

111TH CONGRESS
2^D 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, establish rights of families of victims of workplace accidents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. HARKIN (for himself, Mrs. MURRAY, and Mr. ROCKEFELLER) 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, 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 “Miner Safety and Health Act of 2010”.

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

2

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

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION
AUTHORITY

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

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

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

TITLE III—PENALTIES

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

TITLE IV—WORKER RIGHTS AND PROTECTIONS

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

TITLE V—MODERNIZING HEALTH AND SAFETY STANDARDS

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

TITLE VI—ADDITIONAL MINE SAFETY PROVISIONS

- Sec. 601. Definitions.
- Sec. 602. Assistance to States.
- Sec. 603. Black lung medical reports.
- Sec. 604. Reporting requirements regarding coal or other mine safety.

TITLE VII—AMENDMENTS TO THE OCCUPATIONAL SAFETY AND
HEALTH ACT

- Sec. 701. Enhanced protections from retaliation.
- Sec. 702. Victims' rights.
- Sec. 703. Correction of serious, willful, or repeated violations pending contest and procedures for a stay.

Sec. 704. Conforming amendments.
Sec. 705. Civil penalties.
Sec. 706. Criminal penalties.
Sec. 707. Penalties.
Sec. 708. Effective date.

1 **SEC. 2. REFERENCES.**

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

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

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

12 (a) IN GENERAL.—Section 103(b) (30 U.S.C.
13 813(b)) is amended by striking “(b) For the purpose” and
14 inserting the following:

15 “(b) ACCIDENT INVESTIGATIONS.—

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

18 “(A) determine why the accident occurred;

19 “(B) determine whether there were viola-
20 tions of law, mandatory health and safety
21 standards, or other requirements, and if such
22 violations are found, issue citations and pen-
23 alties, and in cases involving possible criminal

1 actions, refer such matters to the Attorney
2 General; and

3 “(C) make recommendations to avoid any
4 recurrence.

5 “(2) INDEPENDENT ACCIDENT INVESTIGA-
6 TIONS.—

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

13 “(i) any accident involving 3 or more
14 deaths; or

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

20 “(B) APPOINTMENT.—

21 “(i) IN GENERAL.—As soon as prac-
22 ticable after an accident described in sub-
23 paragraph (A), the Secretary of Health
24 and Human Services shall appoint 5 mem-
25 bers for the Panel required under this

1 paragraph from among individuals who
2 have expertise in accident investigations,
3 mine engineering, or mine safety and
4 health that is relevant to the particular in-
5 vestigation.

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

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

19 “(iv) COMPOSITION.—The Secretary
20 of Health and Human Services shall ap-
21 point as members of the Panel—

22 “(I) 1 operator of a mine or indi-
23 vidual representing mine operators,
24 and

1 “(II) 1 member of a labor orga-
2 nization or other representative of
3 miners,

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

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

21 “(vi) COMPENSATION AND TRAVEL.—
22 All members of the Panel who are officers
23 or employees of the United States shall
24 serve without compensation in addition to
25 that received for their services as officers

1 or employees of the United States. Each
2 Panel member who is not an officer or em-
3 ployee of the United States shall be com-
4 pensated at a rate equal to the daily equiv-
5 alent of the annual rate of basic pay pre-
6 scribed for level IV of the Executive Sched-
7 ule under section 5315 of title 5, United
8 States Code, for each day (including travel
9 time) during which such member is en-
10 gaged in the performance of duties of the
11 Panel. The members of the Panel shall be
12 allowed travel expenses, including per diem
13 in lieu of subsistence, at rates authorized
14 for employees of agencies under subchapter
15 1 of chapter 57 of title 5, United States
16 Code, while away from their homes or reg-
17 ular places of business in the performance
18 of services for the Panel.

19 “(C) DUTIES.—The Panel shall—

20 “(i) assess and identify any factors
21 that caused the accident, including defi-
22 ciencies in safety management systems,
23 regulations, enforcement, industry prac-
24 tices or guidelines, or organizational fail-
25 ures;

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

3 “(I) the operator;

4 “(II) any contractors or other
5 persons engaged in mining-related
6 functions at the site;

7 “(III) any State agency with
8 oversight responsibilities;

9 “(IV) any agency or office within
10 the Department of Labor; or

11 “(V) any other person or entity
12 (including equipment manufacturers);

13 “(iii) review the determinations and
14 recommendations by the Secretary under
15 paragraph (1);

16 “(iv) prepare a report that—

17 “(I) includes the findings regard-
18 ing the causal factors described in
19 clauses (i) and (ii);

