section 705) is further amended—

22 (1) by amending subsection (f) (as redesignated
23 by section 705) to read as follows:

24 “(f)(1) Any employer who knowingly violates any
25 standard, rule, or order promulgated under section 6 of

1 this Act, or of any regulation prescribed under this Act,
2 and that violation caused or significantly contributed to
3 the death of any employee, shall, upon conviction, be pun-
4 ished by a fine in accordance with title 18, United States
5 Code, or by imprisonment for not more than 10 years, or
6 both, except that if the conviction is for a violation com-
7 mitted after a first conviction of such person under this
8 subsection or subsection (i), punishment shall be by a fine
9 in accordance title 18, United States Code, or by imprison-
10 ment for not more than 20 years, or by both.

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

14 (2) by amending subsection (g) (as redesignated
15 by section 705) to read as follows:

16 “(g) Unless otherwise authorized by this Act, any
17 person that knowingly gives, causes to give, or attempts
18 to give or cause to give, advance notice of any inspection
19 conducted under this Act with the intention of impeding,
20 interfering with, or adversely affecting the results of such
21 inspection, shall be fined under title 18, United States
22 Code, imprisoned for not more than 5 years, or both.”.

23 (3) in subsection (h) (as redesignated by section
24 705), by striking “fine of not more than \$10,000, or
25 by imprisonment for not more than six months,”

1 and inserting “fine in accordance with title 18,
2 United States Code, or by imprisonment for not
3 more than 5 years,”;

4 (4) by inserting after subsection (j) (as redesign-
5 nated by section 705) the following:

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

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

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

25 “(A) a substantial risk of death;

1 “(B) protracted unconsciousness;

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

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

7 (b) JURISDICTION FOR PROSECUTION UNDER STATE
8 AND LOCAL CRIMINAL LAWS.—Such section is further
9 amended by adding at the end the following:

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

14 **SEC. 707. PENALTIES.**

15 Section 17(n) of the Occupational Safety and Health
16 Act of 1970 (29 U.S.C. 666) (as redesignated by section
17 706(a)(4)) (29 U.S.C. 666(n)) is ended by adding at the
18 end the following: “Pre-final order interest on such pen-
19 alties shall begin to accrue on the date the party contests
20 a citation issued under this Act, and shall end upon the
21 issuance of the final order. Such pre-final order interest
22 shall be calculated at the current underpayment rate de-
23 termined by the Secretary of the Treasury pursuant to
24 section 6621 of the Internal Revenue Code of 1986, and
25 shall be compounded daily. Post-final order interest shall

1 begin to accrue 30 days after the date a final order of
2 the Commission or the court is issued, and shall be
3 charged at the rate of 8 percent per year.”.

4 **SEC. 708. HEALTH HAZARD EVALUATIONS BY THE NA-**
5 **TIONAL INSTITUTE FOR OCCUPATIONAL**
6 **SAFETY AND HEALTH.**

7 Section 20(a)(6) of the Occupational Safety and
8 Health Act of 1970 (29 U.S.C. 669(a)(6)) is amended by
9 striking the second sentence and inserting the following:
10 “The Secretary shall determine following a written request
11 by any employer, authorized representative of current or
12 former employees, physician, other Federal agency, or
13 State or local health department, specifying with reason-
14 able particularity the grounds on which the request is
15 made, whether any substance normally found in the place
16 of employment has potentially toxic effects in such con-
17 centrations as used or found or whether any physical
18 agents, equipment, or working condition found or used has
19 potentially hazardous effects; and shall submit such deter-
20 mination both to employers and affected employees as
21 soon as possible.”.

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

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

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

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

