

112TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

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

A BILL

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

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Robert C. Byrd Mine and Workplace Safety and Health
6 Act of 2012”.

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

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

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION
AUTHORITY

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

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

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

TITLE III—PENALTIES

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

TITLE IV—WORKER RIGHTS AND PROTECTIONS

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

TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

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

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

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

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

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

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

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

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

12 (3) In response to several mining tragedies in
13 early 2006, Congress quickly passed the most sweep-
14 ing changes to mine safety laws in 30 years. The
15 Mine Improvement and New Emergency Response
16 Act of 2006 (Public Law 109–236, 120 Stat. 493),
17 also known as the “MINER Act”, was signed into
18 law on June 15, 2006.

19 (4) As a result of the MINER Act—

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

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

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

12 (D) a new grant program was created to
13 provide mine safety training.

14 (5) Although the MINER Act made significant
15 improvements to mine rescue capabilities, Congress
16 was again reminded of the need to continually im-
17 prove and vigorously enforce our Federal mine safe-
18 ty laws when, on April 5, 2010, an explosion ripped
19 through the Upper Big Branch Mine in Montcoal,
20 West Virginia, killing 29 brave West Virginia coal
21 miners and seriously injuring another. This was the
22 worst coal mining disaster in the United States in
23 nearly 40 years.

24 (6) We must never forget those who have been
25 impacted by this tragedy – family members, friends,

1 coworkers, loved ones, and most importantly, the in-
2 dividuals who perished in the Upper Big Branch ex-
3 plosion: Carl “Pee Wee” Acord, Jason Matthew At-
4 kins, Christopher Lee Bell, Sr., Gregory Steven
5 Brock, Kenneth A. Chapman, Sr., Robert Eugene
6 Clark, Cory Davis, Charles Timothy Davis, Michael
7 Lee Elswick, William Ildon Griffith, Steven J.
8 “Smiley” Harrah, Edward “Dean” Jones, Richard
9 Keith Lane, William Roosevelt Lynch, Joe Marcum,
10 Ronald Lee Maynor, Nicolas D. McCroskey, James
11 “Eddie” Mooney, Adam K. Morgan, Rex Lane
12 Mullins, Joshua Scott Napper, Howard “Boone”
13 Payne, Jr., Dillard Earl “Dewey” Persinger, Joel R.
14 “Jody” Price, Gary Wayne Quarles, Deward Allan
15 Scott, Grover Dale Skeens, Benny Ray Willingham,
16 and Ricky L. Workman. Another miner, James
17 Woods, was seriously injured in the explosion and a
18 second survivor, Tim Blake, has been credited with
19 heroically attempting to save the lives of his fellow
20 miners by applying emergency breathing devices to
21 them while they were unconscious.

22 (7) Five State, Federal, and independent enti-
23 ties have conducted investigations into the Upper
24 Big Branch disaster. Together, these reports con-
25 clude that the Upper Big Branch disaster was a pre-

1 ventable explosion caused by a failure of the oper-
2 ator to follow known safety standards, including
3 those that are intended to prevent large-scale explo-
4 sions.

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

11 (9) In the last two years, Congress has held 9
12 hearings into the Upper Big Branch disaster and on
13 mine safety generally.

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

21 (11) Congress appropriated \$22,000,000
22 through the Supplemental Appropriations Act, 2010
23 (Public Law 111–212) to reduce the backlog of ap-
24 peals at the Federal Mine Safety and Health Review
25 Commission, investigate the Upper Big Branch dis-

1 aster, and purchase emergency response equipment.
2 During the year that this funding was available, the
3 Federal Mine Safety and Health Review Commission
4 was able to hire 6 additional judges and support
5 staff and, along with the Department of Labor, was
6 able to dispose of 11,643 cases, including 6,924
7 cases that had been specifically targeted for backlog
8 reduction.

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

17 (13) During the 2-year period ending May
18 2012, the Mine Safety and Health Administration
19 has increased its enforcement by implementing im-
20 pact inspections that target violations at unsafe
21 mines with poor compliance history or specific safety
22 concerns. As of May 2012, the Administration had
23 conducted 452 impact inspections resulting in 8,106
24 citations, 811 orders, and 32 safeguards.

1 (14) The Mine Safety and Health Administra-
2 tion has also—

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

9 (B) created a new online tool to allow op-
10 erators, miners, and the public to monitor
11 whether a mine could be subject to a pattern of
12 violations; and

13 (C) proposed new regulations that will
14 eliminate regulatory loopholes that have allowed
15 unsafe mines to avoid being placed onto pattern
16 of violations status altogether.

17 (15) In April 2011, for the first time in history
18 since the Federal Mine Safety and Health Act of
19 1977 (30 U.S.C. 801 et seq.) was enacted, the Mine
20 Safety and Health Administration placed 2 mines
21 onto pattern of violations status, and as of the end
22 of 2011 had notified 94 mines that they faced a po-
23 tential pattern of violations, which is the regulatory
24 precursor to being placed onto pattern of violations
25 status.

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

10 **SEC. 3. REFERENCES.**

11 Except in title VII and as otherwise expressly pro-
12 vided, whenever in this Act an amendment is expressed
13 as an amendment to a section or other provision, the ref-
14 erence shall be considered to be made to a section or other
15 provision of the Federal Mine Safety and Health Act of
16 1977 (30 U.S.C. 801 et seq.).

17 **TITLE I—ADDITIONAL INSPEC-**
18 **TION AND INVESTIGATION**
19 **AUTHORITY**

20 **SEC. 101. INDEPENDENT ACCIDENT INVESTIGATIONS.**

21 (a) IN GENERAL.—Section 103(b) (30 U.S.C.
22 813(b)) is amended by striking “(b) For the purpose” and
23 inserting the following:

24 “(b) ACCIDENT INVESTIGATIONS.—

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

3 “(A) determine why the accident occurred;

4 “(B) determine whether there were viola-
5 tions of law, mandatory health and safety
6 standards, or other requirements, and if such
7 violations are found, issue citations and pen-
8 alties, and in cases involving possible criminal
9 actions, refer such matters to the Attorney
10 General; and

11 “(C) make recommendations to avoid any
12 recurrence.

13 “(2) INDEPENDENT ACCIDENT INVESTIGA-
14 TIONS.—

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

21 “(i) any accident involving 3 or more
22 deaths; or

23 “(ii) any accident that is of such se-
24 verity or scale for potential or actual harm
25 that, in the opinion of the Secretary of

1 Health and Human Services, the accident
2 merits an independent investigation.

3 “(B) APPOINTMENT.—

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

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

20 “(iii) CONFLICTS OF INTEREST.—
21 Panel members, and staff and consultants
22 assisting the Panel with an investigation,
23 shall be free from conflicts of interest with
24 regard to the investigation, and be subject

1 to the same standards of ethical conduct
2 for persons employed by the Secretary.