20 “(II) identifies any strengths and
21 weaknesses in the Secretary’s inves-
22 tigation; and

23 “(III) includes recommendations,
24 including interim recommendations
25 where appropriate, to industry, labor

1 organizations, State and Federal
2 agencies, or Congress, regarding pol-
3 icy, regulatory, enforcement, adminis-
4 trative, or other changes, which in the
5 judgment of the Panel, would prevent
6 a recurrence at other mines; and

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

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

23 “(E) MEMORANDUM OF UNDER-
24 STANDING.—Not later than 90 days after the
25 date of enactment of the Miner Safety and

1 Health Act of 2010, the Secretary of Labor and
2 the Secretary of Health and Human Services
3 shall conclude and publically issue a memo-
4 randum of understanding that—

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

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

1 witnesses which may be requested by such
2 Panel; and

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

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

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

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

1 flicts of interest in witness representation;
2 and

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

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

11 “(3) POWERS AND PROCESSES.—For the pur-
12 pose”.

13 (b) REPORTING REQUIREMENTS.—Section 511(a)
14 (30 U.S.C. 958(a)) is amended by inserting after “501,”
15 the following: “the status of implementation of rec-
16 ommendations from each independent investigation panel
17 under section 103(b) received in the preceding 5 years.”.

18 **SEC. 102. SUBPOENA AUTHORITY AND MINER RIGHTS DUR-**
19 **ING INSPECTIONS AND INVESTIGATIONS.**

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

23 “(4) ADDITIONAL POWERS.—For the purpose
24 of enabling the Secretary to perform any of the
25 functions under this Act, the Secretary or the Sec-

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

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

23 Section 103(f) (30 U.S.C. 813(f)) is amended by in-
24 serting before the last sentence the following: “If any
25 miner is entrapped or otherwise prevented as the result

1 of an accident in such mine from designating such a rep-
2 resentative directly, such miner's closest relative may act
3 on behalf of such miner in designating such a representa-
4 tive. If any miner is not currently working in such mine
5 as the result of an accident in such mine, but would be
6 currently working in such mine but for such accident, such
7 miner may designate such a representative.”.

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

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

17 (b) INJURY AND ILLNESS REPORTING.—Section
18 103(d) (30 U.S.C. 813(d)) is amended by striking the last
19 sentence and inserting the following: “The records to be
20 kept and made available by the operator of the mine shall
21 include man-hours worked and occupational injuries and
22 illnesses, and shall be maintained separately for each mine
23 and be reported at a frequency determined by the Sec-
24 retary, but at least annually. Operators shall be respon-
25 sible for reporting on all miners working at such mine re-

1 gardless of their employer, except that independent con-
2 tractors (within the meaning of section 3(d)) shall only
3 be responsible for reporting on miners in their employ or
4 under their direction or authority.”.

5 (c) ORDERS FOLLOWING AN ACCIDENT.—Section
6 103(k) (30 U.S.C. 813(k)) is amended by striking “, when
7 present,”.

8 (d) CONFLICT OF INTEREST IN THE REPRESENTA-
9 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) is
10 amended by adding at the end the following: “During in-
11 spections and investigations under this section, and during
12 any litigation under this Act, no attorney shall represent
13 or purport to represent both the operator of a coal or other
14 mine and any other individual, unless such individual has
15 knowingly and voluntarily waived all actual and reasonably
16 foreseeable conflicts of interest resulting from such rep-
17 resentation. The Secretary is authorized to take such ac-
18 tions as the Secretary considers appropriate to ascertain
19 whether such individual has knowingly and voluntarily
20 waived all such conflicts of interest. If the Secretary finds
21 that such an individual cannot be represented adequately
22 by such an attorney due to such conflicts of interest, the
23 Secretary may petition the appropriate United States Dis-
24 trict Court which shall have jurisdiction to disqualify such
25 attorney as counsel to such individual in the matter. The

1 Secretary may make such a motion as part of an ongoing
2 related civil action or as a miscellaneous action.”.

3 **TITLE II—ENHANCED**
4 **ENFORCEMENT AUTHORITY**

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

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

8 (1) in the first sentence—

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

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

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

23 (3) by inserting after the first sentence the fol-
24 lowing: “For purposes of this Act, a violation of a
25 provision of this Act, including any mandatory

1 health or safety standard or regulation promulgated
2 under this Act, is of such nature as could signifi-
3 cantly and substantially contribute to the cause and
4 effect of a safety or health hazard if there is a rea-
5 sonable possibility that such violation could result in
6 injury, illness, or death.”.

