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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, Mr. MOLLOHAN, Ms. HIRONO, Mr. SESTAK, Mr. ANDREWS, Mr. HARE, Ms. SHEA-PORTER, Mr. GRIJALVA, Mr. BISHOP of New York, Ms. SUTTON, Ms. CLARKE, Mr. SHULER, and Mr. PIERLUISI) 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,*

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. References.

TITLE I—ADDITIONAL INSPECTION AND INVESTIGATION
AUTHORITY

Sec. 101. Independent accident investigations.

Sec. 102. Subpoena authority and miner rights during inspections and investigations.

Sec. 103. Designation of miner representative.

Sec. 104. Additional amendments relating to inspections and investigations.

TITLE II—ENHANCED ENFORCEMENT AUTHORITY

Sec. 201. 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;

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

8 “(C) make recommendations to avoid any
9 recurrence.

10 “(2) INDEPENDENT ACCIDENT INVESTIGA-
11 TIONS.—

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

18 “(i) any accident involving 3 or more
19 deaths; or

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

25 “(B) APPOINTMENT.—

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

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

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

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

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

7 “(II) 1 representative of a labor
8 organization that represents miners,
9 and may not appoint more than 1 of either
10 such individuals as members of the Panel.

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

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

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

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

9 “(I) the operator;

10 “(II) any contractors or other
11 persons engaged in mining-related
12 functions at the site;

13 “(III) any State agency with
14 oversight responsibilities;

15 “(IV) any agency or office within
16 the Department of Labor; or

17 “(V) any other person or entity
18 (including equipment manufacturers);

19 “(iii) review the determinations and
20 recommendations by the Secretary under
21 paragraph (1);

22 “(iv) prepare a report that—

23 “(I) includes the findings regard-
24 ing the causal factors described in
25 clauses (i) and (ii);

1 “(II) identifies any strengths and
2 weaknesses in the Secretary’s inves-
3 tigation; and

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

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

21 “(D) HEARINGS; APPLICABILITY OF CER-
22 TAIN FEDERAL LAW.—The Panel shall have the
23 authority to conduct public hearings or meet-
24 ings, but shall not be subject to the Federal Ad-
25 visory Committee Act. All public hearings of the

1 Panel shall be subject to the requirements
2 under section 552b of title 5, United States
3 Code.

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

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

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

1 produced in such investigation, and en-
2 sures that the Secretary of Labor will
3 make all of the authority available to such
4 Secretary under this section, including sub-
5 poena authority, to obtain information and
6 witnesses which may be requested by such
7 Panel; and

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

11 “(F) PROCEDURES.—Not later than 90
12 days after the date of enactment of the Miner
13 Safety and Health Act of 2010, the Secretary
14 of Health and Human Services shall establish
15 procedures to ensure the consistency and effec-
16 tiveness of Panel investigations. In establishing
17 such procedures, such Secretary shall consult
18 with independent safety investigation agencies,
19 sectors of the mining industry, representatives
20 of miners, families of miners involved in fatal
21 accidents, State mine safety agencies, and mine
22 rescue organizations. Such procedures shall in-
23 clude—

24 “(i) authority for the Panel to use evi-
25 dence, samples, interviews, data, analyses,

1 findings, or other information gathered by
2 the Secretary of Labor, as the Panel deter-
3 mines valid;

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

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

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

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

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

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

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

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

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

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

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

15 **SEC. 104. ADDITIONAL AMENDMENTS RELATING TO IN-**
16 **SPECTIONS AND INVESTIGATIONS.**

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

24 (b) INJURY AND ILLNESS REPORTING.—Section
25 103(d) (30 U.S.C. 813(d)) is amended by striking the last

1 sentence and inserting the following: “The records to be
2 kept and made available by the operator of the mine shall
3 include man-hours worked and occupational injuries and
4 illnesses, and shall be maintained separately for each mine
5 and be reported at a frequency determined by the Sec-
6 retary, but at least annually. Operators shall be respon-
7 sible for reporting on all miners working at such mine re-
8 gardless of their employer, except that independent con-
9 tractors (within the meaning of section 3(d)) shall only
10 be responsible for reporting on miners in their employ or
11 under their direction or authority.”.

12 (c) ORDERS FOLLOWING AN ACCIDENT.—Section
13 103(k) (30 U.S.C. 813(k)) is amended by striking “, when
14 present,”.