3 “(iv) COMPOSITION.—The Secretary
4 of Health and Human Services shall ap-
5 point as members of the Panel—

6 “(I) 1 operator of a mine or indi-
7 vidual representing mine operators,
8 and

9 “(II) 1 member of a labor orga-
10 nization or other representative of
11 miners,

12 and may not appoint more than 1 of either
13 such types of individuals as members of
14 the Panel.

15 “(v) STAFF AND EXPENSES.—The Di-
16 rector of NIOSH shall designate NIOSH
17 staff to facilitate the work of the Panel.
18 The Director may accept as staff personnel
19 on detail from other Federal agencies or
20 re-employ annuitants. The detail of per-
21 sonnel under this paragraph may be on a
22 non-reimbursable basis, and such detail
23 shall be without interruption or loss of civil
24 service status or privilege. The Director of
25 NIOSH shall have the authority to procure

1 on behalf of the Panel such materials, sup-
2 plies or services, including technical ex-
3 perts, as requested in writing by a majority
4 of the Panel.

5 “(vi) COMPENSATION AND TRAVEL.—
6 All members of the Panel who are officers
7 or employees of the United States shall
8 serve without compensation in addition to
9 that received for their services as officers
10 or employees of the United States. Each
11 Panel member who is not an officer or em-
12 ployee of the United States shall be com-
13 pensated at a rate equal to the daily equiv-
14 alent of the annual rate of basic pay pre-
15 scribed for level IV of the Executive Sched-
16 ule under section 5315 of title 5, United
17 States Code, for each day (including travel
18 time) during which such member is en-
19 gaged in the performance of duties of the
20 Panel. The members of the Panel shall be
21 allowed travel expenses, including per diem
22 in lieu of subsistence, at rates authorized
23 for employees of agencies under subchapter
24 1 of chapter 57 of title 5, United States
25 Code, while away from their homes or reg-

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

3 “(C) DUTIES.—The Panel shall—

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

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

12 “(I) the operator;

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

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

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

20 “(V) any other person or entity
21 (including equipment manufacturers);

22 “(iii) review the determinations and
23 recommendations by the Secretary under
24 paragraph (1);

25 “(iv) prepare a report that—

1 “(I) includes the findings regard-
2 ing the causal factors described in
3 clauses (i) and (ii);

4 “(II) identifies any strengths and
5 weaknesses in the Secretary’s inves-
6 tigation; and

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

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

24 “(D) HEARINGS; APPLICABILITY OF CER-
25 TAIN FEDERAL LAW.—The Panel shall have the

1 authority to conduct public hearings or meet-
2 ings, but shall not be subject to the Federal Ad-
3 visory Committee Act (5 U.S.C. App.). All pub-
4 lic hearings of the Panel shall be subject to the
5 requirements under section 552b of title 5,
6 United States Code.

7 “(E) MEMORANDUM OF UNDER-
8 STANDING.—Not later than 90 days after the
9 date of enactment of the Robert C. Byrd Mine
10 and Workplace Safety and Health Act of 2012,
11 the Secretary of Labor and the Secretary of
12 Health and Human Services shall conclude and
13 publically issue a memorandum of under-
14 standing that—

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

24 “(ii) ensures that Panel members or
25 staff will be able to participate in inves-

1 tigation activities (such as mine inspections
2 and interviews) related to the Secretary of
3 Labor’s investigation and will have full ac-
4 cess to documents that are assembled or
5 produced in such investigation, and en-
6 sures that the Secretary of Labor will
7 make all of the authority available to such
8 Secretary under this section, including sub-
9 poena authority, to obtain information and
10 witnesses which may be requested by such
11 Panel; and

12 “(iii) establishes such other arrange-
13 ments as are necessary to implement this
14 paragraph.

15 “(F) PROCEDURES.—Not later than 90
16 days after the date of enactment of the Robert
17 C. Byrd Mine and Workplace Safety and
18 Health Act of 2012, the Secretary of Health
19 and Human Services shall establish procedures
20 to ensure the consistency and effectiveness of
21 Panel investigations. In establishing such proce-
22 dures, such Secretary shall consult with inde-
23 pendent safety investigation agencies, sectors of
24 the mining industry, representatives of miners,
25 families of miners involved in fatal accidents,

1 State mine safety agencies, and mine rescue or-
2 ganizations. Such procedures shall include—

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

8 “(ii) provisions to ensure confiden-
9 tiality if requested by any witness, to the
10 extent permitted by law, and prevent con-
11 flicts of interest in witness representation;
12 and

13 “(iii) provisions for preservation of
14 public access to the Panel’s records
15 through the Secretary of Health and
16 Human Services.

17 “(G) AUTHORIZATION OF APPROPRIA-
18 TIONS.—There is authorized to be appropriated
19 to carry out this subsection such sums as may
20 be necessary.

21 “(3) POWERS AND PROCESSES.—For the pur-
22 pose”.

23 (b) REPORTING REQUIREMENTS.—Section 511(a)
24 (30 U.S.C. 958(a)) is amended by inserting after “501,”
25 the following: “the status of implementation of rec-

1 ommendations from each independent investigation panel
2 under section 103(b) received in the preceding 5 years,”.

3 **SEC. 102. SUBPOENA AUTHORITY AND MINER RIGHTS DUR-**
4 **ING INSPECTIONS AND INVESTIGATIONS.**

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

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

1 ment, or knowledge of the operator or the operator's
2 agents or attorneys. The Secretary shall keep the
3 identity of an individual providing such a statement
4 confidential to the extent permitted by law. Nothing
5 in this paragraph prevents any individual from being
6 represented by that individual's personal attorney.".

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

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

18 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**
19 **SPECTIONS, INVESTIGATIONS, AND RECORD-**
20 **KEEPING.**

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

1 sure that the protections of this Act are afforded to all
2 miners working all shifts. If an inspection of a working
3 section of a mine occurs during a shift on which a mecha-
4 nized mining unit is producing, or customarily produces,
5 coal on such section, then such inspection shall be con-
6 ducted while such unit is producing coal at a rate that
7 is reasonably consistent with the average rate of produc-
8 tion at the mine during the previous quarter.”.