7 **SEC. 202. A PATTERN OF RECURRING NONCOMPLIANCE OR**
8 **ACCIDENTS.**

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

11 “(e) PATTERN OF RECURRING NONCOMPLIANCE OR
12 ACCIDENTS.—

13 “(1) PATTERN STATUS.—

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

19 “(i) a pattern of—

20 “(I) citations for significant and
21 substantial violations;

22 “(II) citations and withdrawal or-
23 ders issued for unwarrantable failure
24 to comply with mandatory health and
25 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 Labor of the House of Rep-
7 resentatives and the Committee on Health,
8 Education, Labor, and Pensions of the
9 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 70
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 Miner
25 Safety and Health Act of 2010, the Secretary

1 shall issue interim final regulations that shall
2 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
12 Miner Safety and Health Act of 2010, the Sec-
13 retary shall promulgate a final regulation imple-
14 menting this paragraph.

15 “(9) PUBLIC DATABASE AND INFORMATION.—
16 The Secretary shall establish and maintain a pub-
17 lically available electronic database containing the
18 data used to determine pattern status for all coal or
19 other mines. Such database shall be searchable, shall
20 have the capacity to provide comparative data about
21 the health and safety at mines of similar sizes and
22 types. The Secretary shall also make publicly avail-
23 able—

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

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

8 “(10) OPERATOR FEES FOR ADDITIONAL IN-
9 SPECTIONS.—

10 “(A) ASSESSMENT AND COLLECTION.—Be-
11 ginning 120 days after the date of enactment of
12 the Miner Safety and Health Act of 2010, the
13 Secretary shall assess and collect fees, in ac-
14 cordance with this paragraph, from each coal or
15 other mine in pattern status for the costs of ad-
16 ditional inspections under this subsection. The
17 Secretary shall issue, by rule, a schedule of fees
18 to be assessed against coal or other mines of
19 varying types and sizes, and shall collect and
20 assess amounts under this paragraph based on
21 the schedule.

22 “(B) MINES IN PATTERN STATUS INSPEC-
23 TION FUND.—There is established in the Treas-
24 ury of the United States a separate account for
25 the deposit of fees collected under this para-

1 graph to be known as the Mines in Pattern Sta-
2 tus Inspection Fund. The Secretary shall de-
3 posit any fees collected pursuant to subpara-
4 graph (A) into the fund.

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

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

23 “(E) CREDITING AND AVAILABILITY OF
24 FEES.—Fees authorized and collected under
25 this paragraph shall be available for obligation

1 only to the extent and in the amount provided
2 in advance in appropriations Acts.”.

3 **SEC. 203. INJUNCTIVE AUTHORITY.**

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

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

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

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

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

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

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

1 retary shall revoke the approval of such program or
2 plan.

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

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

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

1 **TITLE III—PENALTIES**

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

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

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

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

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

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

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

8 (c) CIVIL PENALTY FOR RETALIATION.—Section
9 110(a) (30 U.S.C. 820(a)) is further amended—

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

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

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

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

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

24 “(c) CIVIL AND CRIMINAL LIABILITY OF OFFICERS,
25 DIRECTORS, AND AGENTS.—Whenever an operator vio-

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

13 **SEC. 303. CRIMINAL PENALTIES.**

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

17 (1) by striking “willfully” and inserting “know-
18 ingly”;

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

23 (3) by striking “\$500,000, or by imprisonment
24 for not more than five years” and inserting

1 “\$2,000,000, or by imprisonment for not more than
2 10 years”.

3 (b) CRIMINAL PENALTY FOR RETALIATION.—Section
4 110(d) is further amended—

5 (1) by inserting “(1)” before “Any operator”;
6 and

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

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

18 (c) ADVANCE NOTICE OF INSPECTIONS.—

19 (1) IN GENERAL.—Section 110(e) (30 U.S.C.
20 820(e)) is amended—

21 (A) by striking “Unless” and inserting
22 “(1) Unless”; and

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

24 “(2) Unless otherwise authorized by this Act, any op-
25 erator, agent or contractor of any operator, miner, inspec-

1 tor, employee of the Administration, or State mine inspec-
2 tor, that knowingly gives, causes to give, or attempts to
3 give or cause to give advance notice of any inspection to
4 be conducted under this Act shall be fined under title 18,
5 United States Code, imprisoned for not more than 5 years,
6 or both.”.

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

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

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

20 “(2) the maximum penalties for a violation
21 under such subsection.”.

