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(Original Signature of Member)

111TH CONGRESS
2D SESSION

H. R.

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 HOUSE OF REPRESENTATIVES

Mr. GEORGE MILLER of California (for himself, Ms. WOOLSEY, Mr. RAHALL, Mr. COURTNEY, and Mr. MOLLOHAN) introduced the following bill; which was 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”.

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

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

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION
AUTHORITY

- Sec. 101. Independent accident investigations.
- Sec. 102. Subpoena authority and miner rights during inspections and investigations.
- Sec. 103. Designation of miner representative.
- Sec. 104. Additional amendments relating to inspections 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.
- Sec. 403. Underground coal miner employment standard.

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.

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

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

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

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

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

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

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

22 “(B) APPOINTMENT.—

23 “(i) IN GENERAL.—As soon as prac-
24 ticable after an accident described in sub-
25 paragraph (A), the Secretary of Health

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

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

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

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

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

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

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

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

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

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

22 “(C) DUTIES.—The Panel shall—

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

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

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

6 “(I) the operator;

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

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

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

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

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

19 “(iv) prepare a report that—

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

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

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

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

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

1 “(E) MEMORANDUM OF UNDER-
2 STANDING.—Not later than 90 days after the
3 date of enactment of the Miner Safety and
4 Health Act of 2010, the Secretary of Labor and
5 the Secretary of Health and Human Services
6 shall conclude and publically issue a memo-
7 randum of understanding that—

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

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

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

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

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

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

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

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

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

14 “(3) POWERS AND PROCESSES.—For the pur-
15 pose”.

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

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

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

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

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

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

12 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**
13 **SPECTIONS AND INVESTIGATIONS.**

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

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

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

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

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

1 Secretary may petition the appropriate United States Dis-
2 trict Court which shall have jurisdiction to disqualify such
3 attorney as counsel to such individual in the matter. The
4 Secretary may make such a motion as part of an ongoing
5 related civil action or as a miscellaneous action.”.

6 **TITLE II—ENHANCED**
7 **ENFORCEMENT AUTHORITY**

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

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

11 (1) in the first sentence—

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

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

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

1 (3) by inserting after the first sentence the fol-
2 lowing: “For purposes of this Act, a violation of a
3 provision of this Act, including any mandatory
4 health or safety standard or regulation promulgated
5 under this Act, is of such nature as could signifi-
6 cantly and substantially contribute to the cause and
7 effect of a safety or health hazard if there is a rea-
8 sonable possibility that such violation could result in
9 injury, illness, or death.”.

10 **SEC. 202. A PATTERN OF RECURRING NONCOMPLIANCE OR**
11 **ACCIDENTS.**

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

14 “(e) PATTERN OF RECURRING NONCOMPLIANCE OR
15 ACCIDENTS.—

16 “(1) PATTERN STATUS.—

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

22 “(i) a pattern of—

23 “(I) citations for significant and
24 substantial violations;

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

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

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

10 “(V) accidents, injuries, or ill-
11 nesses; or

12 “(ii) a pattern consisting of any com-
13 bination of citations, orders, accidents, in-
14 juries, or illnesses described in subclauses
15 (I) through (V).

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

1 tern status under this subsection. The Sec-
2 retary shall issue any such certification of such
3 mitigating circumstances that would preclude
4 the placement of a mine in pattern status as a
5 written finding, which shall, not later than 10
6 days after the certification is made, be—

7 “(i) published in the Federal Register;

8 and

9 “(ii) transmitted to the Committee on
10 Education and Labor of the House of Rep-
11 resentatives and the Committee on Health,
12 Education, Labor, and Pensions of the
13 Senate.

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

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

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

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

1 “(D) require that the number of regular
2 inspections of such mine required under section
3 103 be increased to 8 per year for an under-
4 ground mine and 4 per year for a surface mine
5 while the mine is in pattern status.

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

10 “(3) REMEDIATION ORDER.—

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

18 “(i) Provide specified training, includ-
19 ing training not otherwise required under
20 this Act.

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

1 “(I) the employment of safety
2 professionals, certified persons, and
3 adequate numbers of personnel for the
4 mine, as may be required by the Sec-
5 retary;

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

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

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

23 “(B) MODIFICATION OF AND FAILURE TO
24 COMPLY WITH REMEDIATION ORDER.—The Sec-
25 retary may modify the remediation order, as

1 necessary, to protect the health and safety of
2 miners. If the mine operator fails to fully com-
3 ply with the remediation order during the time
4 a mine is in pattern status, the Secretary shall
5 reinstate the withdrawal order under paragraph
6 (2)(B).