15 (d) CONFLICT OF INTEREST IN THE REPRESENTA-
16 TION OF MINERS.—Section 103(a) (30 U.S.C. 813(a)) is
17 amended by adding at the end the following: “During in-
18 spections and investigations under this section, and during
19 any litigation under this Act, no attorney shall represent
20 or purport to represent both the operator of a coal or other
21 mine and any other individual, unless such individual has
22 knowingly and voluntarily waived all actual and reasonably
23 foreseeable conflicts of interest resulting from such rep-
24 resentation. The Secretary is authorized to take such ac-
25 tions as the Secretary considers appropriate to ascertain

1 whether such individual has knowingly and voluntarily
2 waived all such conflicts of interest. If the Secretary finds
3 that such an individual cannot be represented adequately
4 by such an attorney due to such conflicts of interest, the
5 Secretary may petition the appropriate United States Dis-
6 trict Court which shall have jurisdiction to disqualify such
7 attorney as counsel to such individual in the matter. The
8 Secretary may make such a motion as part of an ongoing
9 related civil action or as a miscellaneous action.”.

10 **TITLE II—ENHANCED**
11 **ENFORCEMENT AUTHORITY**

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

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

15 (1) in the first sentence—

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

21 (B) by striking “such mandatory health or
22 safety standards” and inserting “such provi-
23 sions, regulations, or mandatory health or safe-
24 ty standards”;

1 (2) in the second sentence, by striking “any
2 mandatory health or safety standard” and inserting
3 “any provision of this Act, including any mandatory
4 health or safety standard or regulation promulgated
5 under this Act,”; and

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

15 **SEC. 202. A PATTERN OF RECURRING NONCOMPLIANCE OR**
16 **ACCIDENTS.**

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

19 “(e) **PATTERN OF RECURRING NONCOMPLIANCE OR**
20 **ACCIDENTS.—**

21 “(1) **PATTERN STATUS.—**

22 “(A) **IN GENERAL.—**For purposes of this
23 subsection, an operator of a coal or other mine
24 shall be in pattern status if the operator has,

1 as determined based on the regulations promul-
2 gated under paragraph (8)—

3 “(i) a pattern of—

4 “(I) citations for significant and
5 substantial violations;

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

10 “(III) citations for flagrant viola-
11 tions within the meaning of section
12 110(b);

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

15 “(V) accidents, injuries, or ill-
16 nesses; or

17 “(ii) a pattern consisting of any com-
18 bination of citations, orders, accidents, in-
19 juries, or illnesses described in subclauses
20 (I) through (V).

21 “(B) MITIGATING CIRCUMSTANCES.—Not-
22 withstanding subparagraph (A), if the Sec-
23 retary, after conducting an assessment of a coal
24 or other mine that otherwise qualifies for pat-
25 tern status, certifies that there are mitigating

1 circumstances wherein the operator has elimi-
2 nated any elevated risk to the health or safety
3 of miners and has taken sufficient measures to
4 ensure such elevated risk will not recur, the
5 Secretary may deem such mine to not be in pat-
6 tern status under this subsection. The Sec-
7 retary shall issue any such certification of such
8 mitigating circumstances that would preclude
9 the placement of a mine in pattern status as a
10 written finding, which shall, not later than 10
11 days after the certification is made, be—

12 “(i) published in the Federal Register;

13 and

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

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

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

24 “(B) issue an order requiring such oper-
25 ator to cause all persons to be withdrawn from

1 such mine, except those persons referred to in
2 subsection (c) or authorized by an order of the
3 Secretary issued under this subsection;

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

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

11 Notice advising operators that they face potential
12 placement in pattern status shall not be a require-
13 ment for issuing a withdrawal order to operators
14 under this subsection.

15 “(3) REMEDIATION ORDER.—

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

23 “(i) Provide specified training, includ-
24 ing training not otherwise required under
25 this Act.

1 “(ii) Institute and implement an effective health and safety management program approved by the Secretary, including—

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5 “(I) the employment of safety professionals, certified persons, and adequate numbers of personnel for the mine, as may be required by the Secretary;

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10 “(II) specific inspection, record-keeping, reporting and other requirements for the mine as the Secretary may establish; and

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14 “(III) other requirements to ensure compliance and to protect the health and safety of miners or prevent accidents or injuries as the Secretary may determine are necessary.

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19 “(iii) Facilitate any effort by the Secretary to communicate directly with miners employed at the mine outside the presence of the mine operators or its agents, for the purpose of obtaining information about mine conditions, health and safety prac-

1 tices, and advising miners of their rights
2 under this Act.