9 (b) INCREASED TARGETED INSPECTIONS.—Section
10 103(a) (as amended by subsection (a)) is further amended
11 by inserting after the fifth sentence (as inserted by such
12 subsection) the following: “If the Secretary determines
13 that the operator has not properly maintained a record
14 of all violations of this Act (including any mandatory
15 health or safety standard or regulation promulgated under
16 this Act) for a mine, the Secretary shall provide, during
17 the 3-month period following such determination, a min-
18 imum of one spot inspection by his authorized representa-
19 tive of all or part of such mine, during every 15 working
20 days and at irregular intervals. Such inspections shall be
21 in addition to any other inspections required under this
22 section.”.

23 (c) CONFLICT OF INTEREST IN THE REPRESENTA-
24 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) is
25 further amended by adding at the end the following: “Dur-

1 ing inspections and investigations under this section, and
2 during any litigation under this Act, no attorney shall rep-
3 resent or purport to represent both the operator of a coal
4 or other mine and any other individual, unless such indi-
5 vidual has knowingly and voluntarily waived all actual and
6 reasonably foreseeable conflicts of interest resulting from
7 such representation. The Secretary is authorized to take
8 such actions as the Secretary considers appropriate to as-
9 certain whether such individual has knowingly and volun-
10 tarily waived all such conflicts of interest. If the Secretary
11 finds that such an individual cannot be represented ade-
12 quately by such an attorney due to such conflicts of inter-
13 est, the Secretary may petition the appropriate United
14 States District Court which shall have jurisdiction to dis-
15 qualify such attorney as counsel to such individual in the
16 matter. The Secretary may make such a motion as part
17 of an ongoing related civil action or as a miscellaneous
18 action.”.

19 (d) INJURY AND ILLNESS REPORTING.—Section
20 103(d) (30 U.S.C. 813(d)) is amended by striking the last
21 sentence and inserting the following: “The records to be
22 kept and made available by the operator of the mine shall
23 include man-hours worked and occupational injuries and
24 illnesses, and shall be maintained separately for each mine
25 and be reported at a frequency determined by the Sec-

1 retary, but at least annually. Operators shall be respon-
2 sible for reporting on all miners working at such mine re-
3 gardless of their employer, except that independent con-
4 tractors (within the meaning of section 3(d)) shall only
5 be responsible for reporting on miners in their employ or
6 under their direction or authority.”.

7 (e) ORDERS FOLLOWING AN ACCIDENT.—Section
8 103(k) (30 U.S.C. 813(k)) is amended by striking “, when
9 present,”.

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

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

21 (g) FEDERAL-STATE COORDINATION.—Section 103
22 is further amended by adding at the end the following:

23 “(m)(1) To the maximum extent practicable, when
24 the Secretary identifies a mine as having a significant or
25 persistent safety or health problem—

1 “(A) an authorized representative of the Sec-
2 retary shall request a meeting with the appropriate
3 State-level regulator to share the concerns of the
4 Secretary when the Secretary determines that such
5 actions would improve conditions of the mine; and

6 “(B) the Secretary and the State-level regulator
7 may develop a joint plan designed to correct the
8 identified problem.

9 “(2) Nothing in this subsection shall be construed to
10 require the Secretary to take action that could delay or
11 compromise any civil or criminal enforcement action or
12 proceeding.”.

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

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

17 “(a) CIVIL LITIGATION REPRESENTATION.—Except
18 as provided”; and

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

20 “(b) MINING EXPERTS IN INVESTIGATIONS.—The
21 Attorney General shall designate 1 or more full-time em-
22 ployees with expertise in the mining industry to coordinate
23 with the Department of Labor and assist United States
24 attorneys in the investigation and prosecution of criminal
25 violations under this Act.”.

1 **TITLE II—ENHANCED**
2 **ENFORCEMENT AUTHORITY**

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

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

6 (1) in the first sentence—

7 (A) by striking “any mandatory health or
8 safety standard” and inserting “any provision
9 of this Act, including any mandatory health or
10 safety standard or regulation promulgated
11 under this Act”; and

12 (B) by striking “such mandatory health or
13 safety standards” and inserting “such provi-
14 sions, regulations, or mandatory health or safe-
15 ty standards”;

16 (2) in the second sentence, by striking “any
17 mandatory health or safety standard” and inserting
18 “any provision of this Act, including any mandatory
19 health or safety standard or regulation promulgated
20 under this Act,”; and

21 (3) by inserting after the first sentence the fol-
22 lowing: “For purposes of this Act, a violation of a
23 provision of this Act, including any mandatory
24 health or safety standard or regulation promulgated
25 under this Act, is of such nature as could signifi-

1 cantly and substantially contribute to the cause and
2 effect of a safety or health hazard if there is a rea-
3 sonable possibility that such violation could result in
4 injury, illness, or death.”.

5 **SEC. 202. A PATTERN OF RECURRING NONCOMPLIANCE OR**
6 **ACCIDENTS.**

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

9 “(e) **PATTERN OF RECURRING NONCOMPLIANCE OR**
10 **ACCIDENTS.—**

11 “(1) **PATTERN STATUS.—**

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

17 “(i) a pattern of—

18 “(I) citations for significant and
19 substantial violations;

20 “(II) citations and withdrawal or-
21 ders issued for unwarrantable failure
22 to comply with mandatory health and
23 safety standards under section 104(d);

1 “(III) citations for flagrant viola-
2 tions within the meaning of section
3 110(b);

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

6 “(V) accidents, injuries, or ill-
7 nesses; or

8 “(ii) a pattern consisting of any com-
9 bination of citations, orders, accidents, in-
10 juries, or illnesses described in subclauses
11 (I) through (V).

12 “(B) MITIGATING CIRCUMSTANCES.—Not-
13 withstanding subparagraph (A), if the Sec-
14 retary, after conducting an assessment of a coal
15 or other mine that otherwise qualifies for pat-
16 tern status, certifies that there are mitigating
17 circumstances wherein the operator has elimi-
18 nated any elevated risk to the health or safety
19 of miners and has taken sufficient measures to
20 ensure such elevated risk will not recur, the
21 Secretary may deem such mine to not be in pat-
22 tern status under this subsection. The Sec-
23 retary shall issue any such certification of such
24 mitigating circumstances that would preclude
25 the placement of a mine in pattern status as a

1 written finding, which shall, not later than 10
2 days after the certification is made, be—

3 “(i) published in the Federal Register;

4 and

5 “(ii) transmitted to the Committee on
6 Education and the Workforce of the House
7 of Representatives and the Committee on
8 Health, Education, Labor, and Pensions of
9 the Senate.

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

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

15 “(B) issue an order requiring such oper-
16 ator to cause all persons to be withdrawn from
17 such mine, except those persons referred to in
18 subsection (c) or authorized by an order of the
19 Secretary issued under this subsection;

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

22 “(D) require that the number of regular
23 inspections of such mine required under section
24 103 be increased to 8 per year for an under-

1 ground mine and 4 per year for a surface mine
2 while the mine is in pattern status.