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

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

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

23 “(B) the operator has completed any other
24 actions under the remediation order that are re-
25 quired for reopening the mine.

1 “(5) PERFORMANCE EVALUATION.—

2 “(A) PERFORMANCE BENCHMARKS.—The
3 Secretary shall evaluate the performance of
4 each operator whose mine is in pattern status
5 every 90 days during which the mine is pro-
6 ducing and determine if, for such 90-day pe-
7 riod—

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

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

14 “(II) have been reduced by 70
15 percent since such mine was placed on
16 pattern status;

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

22 “(iii) no citation or withdrawal order
23 for a violation under section 104(d), no
24 withdrawal order for imminent danger
25 under section 107 arising from a signifi-

1 cant and substantial violation, and no fla-
2 grant violations within the meaning of sec-
3 tion 110(b), were issued for such mine.

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

13 “(6) TERMINATION OF PATTERN STATUS.—

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

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

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

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

4 “(ii) the operator’s accident and in-
5 jury rates are, on average, in the top per-
6 forming 25th percentile of such rates, re-
7 spectively, for all mines of similar size and
8 type; and

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

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

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

1 “(8) REGULATIONS; INFORMATION ON PER-
2 FORMANCE.—

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

8 “(i) the threshold criteria to trigger
9 pattern status under paragraph (1) and
10 cause a withdrawal order to be issued or
11 reissued; and

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

14 “(B) THRESHOLD CRITERIA.—In estab-
15 lishing threshold criteria to trigger pattern sta-
16 tus for mines with significantly poor compliance
17 that contributes to unsafe or unhealthy condi-
18 tions, the Secretary—

19 “(i) shall consider frequency and rates
20 of citations described in paragraph (1)(A)
21 and rates of reportable accidents and inju-
22 ries within the preceding 180-day period;

23 “(ii) may include factors such as mine
24 type, production levels, number of miners,
25 hours worked by miners, number of mecha-

1 nized mining units (or similar production
2 characteristics), and the designation of a
3 representative of miners at the mine;

4 “(iii) may include the mine’s history
5 of citations, violations, orders, and other
6 enforcement actions, or rates of reportable
7 accidents and injuries, over any period de-
8 termined relevant by the Secretary;

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

12 “(v) may include other factors the
13 Secretary may determine appropriate to
14 protect the safety and health of miners.

15 “(C) FINAL REGULATION.—Not later than
16 2 years after the date of enactment of the
17 Miner Safety and Health Act of 2010, the Sec-
18 retary shall promulgate a final regulation imple-
19 menting this paragraph.

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

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

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

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

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

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

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

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

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

1 amounts are authorized to remain available
2 until expended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **TITLE III—PENALTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (c) ADVANCE NOTICE OF INSPECTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (b) ENSURING PAYMENT OF PENALTIES.—

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

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

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

16 “(l) ENSURING PAYMENTS OF PENALTIES.—

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

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

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

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

4 (2) APPLICABILITY AND EFFECTIVE DATE.—

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

16 **TITLE IV—WORKER RIGHTS AND** 17 **PROTECTIONS**

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

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

21 “(c) PROTECTION FROM RETALIATION.—

22 “(1) RETALIATION PROHIBITED.—

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(3) INVESTIGATION AND HEARING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 charges and, if the charges are sustained,
2 granting such relief as it deems appropriate as
3 described in paragraph (3)(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 **SEC. 403. UNDERGROUND COAL MINER EMPLOYMENT**
4 **STANDARD.**

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

8 **“SEC. 117. UNDERGROUND COAL MINER EMPLOYMENT**
9 **STANDARD.**

10 “(a) IN GENERAL.—An operator of an underground
11 coal mine may not discharge or constructively discharge
12 a miner who is paid on an hourly basis and employed at
13 an underground coal mine without reasonable job-related
14 grounds based on a failure to satisfactorily perform job
15 duties, including compliance with this Act and with man-
16 datory health and safety standards or other regulations
17 issued under this Act, or other legitimate business reason,
18 where the miner has completed the employer’s proba-
19 tionary period, not to exceed 6 months.