22 **SEC. 304. COMMISSION REVIEW OF PENALTY ASSESS-**
23 **MENTS.**

24 Section 110(i) (30 U.S.C. 820(i)) is amended by
25 striking “In assessing civil monetary penalties, the Com-

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

14 **SEC. 305. DELINQUENT PAYMENTS AND PREJUDGMENT IN-**
15 **TEREST.**

16 (a) PRE-FINAL ORDER INTEREST.—Section 110(j)
17 (30 U.S.C. 820(j)) is amended by striking the second and
18 third sentences and inserting the following: “Pre-final
19 order interest on such penalties shall begin to accrue on
20 the date the operator contests a citation issued under this
21 Act, including any mandatory health or safety standard
22 or regulation promulgated under this Act, and shall end
23 upon the issuance of the final order. Such pre-final order
24 interest shall be calculated at the current underpayment
25 rate determined by the Secretary of the Treasury pursu-

1 ant to section 6621 of the Internal Revenue Code of 1986,
2 and shall be compounded daily. Post-final order interest
3 shall begin to accrue 30 days after the date a final order
4 of the Commission or the court is issued, and shall be
5 charged at the rate of 8 percent per annum.”.

6 (b) ENSURING PAYMENT OF PENALTIES.—

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

9 (A) by redesignating subsection (l) as sub-
10 section (m); and

11 (B) by inserting after subsection (k) the
12 following:

13 “(l) ENSURING PAYMENTS OF PENALTIES.—

14 “(1) DELINQUENT PAYMENT LETTER.—If the
15 operator of a coal or other mine fails to pay any civil
16 penalty assessment that has become a final order of
17 the Commission or a court within 90 days after such
18 assessment became a final order, the Secretary shall
19 send the operator a letter advising the operator of
20 the consequences under this subsection of such fail-
21 ure to pay. The letter shall also advise the operator
22 of the opportunity to enter into or modify a payment
23 plan with the Secretary based upon a demonstrated
24 inability to pay, the procedure for entering into such

1 plan, and the consequences of not entering into or
2 not complying with such plan.

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

1 plan in the manner specified in such payment
2 plan.”.

3 (2) APPLICABILITY AND EFFECTIVE DATE.—

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

15 **TITLE IV—WORKER RIGHTS AND** 16 **PROTECTIONS**

17 **SEC. 401. PROTECTION FROM RETALIATION.**

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

20 “(c) PROTECTION FROM RETALIATION.—

21 “(1) RETALIATION PROHIBITED.—

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

1 otherwise interfere with the exercise of the stat-
2 utory rights of any miner or other employee of
3 an operator, representative of miners, or appli-
4 cant for employment, because—

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

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

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

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

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

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

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

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

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

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

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

1 “(3) INVESTIGATION AND HEARING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 “(a) PROTECTION FROM LOSS OF PAY.—

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

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

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

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

8 “(b) ENFORCEMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

15 “(C) Not later than 90 days after the date of enact-
16 ment of the Miner Safety and Health Act of 2010, the
17 Secretary shall promulgate interim final rules imple-
18 menting the requirements of subparagraphs (A) and
19 (B).”.

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

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

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

25 “(1) IN GENERAL.—Where rock”;

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

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

8 “(2) METHODS OF MEASUREMENT.—

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

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

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

4 “(C) REGULATIONS.—The Secretary shall,
5 not later than 180 days after the date of enact-
6 ment of the Miner Safety and Health Act of
7 2010, promulgate an interim final rule that pre-
8 scribes methods for sampling of total incombust-
9 ible content of coal dust using direct reading
10 monitors and includes requirements for loca-
11 tions, methods, and intervals for mandatory op-
12 erator sampling.

13 “(D) RECOMMENDATIONS.—Not later than
14 1 year after the date of enactment of the Miner
15 Safety and Health Act of 2010, the Secretary
16 of Health and Human Services shall, based
17 upon the latest research, recommend to the
18 Secretary of Labor any revisions to the manda-
19 tory operator sampling locations, methods, and
20 intervals included in the interim final rule de-
21 scribed in subparagraph (B) that may be war-
22 ranted in light of such research.”.