3 Notice advising operators that they face potential
4 placement in pattern status shall not be a require-
5 ment for issuing a withdrawal order to operators
6 under this subsection.

7 “(3) REMEDIATION ORDER.—

8 “(A) IN GENERAL.—A remediation order
9 issued to an operator under paragraph (2)(C)
10 may require the operator to carry out one or
11 more of the following requirements, pursuant to
12 a timetable for commencing and completing
13 such actions or as a condition of miners reen-
14 tering the mine:

15 “(i) Provide specified training, includ-
16 ing training not otherwise required under
17 this Act.

18 “(ii) Institute and implement an effec-
19 tive health and safety management pro-
20 gram approved by the Secretary, includ-
21 ing—

22 “(I) the employment of safety
23 professionals, certified persons, and
24 adequate numbers of personnel for the

1 mine, as may be required by the Sec-
2 retary;

3 “(II) specific inspection, record-
4 keeping, reporting and other require-
5 ments for the mine as the Secretary
6 may establish; and

7 “(III) other requirements to en-
8 sure compliance and to protect the
9 health and safety of miners or prevent
10 accidents or injuries as the Secretary
11 may determine are necessary.

12 “(iii) Facilitate any effort by the Sec-
13 retary to communicate directly with miners
14 employed at the mine outside the presence
15 of the mine operators or its agents, for the
16 purpose of obtaining information about
17 mine conditions, health and safety prac-
18 tices, and advising miners of their rights
19 under this Act.

20 “(B) MODIFICATION OF AND FAILURE TO
21 COMPLY WITH REMEDIATION ORDER.—The Sec-
22 retary may modify the remediation order, as
23 necessary, to protect the health and safety of
24 miners. If the mine operator fails to fully com-
25 ply with the remediation order during the time

1 a mine is in pattern status, the Secretary shall
2 reinstate the withdrawal order under paragraph
3 (2)(B).

4 “(C) EXTENSION OF DEADLINES.—An ex-
5 tension of a deadline under the remediation
6 order may be granted on a temporary basis and
7 only upon a showing that the operator took all
8 feasible measures to comply with the order and
9 only to the extent that the operator’s failure to
10 comply is beyond the control of the operator.

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

15 “(A) any and all violations or other condi-
16 tions in the mine identified in the remediation
17 order have been or are being fully abated or
18 corrected as outlined in the remediation order;
19 and

20 “(B) the operator has completed any other
21 actions under the remediation order that are re-
22 quired for reopening the mine.

23 “(5) PERFORMANCE EVALUATION.—

24 “(A) PERFORMANCE BENCHMARKS.—The
25 Secretary shall evaluate the performance of

1 each operator whose mine is in pattern status
2 every 90 days during which the mine is pro-
3 ducing and determine if, for such 90-day pe-
4 riod—

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

7 “(I) are, on average, in the top
8 performing 35th percentile of such
9 rates, respectively, for all mines of
10 similar size and type; or

11 “(II) have been reduced by 70
12 percent since such mine was placed on
13 pattern status;

14 “(ii) the operator’s accident and in-
15 jury rates are, on average, in the top per-
16 forming 35th percentile of such rates, re-
17 spectively, for all mines of similar size and
18 type; and

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

1 “(B) REISSUANCE OF WITHDRAWAL OR-
2 DERS.—If an operator being evaluated fails to
3 achieve the performance benchmarks described
4 in subparagraph (A), the Secretary may reissue
5 a withdrawal order under paragraph (2)(B) to
6 remedy any recurring conditions that led to pat-
7 tern status under this subsection, and may
8 modify the remediation order, as necessary, to
9 protect the health and safety of miners.

10 “(6) TERMINATION OF PATTERN STATUS.—

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

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

17 “(I) are, on average, in the top
18 performing 25th percentile of such
19 rates, respectively, for all mines of
20 similar size and type; or

21 “(II) have been reduced by 80
22 percent since such mine was placed on
23 pattern status;

24 “(ii) the operator’s accident and in-
25 jury rates are, on average, in the top per-

1 forming 25th percentile of such rates, re-
2 spectively, for all mines of similar size and
3 type; and

4 “(iii) no citation or withdrawal orders
5 for violations under section 104(d), no
6 withdrawal orders for imminent danger
7 under section 107 arising from a signifi-
8 cant and substantial violation, and no fla-
9 grant violations within the meaning of sec-
10 tion 110(b), were issued for such mine.

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

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

21 “(8) REGULATIONS; INFORMATION ON PER-
22 FORMANCE.—

23 “(A) IN GENERAL.—Not later than 120
24 days after the date of enactment of the Robert
25 C. Byrd Mine and Workplace Safety and

1 Health Act of 2012, the Secretary shall issue
2 interim final regulations that shall define—

3 “(i) the threshold criteria to trigger
4 pattern status under paragraph (1) and
5 cause a withdrawal order to be issued or
6 reissued; and

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

9 “(B) THRESHOLD CRITERIA.—In estab-
10 lishing threshold criteria to trigger pattern sta-
11 tus for mines with significantly poor compliance
12 that contributes to unsafe or unhealthy condi-
13 tions, the Secretary—

14 “(i) shall consider frequency and rates
15 of citations described in paragraph (1)(A)
16 and rates of reportable accidents and inju-
17 ries within the preceding 180-day period;

18 “(ii) may include factors such as mine
19 type, production levels, number of miners,
20 hours worked by miners, number of mecha-
21 nized mining units (or similar production
22 characteristics), and the designation of a
23 representative of miners at the mine;

24 “(iii) may include the mine’s history
25 of citations, violations, orders, and other

1 enforcement actions, or rates of reportable
2 accidents and injuries, over any period de-
3 termined relevant by the Secretary;

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

7 “(v) may include other factors the
8 Secretary may determine appropriate to
9 protect the safety and health of miners.

10 “(C) FINAL REGULATION.—Not later than
11 2 years after the date of enactment of the Rob-
12 ert C. Byrd Mine and Workplace Safety and
13 Health Act of 2012, the Secretary shall promul-
14 gate final regulations implementing this para-
15 graph.

16 “(D) GOVERNMENT ACCOUNTABILITY OF-
17 FICE STUDY.—Not later than 2 years after the
18 promulgation of the final regulations under sub-
19 paragraph (C), the Comptroller General of the
20 United States shall study the effectiveness of
21 the threshold criteria established in this para-
22 graph and issue to the Committee on Health,
23 Education, Labor, and Pensions of the Senate
24 and to the Committee on Education and the
25 Workforce of the House of Representative a re-

1 port on the results of the study. In conducting
2 this study, the Comptroller General shall con-
3 sult with all appropriate stakeholders.