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

24 “(c) REMEDIES.—In an action under subsection (b),
25 for any prevailing miner the court shall take affirmative

1 action to further the purposes of the Act, which may in-
2 clude reinstatement with backpay and compensatory dam-
3 ages. Reasonable attorneys' fees and costs shall be award-
4 ed to any prevailing miner under this section.

5 “(d) PRE-DISPUTE WAIVER PROHIBITED.—A min-
6 er's right to a cause of action under this section may not
7 be waived with respect to disputes that have not arisen
8 as of the time of the waiver

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

13 **TITLE V—MODERNIZING**
14 **HEALTH AND SAFETY STAND-**
15 **ARDS**

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

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

19 “(3)(A) Not later than 30 days after the issuance of
20 the interim final rules promulgated under subparagraph
21 (C), each operator of an underground coal mine shall im-
22 plement a communication program at the underground
23 coal mine to ensure that each miner entering the mine
24 is made aware, at the start of such miner's shift, of the
25 current conditions of the mine, including—

1 “(i) any conditions that are hazardous or that
2 violate a mandatory health or safety standard or a
3 plan approved under this Act; and

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

6 “(B) In an effort to facilitate the communications de-
7 scribed in subparagraph (A), each agent of the operator
8 who is responsible for ensuring the safe and healthful
9 working conditions at the mine, including mine foremen,
10 assistant mine foremen, and mine examiners, shall, upon
11 exiting the mine or workplace, verbally communicate with
12 any oncoming agent replacing the exiting agent on duty
13 in order to update the oncoming agent on the conditions
14 the exiting agent observed during the exiting agent’s shift,
15 including any conditions that are hazardous or that violate
16 a mandatory health or safety standard or a plan approved
17 under this Act. Such communications process shall be
18 completed prior to the start of each shift at the mine and
19 recorded in a book designated for that purpose and avail-
20 able for inspection by all interested parties. In the event
21 the mine operation is idle prior to the start of any shift,
22 the oncoming agent of the operator shall meet with the
23 individual who was responsible for examining the mine to
24 obtain the necessary information.

1 “(C) Not later than 90 days after the date of enact-
2 ment of the Miner Safety and Health Act of 2010, the
3 Secretary shall promulgate interim final rules imple-
4 menting the requirements of subparagraphs (A) and
5 (B).”.

6 **SEC. 502. ROCK DUST STANDARDS.**

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

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

11 “(1) IN GENERAL.—Where rock”;

12 (2) by striking “65 per centum” and all that
13 follows and inserting “80 percent. Where methane is
14 present in any ventilating current, the percentage of
15 incombustible content of such combined dusts shall
16 be increased 0.4 percent for each 0.1 percent of
17 methane.”; and

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

19 “(2) METHODS OF MEASUREMENT.—

20 “(A) IN GENERAL.—Each operator of an
21 underground coal mine shall take accurate sam-
22 ples of the amount of coal dust, including float
23 coal dust deposited on rock-dusted surfaces,
24 loose coal, and other combustible materials in
25 the active workings of such mines, to ensure

1 that the coal dust is kept below explosive levels
2 through the appropriate application of rock
3 dusting.

4 “(B) DIRECT READING MONITORS.—By
5 the later of June 15, 2011, or the date that is
6 30 days after the Secretary of Health and
7 Human Services has certified in writing that di-
8 rect reading monitors are commercially avail-
9 able to measure total incombustible content in
10 coal dust and the Department of Labor has ap-
11 proved such monitors for use in underground
12 coal mines, the Secretary shall require opera-
13 tors to take coal dust samples using direct
14 reading monitors.

15 “(C) REGULATIONS.—The Secretary shall,
16 not later than 180 days after the date of enact-
17 ment of the Miner Safety and Health Act of
18 2010, promulgate an interim final rule that pre-
19 scribes methods for sampling of total incombust-
20 tible content of coal dust using direct reading
21 monitors and includes requirements for loca-
22 tions, methods, and intervals for mandatory op-
23 erator sampling.

24 “(D) RECOMMENDATIONS.—Not later than
25 1 year after the date of enactment of the Miner

1 Safety and Health Act of 2010, the Secretary
2 of Health and Human Services shall, based
3 upon the latest research, recommend to the
4 Secretary of Labor any revisions to the manda-
5 tory operator sampling locations, methods, and
6 intervals included in the interim final rule de-
7 scribed in subparagraph (B) that may be war-
8 ranted in light of such research.”.