23 (b) REPORT.—Not later than 2 years 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 Labor of the House of Representatives and
3 the Committee on Health, Education, Labor, and Pen-
4 sions 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 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

20 “(u) ATMOSPHERIC MONITORING SYSTEMS.—

21 “(1) NIOSH RECOMMENDATIONS.—Not later
22 than 6 months after the date of enactment of the
23 Miner Safety and Health Act of 2010, the Director
24 of the National Institute for Occupational Safety
25 and Health, acting through the Office of Mine Safe-

1 ty and Health Research, shall issue recommenda-
2 tions to the Secretary regarding—

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

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

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

19 “(A) protect miners where the miners nor-
20 mally work and travel;

21 “(B) provide real-time information regard-
22 ing methane and carbon monoxide levels, and
23 airflow direction, as appropriate, with sensing,
24 annunciating, and recording capabilities; and

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

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

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

5 (1) by striking “of Health and Human Serv-
6 ices”; and

7 (2) by striking the second sentence and insert-
8 ing the following: “Not later than 2 years after the
9 date of enactment of the Miner Safety and Health
10 Act of 2010, the Secretary shall promulgate final
11 regulations that require operators, beginning on the
12 date such regulations are issued, to provide coal
13 miners with the maximum feasible protection from
14 respirable dust, including coal and silica dust, that
15 is achievable through environmental controls.”.

16 **SEC. 505. REFRESHER TRAINING ON MINER RIGHTS AND**
17 **RESPONSIBILITIES.**

18 (a) IN GENERAL.—Section 115(a)(3) (30 U.S.C.
19 825(a)(3)) is amended to read as follows:

20 “(3) all miners shall receive not less than 9
21 hours of refresher training not less frequently than
22 once every 12 months, and such training shall in-
23 clude one hour of training on the statutory rights
24 and responsibilities of miners and their representa-
25 tives under this Act and other applicable Federal

1 and State law, pursuant to a program of instruction
2 developed by the Secretary and delivered by an em-
3 ployee of the Administration or by a trainer ap-
4 proved by the Administration that is a party inde-
5 pendent from the operator;”.

6 (b) **TIMING OF INITIAL STATUTORY RIGHTS TRAIN-**
7 **ING.**—Notwithstanding section 115 of the Federal Mine
8 Safety and Health Act (as amended by subsection (a)) (30
9 U.S.C. 825) or the health and safety training program ap-
10 proved under such section, an operator shall ensure that
11 all miners already employed by the operator on the date
12 of enactment of this Act shall receive the one hour of stat-
13 utory rights and responsibilities training described in sec-
14 tion 115(a)(3) of such Act not later than 180 days after
15 such date.

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

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

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

22 “(1) **IN GENERAL.**—The Secretary is authorized
23 to issue an order requiring that an operator of a
24 coal or other mine provide additional training be-
25 yond what is otherwise required by law, and speci-

1 fying the time within which such training shall be
2 provided, if the Secretary finds that—

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

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

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

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

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

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

3 **SEC. 507. CERTIFICATION OF PERSONNEL.**

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

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

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

19 “(b) ESTABLISHMENT OF CERTIFICATION REQUIRE-
20 MENTS AND PROCEDURES.—

21 “(1) IN GENERAL.—Not later than 1 year after
22 the date of enactment of the Miner Safety and
23 Health Act of 2010, the Secretary shall issue man-
24 datory standards to establish—

1 “(A) requirements for such certification,
2 registration, qualification, or other approval, in-
3 cluding the experience, examinations, and ref-
4 erences that may be required as appropriate;

5 “(B) time limits for such certifications and
6 procedures for obtaining and renewing such cer-
7 tification, registration, qualification, or other
8 approval; and

9 “(C) procedures and criteria for revoking
10 such certification, registration, qualification, or
11 other approval, including procedures that en-
12 sure that the Secretary responds to requests for
13 revocation.

14 “(2) COORDINATION WITH STATES.—In devel-
15 oping such standards, the Secretary shall consult
16 with States that have miner certification programs
17 to ensure effective coordination with existing State
18 standards and requirements for certification. The
19 standards required under paragraph (1) may provide
20 that the certification, registration, qualification, or
21 other approval of the State in which the coal or
22 other mine is located satisfies the requirement of
23 subsection (a) if the State’s program of certification,
24 registration, qualification, or other approval is no

1 less stringent than the standards established by the
2 Secretary under paragraph (1).

3 “(c) OPERATOR FEES FOR CERTIFICATION.—

4 “(1) ASSESSMENT AND COLLECTION.—Begin-
5 ning 180 days after the date of enactment of the
6 Miner Safety and Health Act of 2010, the Secretary
7 shall assess and collect fees, in accordance with this
8 subsection, from each operator for each person cer-
9 tified under this section. Fees shall be assessed and
10 collected in amounts determined by the Secretary as
11 necessary to fund the certification programs estab-
12 lished under this section.