4 “(9) PUBLIC DATABASE AND INFORMATION.—

5 The Secretary shall establish and maintain a pub-
6 lically available electronic database containing the
7 data used to determine pattern status for all coal or
8 other mines. Such database shall be searchable, shall
9 have the capacity to provide comparative data about
10 the health and safety at mines of similar sizes and
11 types. The Secretary shall also make publicly avail-
12 able—

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

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

20 “(10) OPERATOR FEES FOR ADDITIONAL IN-
21 SPECTIONS.—

22 “(A) ASSESSMENT AND COLLECTION.—Be-
23 ginning 120 days after the date of enactment of
24 the Robert C. Byrd Mine and Workplace Safety
25 and Health Act of 2012, the Secretary shall as-

1 sess and collect fees, in accordance with this
2 paragraph, from each coal or other mine in pat-
3 tern status for the costs of additional inspec-
4 tions under this subsection. The Secretary shall
5 issue, by rule, a schedule of fees to be assessed
6 against coal or other mines of varying types
7 and sizes, and shall collect and assess amounts
8 under this paragraph based on the schedule.

9 “(B) MINES IN PATTERN STATUS INSPEC-
10 TION FUND.—There is established in the Treas-
11 ury of the United States a separate account for
12 the deposit of fees collected under this para-
13 graph to be known as the Mines in Pattern Sta-
14 tus Inspection Fund. The Secretary shall de-
15 posit any fees collected pursuant to subpara-
16 graph (A) into the fund.

17 “(C) USE.—Amounts in the Mines in Pat-
18 tern Status Inspection Fund shall be available
19 to the Secretary, as provided in subparagraph
20 (D), for making expenditures to carry out the
21 additional inspections required under paragraph
22 (2)(D).

23 “(D) AUTHORIZATION OF APPROPRIA-
24 TIONS.—In addition to any other amounts ap-
25 propriated, there is authorized to be appro-

1 priated from the Mines in Pattern Status In-
2 spection Fund to the Assistant Secretary for
3 Mine Safety and Health for each fiscal year in
4 which fees are collected under subparagraph
5 (A) an amount equal to the total amount col-
6 lected during the previous fiscal year from fees
7 assessed pursuant to this paragraph. Such
8 amounts are authorized to remain available
9 until expended.

10 “(E) CREDITING AND AVAILABILITY OF
11 FEES.—Fees authorized and collected under
12 this paragraph shall be available for obligation
13 only to the extent and in the amount provided
14 in advance in appropriations Acts.”.

15 **SEC. 203. INJUNCTIVE AUTHORITY.**

16 Section 108(a)(2) (30 U.S.C. 818(a)(2)) is amended
17 by striking “a pattern of violation of” and all that follows
18 and inserting “a course of conduct that in the judgment
19 of the Secretary constitutes a continuing hazard to the
20 health or safety of miners, including violations of this Act
21 or of mandatory health and safety standards or regula-
22 tions under this Act.”.

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

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

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

3 (2) by inserting after subsection (c) the fol-
4 lowing:

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

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

16 “(2) WITHDRAWAL ORDERS.—Upon revocation
17 of the approval of a program or plan under sub-
18 section (a), the Secretary may immediately issue an
19 order requiring the operator to cause all persons, ex-
20 cept those persons referred to in section 104(c), to
21 be withdrawn from such mine, and to be prohibited
22 from entering such mine, until the operator has sub-
23 mitted and the Secretary has approved a new plan.”.

1 **SEC. 205. CHALLENGING A DECISION TO APPROVE, MOD-**
2 **IFY, OR REVOKE A COAL OR OTHER MINE**
3 **PLAN.**

4 Section 105(e) (as redesignated by section 204(1))
5 (30 U.S.C. 815(e)) is amended by adding at the end the
6 following: “In any proceeding in which a party challenges
7 the Secretary’s decision to approve, modify, or revoke a
8 coal or other mine plan under this Act, the Commission
9 and the courts shall affirm the Secretary’s decision unless
10 the challenging party establishes that such decision was
11 arbitrary, capricious, an abuse of discretion, or otherwise
12 not in accordance with law.”.

13 **TITLE III—PENALTIES**

14 **SEC. 301. CIVIL PENALTIES.**

15 (a) **MAXIMUM CIVIL PENALTIES.**—Section 110(a)(1)
16 (30 U.S.C. 820(a)(1)) is amended—

17 (1) by inserting “including any regulation pro-

18 mulgated under this Act,” after “this Act,”; and

19 (2) by striking “violation.” and inserting “viola-

20 tion, except that, in the case of a significant and

21 substantial violation, the penalty shall be not more

22 than \$150,000 for each such violation.”.

23 (b) **INCREASED CIVIL PENALTIES.**—Section 110(b)
24 (30 U.S.C. 820(b)) is amended—

25 (1) in paragraph (2), by inserting “, a change

26 in ventilation in a coal or other mine that has not

1 received prior approval from the Secretary, or a fail-
2 ure to keep the records required for the mine by the
3 Secretary in accordance with this Act, including
4 keeping a record of all violations of this Act (includ-
5 ing any mandatory health or safety standard or reg-
6 ulation promulgated under this Act)” before the pe-
7 riod at the end; and

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

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

1 subsequent performance review that the mine meets the
2 performance benchmarks.”.

3 (c) CIVIL PENALTY FOR RETALIATION.—Section
4 110(a) (30 U.S.C. 820(a)) is further amended—

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

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

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

15 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**
16 **RECTORS, AND AGENTS.**

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

19 “(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS,
20 DIRECTORS, AND AGENTS.—Whenever an operator vio-
21 lates a provision of this Act, including any mandatory
22 health or safety standard or regulation promulgated under
23 this Act, or knowingly violates or fails or refuses to comply
24 with any order issued under this Act or any order incor-
25 porated in a final decision issued under this Act, any di-

1 rector, officer, or agent of such operator who knowingly
2 authorized, ordered, or carried out such violation, failure,
3 or refusal, or any policy or practice that contributed to
4 the occurrence of such violation, failure, or refusal, shall
5 be subject to the same civil penalties, fines, and imprison-
6 ment that may be imposed upon a person under this sec-
7 tion.”.