9 (b) REPORT.—Not later than 2 years after the date
10 of enactment of this Act, the Secretary of Health and
11 Human Services, in consultation with the Secretary of
12 Labor, shall prepare and submit, to the Committee on
13 Education and Labor of the House of Representatives and
14 the Committee on Health, Education, Labor, and Pen-
15 sions of the Senate, a report—

16 (1) regarding whether any direct reading device
17 described in section 304(d)(2)(B) of the Federal
18 Mine Safety and Health Act of 1977 (30 U.S.C.
19 864(d)(2)(B)) is sufficiently reliable and accurate
20 for the enforcement of the mandatory health or safe-
21 ty standards by the Secretary of Labor under such
22 Act, and whether additional improvement to such di-
23 rect reading device, or additional verification regard-
24 ing reliability and accuracy, would be needed for en-
25 forcement purposes; and

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

3 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

6 “(u) ATMOSPHERIC MONITORING SYSTEMS.—

7 “(1) NIOSH RECOMMENDATIONS.—Not later
8 than 6 months after the date of enactment of the
9 Miner Safety and Health Act of 2010, the Director
10 of the National Institute for Occupational Safety
11 and Health, acting through the Office of Mine Safe-
12 ty and Health Research, shall issue recommenda-
13 tions to the Secretary regarding—

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

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

23 “(2) ATMOSPHERIC MONITORING SYSTEM REG-
24 ULATIONS.—Not later than 270 days following the
25 receipt of the recommendations described in para-

1 graph (1), the Secretary shall promulgate regula-
2 tions requiring that each operator of an under-
3 ground coal mine install atmospheric monitoring sys-
4 tems, consistent with such recommendations, that—

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

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

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

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

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

15 (1) by striking “of Health and Human Serv-
16 ices”; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(2) COORDINATION WITH STATES.—In devel-
23 oping such standards, the Secretary shall consult
24 with States that have miner certification programs
25 to ensure effective coordination with existing State

1 standards and requirements for certification. The
2 standards required under paragraph (1) may provide
3 that the certification, registration, qualification, or
4 other approval of the State in which the coal or
5 other mine is located satisfies the requirement of
6 subsection (a) if the State's program of certification,
7 registration, qualification, or other approval is no
8 less stringent than the standards established by the
9 Secretary under paragraph (1).

10 “(c) OPERATOR FEES FOR CERTIFICATION.—

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

20 “(2) MINE SAFETY AND HEALTH CERTIFI-
21 CATION FUND.—There is established in the Treasury
22 of the United States a separate account for the de-
23 posit of fees collected under this subsection to be
24 known as the Mine Safety and Health Certification

1 Fund. The Secretary shall deposit any fees collected
2 pursuant to paragraph (1) into the fund.

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

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

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

23 “(d) CITATION; WITHDRAWAL ORDER.—Any oper-
24 ator who permits a person to perform any of the health
25 or safety related functions described in subsection (a)

1 without a current certification which meets the require-
2 ments of this section shall be considered to have com-
3 mitted an unwarrantable failure under section 104(d)(1),
4 and the Secretary shall issue an order requiring that the
5 miner be withdrawn or reassigned to duties that do not
6 require such certification.”.

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

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

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

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

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

18 **TITLE VI—ADDITIONAL MINE** 19 **SAFETY PROVISIONS**

20 **SEC. 601. DEFINITIONS.**

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

23 “(d) ‘operator’ means—

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

1 “(A) operates or supervises a coal or other
2 mine; or

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

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

9 (b) DEFINITION OF AGENT.—Section 3(e) (30 U.S.C.
10 802(e)) is amended by striking “the miners” and inserting
11 “any miner”.

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

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

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

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

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

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

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

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

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

13 (1) in subsection (a)—

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

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

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

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

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

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

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

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

8 Title IV of the Black Lung Benefits Act (30 U.S.C.
9 901 et seq.) is amended by adding at the end the fol-
10 lowing:

11 **“SEC. 435. MEDICAL REPORTS.**

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

1 **TITLE VII—AMENDMENTS TO**
2 **THE OCCUPATIONAL SAFETY**
3 **AND HEALTH ACT**

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

5 (a) EMPLOYEE ACTIONS.—Section 11(c)(1) of the
6 Occupational Safety and Health Act of 1970 (29 U.S.C.
7 660(c)(1)) is amended—

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

13 “(A) such”;

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

16 “(B) such employee has”;

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

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

23 “(D) of the exercise”; and

24 (4) by inserting before the period at the end the
25 following: “, including the reporting of any injury,

1 illness, or unsafe condition to the employer, agent of
2 the employer, safety and health committee involved,
3 or employee safety and health representative in-
4 volved”.