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

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

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

11 “(5) CREDITING AND AVAILABILITY OF FEES.—
12 Fees authorized and collected under this subsection
13 shall be available for obligation only to the extent
14 and in the amount provided in advance in appropria-
15 tions Acts.

16 “(d) CITATION; WITHDRAWAL ORDER.—Any oper-
17 ator who permits a person to perform any of the health
18 or safety related functions described in subsection (a)
19 without a current certification which meets the require-
20 ments of this section shall be considered to have com-
21 mitted an unwarrantable failure under section 104(d)(1),
22 and the Secretary shall issue an order requiring that the
23 miner be withdrawn or reassigned to duties that do not
24 require such certification.”.

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

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

4 (2) in subsection (c), by redesignating para-
5 graphs (1) through (3) as subparagraphs (A)
6 through (C), respectively;

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

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

12 **TITLE VI—ADDITIONAL MINE**
13 **SAFETY PROVISIONS**

14 **SEC. 601. DEFINITIONS.**

15 (a) DEFINITION OF OPERATOR.—Section 3(d) is
16 amended to read as follows:

17 “(d) ‘operator’ means—

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

19 “(A) operates or supervises a coal or other
20 mine; or

21 “(B) controls such mine by making or hav-
22 ing the authority to make management or oper-
23 ational decisions that affect, directly or indi-
24 rectly, the health or safety at such mine; or

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

3 (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.
4 802(e)) is amended by striking “the miners” and inserting
5 “any miner”.

6 (c) DEFINITION OF MINER.—Section 3(g) (30 U.S.C.
7 802(g)) is amended by inserting after “or other mine” the
8 following: “ , and includes any individual who is not cur-
9 rently working in a coal or other mine but would be cur-
10 rently working in such mine, but for an accident in such
11 mine”.

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

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

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

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

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

22 “(p) ‘significant and substantial violation’ means a
23 violation of this Act, including any mandatory health or
24 safety standard or regulation promulgated under this Act,
25 that is of such nature as could significantly and substan-

1 tially contribute to the cause and effect of a coal or other
2 mine safety or health hazard as described in section
3 104(d).”.

4 **SEC. 602. ASSISTANCE TO STATES.**

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

6 (1) in subsection (a)—

7 (A) in the matter preceding paragraph (1),
8 by striking “, in coordination with the Sec-
9 retary of Health, Education, and Welfare and
10 the Secretary of the Interior,”;

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

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

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

16 “(4) to assist such State in developing and im-
17 plementing any certification program for coal or
18 other mines required for compliance with section
19 117.”; and

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

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

2 Title IV of the Black Lung Benefits Act (30 U.S.C.
3 901 et seq.) is amended by adding at the end the fol-
4 lowing:

5 **“SEC. 435. MEDICAL REPORTS.**

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

17 **SEC. 604. REPORTING REQUIREMENTS REGARDING COAL**
18 **OR OTHER MINE SAFETY.**

19 (a) REPORTING MINE SAFETY INFORMATION.—Each
20 issuer that is required to file reports pursuant to section
21 13(a) or 15(d) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78m, 78o) and that is an operator, or that
23 has a subsidiary that is an operator, of a coal or other
24 mine shall include, in each periodic report filed with the
25 Securities and Exchange Commission under the securities
26 laws on or after the date of enactment of this Act, the

1 following information for the time period covered by such
2 report:

3 (1) For each coal or other mine of which the
4 issuer or a subsidiary of the issuer is an operator—

5 (A) the total number of significant and
6 substantial violations, as defined in section 3 of
7 the Federal Mine Safety and Health Act of
8 1977 (30 U.S.C. 802), for which the operator
9 received a citation from the Mine Safety and
10 Health Administration;

11 (B) the total number of orders issued
12 under section 104(b) of such Act (30 U.S.C.
13 814(b));

14 (C) the total number of citations and or-
15 ders for unwarrantable failure of the mine oper-
16 ator to comply with mandatory health or safety
17 standards under section 104(d) of such Act (30
18 U.S.C. 814(d));

19 (D) the total number of flagrant violations
20 under section 110(b)(2) of such Act (30 U.S.C.
21 820(b)(2));

22 (E) the total number of imminent danger
23 orders issued under section 107(a) of such Act
24 (30 U.S.C. 817(a));

1 (F) the total dollar value of proposed as-
2 sessments from the Mine Safety and Health
3 Administration under such Act (30 U.S.C. 801
4 et seq.); and

5 (G) the total number of mining-related fa-
6 talities.