8 **SEC. 303. CRIMINAL PENALTIES.**

9 (a) INTENT REQUIREMENTS FOR CRIMINAL PEN-
10 ALTY STANDARDS.—Section 110(d) (30 U.S.C. 820(d)) is
11 amended—

12 (1) by striking “willfully” and inserting “know-
13 ingly”;

14 (2) by striking “\$250,000, or by imprisonment
15 for not more than one year” and inserting
16 “\$1,000,000, or by imprisonment for not more than
17 5 years”; and

18 (3) by striking “\$500,000, or by imprisonment
19 for not more than five years” and inserting
20 “\$2,000,000, or by imprisonment for not more than
21 10 years”.

22 (b) CRIMINAL PENALTY FOR RETALIATION.—Section
23 110(d) is further amended—

24 (1) by inserting “(1)” before “Any operator”;
25 and

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

2 “(2) Whoever knowingly takes any action that is di-
3 rectly or indirectly harmful to any person, including action
4 that interferes with the lawful employment or livelihood
5 of any person, because such person has provided an au-
6 thorized representative of the Secretary or another law en-
7 forcement officer with any information related to the exist-
8 ence of a health or safety violation or an unhealthful or
9 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—

15 (A) by striking “Unless” and inserting
16 “(1) Unless”; and

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

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

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

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

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

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

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

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

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

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

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

25 (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 PAYMENTS 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 90 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, including a complaint notifying
3 the operator or the operator’s agent,
4 or the representative of the miners at
5 the coal or other mine of an alleged
6 danger or safety or health violation in
7 a coal or other mine;

8 “(II) instituted or caused to be
9 instituted any proceeding under or re-
10 lated to this Act or has testified or is
11 about to testify in any such pro-
12 ceeding, or because of the exercise by
13 such miner or other employee, rep-
14 resentative, or applicant for employ-
15 ment on behalf of him or herself or
16 others of any right afforded by this
17 Act;

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

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

24 “(ii) such miner is the subject of med-
25 ical evaluations and potential transfer

1 under a standard published pursuant to
2 section 101.

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

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

15 “(ii) STANDARD.—For purposes of
16 clause (i), the circumstances causing the
17 miner’s or other employee’s good-faith be-
18 lief that performing such duties would pose
19 a safety or health hazard shall be of such
20 a nature that a reasonable person, under
21 the circumstances confronting the miner or
22 other employee, would conclude that there
23 is such a hazard. In order to qualify for
24 protection under this paragraph, the miner
25 or other employee, when practicable, shall

1 have communicated or attempted to com-
2 municate the safety or health concern to
3 the operator and have not received from
4 the operator a response reasonably cal-
5 culated to allay such concern.

6 “(2) COMPLAINT.—Any miner or other em-
7 ployee, representative of miners, or applicant for em-
8 ployment who believes that he or she has been dis-
9 charged, disciplined, or otherwise discriminated
10 against by any person in violation of paragraph (1)
11 may file a complaint with the Secretary alleging
12 such discrimination not later than 180 days after
13 the later of the last date on which an alleged viola-
14 tion of such paragraph occurs or the date on which
15 the miner or other employee or representative knows
16 or should reasonably have known that such alleged
17 violation occurred.

18 “(3) INVESTIGATION AND HEARING.—

19 “(A) COMMENCEMENT OF INVESTIGATION
20 AND INITIAL DETERMINATION.—Upon receipt
21 of such complaint, the Secretary shall—

22 “(i) forward a copy of the complaint
23 to the respondent;

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

4 “(iii) as soon as practicable after com-
5 mencing such investigation, make the de-
6 termination required under subparagraph
7 (B) regarding the reinstatement of the
8 miner or other employee.

9 “(B) REINSTATEMENT.—If the Secretary
10 finds that such complaint was not frivolously
11 brought, the Commission, on an expedited basis
12 upon application of the Secretary, shall order
13 the immediate reinstatement of the miner or
14 other employee until there has been a final
15 Commission order disposing of the underlying
16 complaint of the miner or other employee. If ei-
17 ther the Secretary or the miner or other em-
18 ployee pursues the underlying complaint, such
19 reinstatement shall remain in effect until the
20 Commission has disposed of such complaint on
21 the merits, regardless of whether the Secretary
22 pursues such complaint by filing a complaint
23 under subparagraph (D) or the miner or other
24 employee pursues such complaint by filing an
25 action under paragraph (4). If neither the Sec-

1 retary nor the miner or other employee pursues
2 the underlying complaint within the periods
3 specified in paragraph (4), such reinstatement
4 shall remain in effect until such time as the
5 Commission may, upon motion of the operator
6 and after providing notice and an opportunity
7 to be heard to the parties, vacate such com-
8 plaint for failure to prosecute.

9 “(C) INVESTIGATION.—Such investigation
10 shall include interviewing the complainant
11 and—

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

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

21 “(D) ACTION BY THE SECRETARY.—If,
22 upon such investigation, the Secretary deter-
23 mines that the provisions of this subsection
24 have been violated, the Secretary shall imme-
25 diately file a complaint with the Commission,

1 with service upon the alleged violator and the
2 miner or other employee or representative of
3 miners alleging such discrimination or inter-
4 ference, and propose an order granting appro-
5 priate relief.

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

20 “(F) RELIEF.—The Commission shall have
21 authority in such proceedings to require a per-
22 son committing a violation of this subsection to
23 take such affirmative action to abate the viola-
24 tion and prescribe a remedy as the Commission
25 considers appropriate, including—

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

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

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

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

24 “(A) NOTICE TO COMPLAINANT.—Not
25 later than 90 days after the receipt of a com-

1 plaint filed under paragraph (2), the Secretary
2 shall notify, in writing, the miner or other em-
3 ployee, applicant for employment, or representa-
4 tive of miners of his determination whether a
5 violation has occurred.

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

15 “(C) HEARING AND DECISION.—The Com-
16 mission shall afford an opportunity for a hear-
17 ing (in accordance with section 554 of title 5,
18 United States Code, but without regard to sub-
19 section (a)(3) of such section), and thereafter
20 shall issue an order, based upon findings of
21 fact, dismissing or sustaining the complainant’s
22 charges and, if the charges are sustained,
23 granting such relief as it deems appropriate as
24 described in paragraph (3)(F). Such order shall
25 become final 30 days after its issuance.

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

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

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

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

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

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

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

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

23 “(a) PROTECTION FROM LOSS OF PAY.—

24 “(1) WITHDRAWAL ORDER.—If a coal or other
25 mine or area of such mine is closed by an order

1 issued under section 103, 104, 107, 108, or 110, all
2 miners who are idled by such order shall be entitled,
3 regardless of the result of any review of such order,
4 to full compensation by the operator at their regular
5 rates of pay and in accordance with their regular
6 schedules of pay for the entire period for which they
7 are idled.