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

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

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

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

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

10 “(4) STATUTE OF LIMITATIONS.—

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

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

16 “(ii) the date on which the employee
17 knows or should reasonably have known
18 that such alleged violation occurred.

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

24 “(5) INVESTIGATION.—

1 “(A) IN GENERAL.—An employee may,
2 within the time period required under para-
3 graph (4)(B), file a complaint with the Sec-
4 retary alleging a violation of paragraph (1) or
5 (2). If the complaint alleges a prima facie case,
6 the Secretary shall conduct an investigation of
7 the allegations in the complaint, which—
8 “(i) shall include—
9 “(I) interviewing the complain-
10 ant;
11 “(II) providing the respondent an
12 opportunity to—
13 “(aa) submit to the Sec-
14 retary a written response to the
15 complaint; and
16 “(bb) meet with the Sec-
17 retary to present statements from
18 witnesses or provide evidence;
19 and
20 “(III) providing the complainant
21 an opportunity to—
22 “(aa) receive any statements
23 or evidence provided to the Sec-
24 retary;

1 “(bb) meet with the Sec-
2 retary; and

3 “(cc) rebut any statements
4 or evidence; and

5 “(ii) may include issuing subpoenas
6 for the purposes of such investigation.

7 “(B) DECISION.—Not later than 90 days
8 after the filing of the complaint, the Secretary
9 shall—

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

13 “(ii) issue a decision granting or de-
14 nying relief.

15 “(6) PRELIMINARY ORDER FOLLOWING INVES-
16 TIGATION.—If, after completion of an investigation
17 under paragraph (5)(A), the Secretary finds reason-
18 able cause to believe that a violation of paragraph
19 (1) or (2) has occurred, the Secretary shall issue a
20 preliminary order providing relief authorized under
21 paragraph (14) at the same time the Secretary
22 issues a decision under paragraph (5)(B). If a de
23 novo hearing is not requested within the time period
24 required under paragraph (7)(A)(i), such prelimi-

1 nary order shall be deemed a final order of the Sec-
2 retary and is not subject to judicial review.

3 “(7) HEARING.—

4 “(A) REQUEST FOR HEARING.—

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

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

14 “(II) by the complainant within
15 30 days after the date the complaint
16 is dismissed without investigation by
17 the Secretary under paragraph (5)(A);
18 or

19 “(III) by the complainant within
20 120 days after the date of filing the
21 complaint, if the Secretary has not
22 issued a decision under paragraph
23 (5)(B).

24 “(ii) REINSTATEMENT ORDER.—The
25 request for a hearing shall not operate to

1 stay any preliminary reinstatement order
2 issued under paragraph (6).

3 “(B) PROCEDURES.—

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

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

21 “(iii) DECISION.—The administrative
22 law judge shall issue a decision not later
23 than 90 days after the date on which a
24 hearing was requested under this para-
25 graph and promptly notify, in writing, the

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

11 “(8) ADMINISTRATIVE APPEAL.—

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

20 “(B) STANDARD OF REVIEW.—In review-
21 ing the decision and order of the administrative
22 law judge, the review board shall affirm the de-
23 cision and order if it is determined that the fac-
24 tual findings set forth therein are supported by

1 substantial evidence and the decision and order
2 are made in accordance with applicable law.

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

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

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

22 “(B) PUBLIC POLICY CONSIDERATIONS.—
23 Neither the Secretary, an administrative law
24 judge, or review board conducting a hearing
25 under this subsection shall accept a settlement

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

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

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

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

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

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

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

7 “(11) JUDICIAL REVIEW.—

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

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

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

17 “(13) BURDENS OF PROOF.—

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

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

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

11 “(14) RELIEF.—

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

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

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

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

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

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

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

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

3 “(i) reasonable attorneys’ fees; and

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

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

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

20 “(17) ELECTION OF VENUE.—

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

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

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

5 “(B) REFERRALS.—If—

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

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

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

19 **SEC. 702. VICTIMS’ RIGHTS.**

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

23 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) in subsection (a)—

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

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

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

17 (2) in subsection (b)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(A) a substantial risk of death;

2 “(B) protracted unconsciousness;

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

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

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

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

16 **SEC. 707. PENALTIES.**

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

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

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

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

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