7 (2) A list of such coal or other mines, of which
8 the issuer or a subsidiary of the issuer is an oper-
9 ator, that are in pattern status under section 104(e)
10 of such Act (30 U.S.C. 814(e)).

11 (3) Any pending legal action before the Federal
12 Mine Safety and Health Review Commission involv-
13 ing such coal or other mine.

14 (b) REPORTING SHUTDOWNS AND PATTERNS OF
15 VIOLATIONS.—Beginning on and after the date of enact-
16 ment of this Act, each issuer that is an operator, or that
17 has a subsidiary that is an operator, of a coal or other
18 mine shall file a current report with the Securities and
19 Exchange Commission on Form 8-K (or any successor
20 form) disclosing the following regarding each coal or other
21 mine of which the issuer or subsidiary is an operator:

22 (1) The receipt of an imminent danger order
23 issued under section 107(a) of the Federal Mine
24 Safety and Health Act of 1977 (30 U.S.C. 817(a)).

1 (2) The receipt of written notice from the Mine
2 Safety and Health Administration that the coal or
3 other mine has been placed in pattern status under
4 section 104(e) of such Act (30 U.S.C. 814(e)).

5 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
6 tion shall be construed to affect any obligation of a person
7 to make a disclosure under any other applicable law in
8 effect before, on, or after the date of enactment of this
9 Act.

10 (d) COMMISSION AUTHORITY.—

11 (1) ENFORCEMENT.—A violation by any person
12 of this section, or any rule or regulation of the Secu-
13 rities and Exchange Commission issued under this
14 section, shall be treated for all purposes in the same
15 manner as a violation of the Securities Exchange
16 Act of 1934 (15 U.S.C. 78a et seq.) or the rules and
17 regulations issued thereunder, consistent with the
18 provisions of this section, and any such person shall
19 be subject to the same penalties, and to the same ex-
20 tent, as for a violation of such Act or the rules or
21 regulations issued thereunder.

22 (2) RULES AND REGULATIONS.—The Securities
23 and Exchange Commission is authorized to issue
24 such rules or regulations as are necessary or appro-

1 prate for the protection of investors and to carry
2 out the purposes of this section.

3 (e) DEFINITIONS.—In this section—

4 (1) the terms “issuer” and “securities laws”
5 have the meaning given the terms in section 3 of the
6 Securities Exchange Act of 1934 (15 U.S.C. 78c);

7 (2) the term “coal or other mine” means a coal
8 or other mine, as defined in section 3 of the Federal
9 Mine Safety and Health Act of 1977 (30 U.S.C.
10 802), that is subject to the provisions of such Act
11 (30 U.S.C. 801 et seq.); and

12 (3) the term “operator” has the meaning given
13 the term in section 3 of the Federal Mine Safety and
14 Health Act of 1977 (30 U.S.C. 802).

15 (f) EFFECTIVE DATE.—This section shall take effect
16 on the day that is 30 days after the date of enactment
17 of this Act.

18 **TITLE VII—AMENDMENTS TO**
19 **THE OCCUPATIONAL SAFETY**
20 **AND HEALTH ACT**

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

22 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the
23 Occupational Safety and Health Act of 1970 (29 U.S.C.
24 660(c)(1)) is amended—

1 (1) by striking “discharge” and all that follows
2 through “because such” and inserting the following:
3 “discharge or cause to be discharged, or in any man-
4 ner discriminate against or cause to be discriminated
5 against, any employee because—

6 “(A) such”;

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

9 “(B) such employee has”;

10 (3) by striking “such proceeding or because of
11 the exercise” and inserting the following: “before
12 Congress or in any Federal or State proceeding re-
13 lated to safety or health;

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

16 “(D) of the exercise”; and

17 (4) by inserting before the period at the end the
18 following: “, including the reporting of any injury,
19 illness, or unsafe condition to the employer, agent of
20 the employer, safety and health committee involved,
21 or employee safety and health representative in-
22 volved”.

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

1 “(2)(A) No person shall discharge, or cause to be dis-
2 charged, or in any manner discriminate against, or cause
3 to be discriminated against, an employee for refusing to
4 perform the employee’s duties if the employee has a rea-
5 sonable apprehension that performing such duties would
6 result in serious injury to, or serious impairment of the
7 health of, the employee or other employees.

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

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

22 “(3) COMPLAINT.—Any employee who believes
23 that the employee has been discharged, disciplined,
24 or otherwise discriminated against by any person in
25 violation of paragraph (1) or (2) may seek relief for

1 such violation by filing a complaint with the Sec-
2 retary under paragraph (5).