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

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

1 tion to pay received for work performed after such
2 order was issued, for the period beginning when
3 such order was issued and ending when such order
4 is complied with, vacated, or terminated.

5 “(b) ENFORCEMENT.—

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

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

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

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

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

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

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

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

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

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

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

13 “(C) Not later than 90 days after the date of enact-
14 ment of the Robert C. Byrd Mine and Workplace Safety
15 and Health Act of 2012, the Secretary shall promulgate
16 interim final rules implementing the requirements of sub-
17 paragraphs (A) and (B).”

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

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

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

23 “(1) IN GENERAL.—Where rock”;

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

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

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

6 “(2) METHODS OF MEASUREMENT.—

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

16 “(B) DIRECT READING MONITORS.—By
17 the later of September 30, 2012, or the date
18 that is 30 days after the Secretary of Health
19 and Human Services has certified in writing
20 that direct reading monitors are commercially
21 available to measure total incombustible content
22 in coal dust and the Department of Labor has
23 approved such monitors for use in underground
24 coal mines, the Secretary shall require opera-

1 tors to take coal dust samples using direct
2 reading monitors.

3 “(C) REGULATIONS.—The Secretary shall,
4 not later than 180 days after the date of enact-
5 ment of the Robert C. Byrd Mine and Work-
6 place Safety and Health Act of 2012 promul-
7 gate an interim final rule that prescribes meth-
8 ods for sampling of total incombustible content
9 of coal dust using direct reading monitors and
10 includes requirements for locations, methods,
11 and intervals for mandatory operator sampling.

12 “(D) RECOMMENDATIONS.—Not later than
13 1 year after the date of enactment of the Rob-
14 ert C. Byrd Mine and Workplace Safety and
15 Health Act of 2012, the Secretary of Health
16 and Human Services shall, based upon the lat-
17 est research, recommend to the Secretary of
18 Labor any revisions to the mandatory operator
19 sampling locations, methods, and intervals in-
20 cluded in the interim final rule described in
21 subparagraph (C) that may be warranted in
22 light of such research.”.

23 (b) REPORT.—Not later than 1 year after the date
24 of enactment of this Act, the Secretary of Health and
25 Human Services, in consultation with the Secretary of

1 Labor, shall prepare and submit, to the Committee on
2 Education and the Workforce of the House of Representa-
3 tives and the Committee on Health, Education, Labor,
4 and Pensions of the Senate, a report—

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

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

17 (c) **ADDITIONAL ROCK DUST REPORTING.**—Section
18 103(h) (30 U.S.C. 813(h)) is amended by inserting after
19 the first sentence the following: “An operator of a coal
20 or other mine shall, as part of the record-keeping require-
21 ments of this Act, maintain up-to-date records of the
22 amount of rock dust purchased and dispersed.”.

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

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

5 “(u) ATMOSPHERIC MONITORING SYSTEMS.—

6 “(1) NIOSH RECOMMENDATIONS.—Not later
7 than 6 months after the date of enactment of the
8 Robert C. Byrd Mine and Workplace Safety and
9 Health Act of 2012, the Director of the National In-
10 stitute for Occupational Safety and Health, acting
11 through the Office of Mine Safety and Health Re-
12 search, shall issue recommendations to the Secretary
13 regarding—

14 “(A) how to ensure that atmospheric moni-
15 toring systems are utilized in the underground
16 coal mining industry to maximize the health
17 and safety of underground coal miners; and

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

23 “(2) ATMOSPHERIC MONITORING SYSTEM REG-
24 ULATIONS.—Not later than 270 days following the
25 receipt of the recommendations described in para-
26 graph (1), the Secretary shall promulgate regula-

1 tions requiring that each operator of an under-
2 ground coal mine install atmospheric monitoring sys-
3 tems, consistent with such recommendations, that—

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

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

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

12 “(v) **ADDITIONAL TECHNOLOGICAL IMPROVE-**
13 **MENTS.**—Not later than 2 years after the date of enact-
14 ment of the Robert C. Byrd Mine and Workplace Safety
15 and Health Act of 2012, the Secretary shall promulgate
16 regulations requiring that mining equipment used in a coal
17 mine incorporate an atmospheric monitoring and record-
18 ing device that samples and records the methane, oxygen,
19 carbon monoxide and coal dust levels in the mine.”.

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

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

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

24 (2) by striking the second sentence and insert-
25 ing the following: “Not later than 6 months after

1 the date of enactment of the Robert C. Byrd Mine
2 and Workplace Safety and Health Act of 2012, the
3 Secretary shall issue a final regulation lowering per-
4 missible exposure levels to respirable dust and up-
5 dating sampling and testing procedures, in order to
6 provide the maximum feasible protection from res-
7 pirable dust, including coal and silica dust, that is
8 achievable through environmental controls. Not later
9 than 5 years after the date of issuance of such final
10 regulation, and once every 5 years thereafter, the
11 Secretary shall reexamine the incidence of pneumo-
12 coniosis in miners and, unless there is a decline in
13 pneumoconiosis, shall update the regulation.”.

14 **SEC. 505. REFRESHER TRAINING ON MINER RIGHTS AND**
15 **RESPONSIBILITIES.**

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

18 “(3) all miners shall receive not less than 9
19 hours of refresher training not less frequently than
20 once every 12 months, and such training shall in-
21 clude one hour of training on the statutory rights
22 and responsibilities of miners and their representa-
23 tives under this Act and other applicable Federal
24 and State law, pursuant to a program of instruction
25 developed by the Secretary and delivered by an em-

1 ployee of the Administration or by a trainer ap-
2 proved by the Administration that is a party inde-
3 pendent from the operator;”.

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

14 **SEC. 506. ADDITIONAL TRAINING.**

15 (a) **AUTHORITY TO MANDATE ADDITIONAL TRAIN-**
16 **ING.**—

17 (1) **IN GENERAL.**—Section 115 (30 U.S.C. 825)
18 is further amended by redesignating subsection (e)
19 as subsection (f) and inserting after subsection (d)
20 the following:

21 “(e) **AUTHORITY TO MANDATE ADDITIONAL TRAIN-**
22 **ING.**—

23 “(1) **IN GENERAL.**—The Secretary is authorized
24 to issue an order requiring that an operator of a
25 coal or other mine provide additional training be-

1 yond what is otherwise required by law, and speci-
2 fying the time within which such training shall be
3 provided, if the Secretary finds that—

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

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

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

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

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

1 striking “under paragraph (1)” both places it ap-
2 pears and inserting “under paragraph (1) or under
3 section 115(e)”.

4 (b) **ADDITIONAL TRAINING.**—Section 115(a) (30
5 U.S.C. 825(a)) is amended—

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

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

9 “(6) each miner in an underground coal mine
10 shall receive quarterly training on the use of self-res-
11 cue devices, which shall be conducted in cir-
12 cumstances that approximate actual operating cir-
13 cumstances as closely as practicable, including prac-
14 tice during production events and during shift
15 changes.”.

16 **SEC. 507. CERTIFICATION OF PERSONNEL.**

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

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

20 “(a) **CERTIFICATION REQUIRED.**—Any person who is
21 authorized or designated by the operator of a coal or other
22 mine to perform any duties or provide any training that
23 this Act, including a mandatory health or safety standard
24 or regulation promulgated pursuant to this Act, requires
25 to be performed or provided by a certified, registered,

1 qualified, or otherwise approved person, shall be permitted
2 to perform such duties or provide such training only if
3 such person has a current certification, registration, quali-
4 fication, or approval to perform such duties or provide
5 such training consistent with the requirements of this sec-
6 tion.

7 “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-
8 MENTS AND PROCEDURES.—

9 “(1) IN GENERAL.—Not later than 1 year after
10 the date of enactment of the Robert C. Byrd Mine
11 and Workplace Safety and Health Act of 2012, the
12 Secretary shall issue mandatory standards to estab-
13 lish—

14 “(A) requirements for such certification,
15 registration, qualification, or other approval, in-
16 cluding the experience, examinations, and ref-
17 erences that may be required as appropriate;

18 “(B) time limits for such certifications and
19 procedures for obtaining and renewing such cer-
20 tification, registration, qualification, or other
21 approval; and

22 “(C) procedures and criteria for revoking
23 such certification, registration, qualification, or
24 other approval, including procedures that en-

1 sure that the Secretary responds to requests for
2 revocation.

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) may provide
9 that the certification, registration, qualification, or
10 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 Mine and Workplace Safety and
20 Health Act of 2012, the Secretary shall assess and
21 collect fees, in accordance with this subsection, from
22 each operator for each person certified under this
23 section. Fees shall be assessed and collected in
24 amounts determined by the Secretary as necessary

1 to fund the certification programs established under
2 this section.

3 “(2) MINE SAFETY AND HEALTH CERTIFI-
4 CATION FUND.—There is established in the Treasury
5 of the United States a separate account for the de-
6 posit of fees collected under this subsection to be
7 known as the Mine Safety and Health Certification
8 Fund. The Secretary shall deposit any fees collected
9 pursuant to paragraph (1) into the fund.

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

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

1 “(5) CREDITING AND AVAILABILITY OF FEES.—
2 Fees authorized and collected under this subsection
3 shall be available for obligation only to the extent
4 and in the amount provided in advance in appropria-
5 tions Acts.

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

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

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

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

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

24 (4) by redesignating subsections (e) through (j)
25 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) (30
5 U.S.C. 802) is 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 IMMINENT DANGER.—Section
2 3(j) (30 U.S.C. 802(j)) is amended—

3 (1) by striking “means the” and inserting the
4 following: “means—

5 “(1) the”;

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

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

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

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

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

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

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

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

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

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

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

10 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

7 **“SEC. 435. MEDICAL REPORTS.**

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

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

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

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

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

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

9 (A) the mining industry;

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

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

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

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

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

3 (a) STRATEGIC PLAN.—Not later than December 31,
4 2012, the Secretary of Labor, acting through the Assist-
5 ant Secretary of Labor for Mine Safety and Health, shall
6 submit to the Director of the Office of Management and
7 Budget and to the Congress and post on the public website
8 of the Mine Safety and Health Administration, a 5-year
9 strategic plan for program activities. Such plan shall be—

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

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

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

17 (b) ANNUAL PERFORMANCE PLAN.—Beginning with
18 the Mine Safety and Health Administration budget sub-
19 mission for fiscal year 2014, the Secretary of Labor, act-
20 ing through the Assistant Secretary of Labor for Mine
21 Safety and Health, shall submit to the Director of the Of-
22 fice of Management and Budget an annual performance
23 plan covering each program activity set forth in the budget
24 of the Mine Safety and Health Administration. Such plan
25 shall—

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

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

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

13 (c) REPORT.—Not later than 150 days after the end
14 of a fiscal year, beginning with fiscal year 2014, the Sec-
15 retary of Labor, acting through the Assistant Secretary
16 of Labor for Mine Safety and Health, shall prepare and
17 submit to the President and the Congress and post on the
18 public website of the Mine Safety and Health Administra-
19 tion, a report on the program performance for the previous
20 fiscal year. Such report shall—

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

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

4 **TITLE VII—AMENDMENTS TO**
5 **THE OCCUPATIONAL SAFETY**
6 **AND HEALTH ACT OF 1970**

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

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

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

16 “(A) such”;

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

19 “(B) such employee has”;

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

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

1 “(D) of the exercise”; and

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

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

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

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

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

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

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

13 “(4) STATUTE OF LIMITATIONS.—

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

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

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

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

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

3 “(5) INVESTIGATION.—

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

11 “(i) shall include—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(7) HEARING.—

6 “(A) REQUEST FOR HEARING.—

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

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

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

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

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

5 “(B) PROCEDURES.—

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

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

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

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

13 “(8) ADMINISTRATIVE APPEAL.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 “(11) JUDICIAL REVIEW.—

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

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

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

17 “(13) BURDENS OF PROOF.—

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

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

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

11 “(14) RELIEF.—

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

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

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

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

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

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

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

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

3 “(i) reasonable attorneys’ fees; and

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

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

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

20 “(17) ELECTION OF VENUE.—

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

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

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

5 “(B) REFERRALS.—If—

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

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

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

19 **SEC. 702. VICTIMS’ RIGHTS.**

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

23 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) in subsection (a)—

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

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

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

17 (2) in subsection (b)—

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

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

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

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

6 (4) in subsection (d), as amended by section
7 704, by striking “\$7,000” each place it occurs and
8 inserting “\$12,000”;

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

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

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

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

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

23 (a) IN GENERAL.—Section 17 (29 U.S.C. 666) (as
24 amended by sections 704 and 705) is further amended—

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

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

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

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

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

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

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

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

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

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

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

1 “(A) a substantial risk of death;

2 “(B) protracted unconsciousness;

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

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

8 (b) **JURISDICTION FOR PROSECUTION UNDER STATE**
9 **AND LOCAL CRIMINAL LAWS.**—Section 17 (29 U.S.C.
10 666) (as amended by this Act) is further amended by add-
11 ing at the end the following:

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

16 **SEC. 707. PENALTIES.**

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

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

5 **SEC. 708. EFFECTIVE DATE.**

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

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