3 “(4) STATUTE OF LIMITATIONS.—

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

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

9 “(ii) the date on which the employee
10 knows or should reasonably have known
11 that such alleged violation occurred.

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

17 “(5) INVESTIGATION.—

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

25 “(i) shall include—

77

1 “(I) interviewing the complain-
2 ant;

3 “(II) providing the respondent an
4 opportunity to—

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

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

12 “(III) providing the complainant
13 an opportunity to—

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

17 “(bb) meet with the Sec-
18 retary; and

19 “(cc) rebut any statements
20 or evidence; and

21 “(ii) may include issuing subpoenas
22 for the purposes of such investigation.

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

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

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

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

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

18 “(B) PROCEDURES.—

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

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

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

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

3 “(8) ADMINISTRATIVE APPEAL.—

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

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

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

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

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

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

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

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

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

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

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

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

24 “(11) JUDICIAL REVIEW.—

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

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

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

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

9 “(13) BURDENS OF PROOF.—

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

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

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

3 “(14) RELIEF.—

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

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

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

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

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

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

19 “(i) reasonable attorneys’ fees; and

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

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

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

11 “(17) ELECTION OF VENUE.—

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

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

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

21 “(B) REFERRALS.—If—

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

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

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

10 **SEC. 702. VICTIMS’ RIGHTS.**

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

14 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **SEC. 704. CONFORMING AMENDMENTS.**

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

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

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

9 **SEC. 705. CIVIL PENALTIES.**

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

13 (1) in subsection (a)—

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

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

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

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

7 (2) in subsection (b)—

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

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

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

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

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

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

4 (b) INFLATION ADJUSTMENT.—Section 17 is further
5 amended by inserting after subsection (d) the following:
6 “(e) Amounts provided under this section for civil
7 penalties shall be adjusted by the Secretary at least once
8 during each 4-year period beginning January 1, 2015, to
9 account for the percentage increase or decrease in the
10 Consumer Price Index for all urban consumers during
11 such period.”.

12 **SEC. 706. CRIMINAL PENALTIES.**

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

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

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

1 subsection (i), punishment shall be by a fine in accordance
2 title 18, United States Code, or by imprisonment for not
3 more than 20 years, or by both.

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

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

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

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

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

21 “(j)(1) Any employer who knowingly violates any
22 standard, rule, or order promulgated under section 6, or
23 any regulation prescribed under this Act, and that viola-
24 tion causes or contributes to serious bodily harm to any
25 employee but does not cause death to any employee, shall,

1 upon conviction, be punished by a fine in accordance with
2 title 18, United States Code, or by imprisonment for not
3 more than 5 years, or by both, except that if the conviction
4 is for a violation committed after a first conviction of such
5 person under this subsection or subsection (e), punishment
6 shall be by a fine in accordance with title 18, United
7 States Code, or by imprisonment for not more than 10
8 years, or by both.

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

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

15 “(A) a substantial risk of death;

16 “(B) protracted unconsciousness;

17 “(C) protracted and obvious physical disfigure-
18 ment; or

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

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

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

5 **SEC. 707. PENALTIES.**

6 Section 17(n) (as redesignated by section 706(a)(4))
7 (29 U.S.C. 666(n)) is amended by adding at the end the
8 following: “Pre-final order interest on such penalties shall
9 begin to accrue on the date the party contests a citation
10 issued under this Act, and shall end upon the issuance
11 of the final order. Such pre-final order interest shall be
12 calculated at the current underpayment rate determined
13 by the Secretary of the Treasury pursuant to section 6621
14 of the Internal Revenue Code of 1986, and shall be com-
15 pounded daily. Post-final order interest shall begin to ac-
16 crue 30 days after the date a final order of the Commis-
17 sion or the court is issued, and shall be charged at the
18 rate of 8 percent per year.”.

19 **SEC. 708. EFFECTIVE DATE.**

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

24 (b) EXCEPTION FOR STATES AND POLITICAL SUB-
25 DIVISIONS.—A State that has a State plan approved under

1 section 18 (29 U.S.C. 667) shall amend its State plan to
2 conform with the requirements of this Act and the amend-
3 ments made by this Act not later than 12 months after
4 the date of the enactment of this Act. The Secretary of
5 Labor may extend the period for a State to make such
6 amendments to its State plan by not more than 12
7 months, if the State's legislature is not in session during
8 the 12-month period beginning with the date of the enact-
9 ment of this Act. Such amendments to the State plan shall
10 take effect not later than 90 days after the adoption of
11 such amendments by such State.