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

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

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

23 “(A) any and all violations or other condi-
24 tions in the mine identified in the remediation
25 order have been or are being fully abated or

1 corrected as outlined in the remediation order;
2 and

3 “(B) the operator has completed any other
4 actions under the remediation order that are re-
5 quired for reopening the mine.

6 “(5) PERFORMANCE EVALUATION.—

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

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

15 “(I) are, on average, in the top
16 performing 35th percentile of such
17 rates, respectively, for all mines of
18 similar size and type; or

19 “(II) have been reduced by 70
20 percent since such mine was placed on
21 pattern status;

22 “(ii) the operator’s accident and in-
23 jury rates are, on average, in the top per-
24 forming 35th percentile of such rates, re-

1 spectively, for all mines of similar size and
2 type; and

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

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

19 “(6) TERMINATION OF PATTERN STATUS.—

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

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

1 “(I) are, on average, in the top
2 performing 25th percentile of such
3 rates, respectively, for all mines of
4 similar size and type; or

5 “(II) have been reduced by 80
6 percent since such mine was placed on
7 pattern status;

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

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

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

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

5 “(8) REGULATIONS; INFORMATION ON PER-
6 FORMANCE.—

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

12 “(i) the threshold criteria to trigger
13 pattern status under paragraph (1) and
14 cause a withdrawal order to be issued or
15 reissued; and

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

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

23 “(i) shall consider frequency and rates
24 of citations described in paragraph (1)(A)

1 and rates of reportable accidents and inju-
2 ries within the preceding 180-day period;

3 “(ii) may include factors such as mine
4 type, production levels, number of miners,
5 hours worked by miners, number of mecha-
6 nized mining units (or similar production
7 characteristics), and the designation of a
8 representative of miners at the mine;

9 “(iii) may include the mine’s history
10 of citations, violations, orders, and other
11 enforcement actions, or rates of reportable
12 accidents and injuries, over any period de-
13 termined relevant by the Secretary;

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

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

20 “(C) FINAL REGULATION.—Not later than
21 2 years after the date of enactment of the
22 Miner Safety and Health Act of 2010, the Sec-
23 retary shall promulgate a final regulation imple-
24 menting this paragraph.

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

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

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

17 “(10) OPERATOR FEES FOR ADDITIONAL IN-
18 SPECTIONS.—

19 “(A) ASSESSMENT AND COLLECTION.—Be-
20 ginning 120 days after the date of enactment of
21 the Miner Safety and Health Act of 2010, the
22 Secretary shall assess and collect fees, in ac-
23 cordance with this paragraph, from each coal or
24 other mine in pattern status for the costs of ad-
25 ditional inspections under this subsection. The

1 Secretary shall issue, by rule, a schedule of fees
2 to be assessed against coal or other mines of
3 varying types and sizes, and shall collect and
4 assess amounts under this paragraph based on
5 the schedule.

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

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

20 “(D) AUTHORIZATION OF APPROPRIA-
21 TIONS.—In addition to any other amounts ap-
22 propriated, there is authorized to be appro-
23 priated from the Mines in Pattern Status In-
24 spection Fund to the Assistant Secretary for
25 Mine Safety and Health for each fiscal year in

1 which fees are collected under subparagraph
2 (A) an amount equal to the total amount col-
3 lected during the previous fiscal year from fees
4 assessed pursuant to this paragraph. Such
5 amounts are authorized to remain available
6 until expended.

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

12 **SEC. 203. INJUNCTIVE AUTHORITY.**

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

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

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

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

24 (2) by inserting after subsection (c) the fol-
25 lowing:

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

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

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

20 **SEC. 205. CHALLENGING A DECISION TO APPROVE, MOD-**
21 **IFY, OR REVOKE A COAL OR OTHER MINE**
22 **PLAN.**

23 Section 105(e) (as redesignated by section 204(1))
24 (30 U.S.C. 815(e)) is amended by adding at the end the
25 following: “In any proceeding in which a party challenges

1 the Secretary’s decision to approve, modify, or revoke a
2 coal or other mine plan under this Act, the Commission
3 and the courts shall affirm the Secretary’s decision unless
4 the challenging party establishes that such decision was
5 arbitrary, capricious, an abuse of discretion, or otherwise
6 not in accordance with law.”.

7 **TITLE III—PENALTIES**

8 **SEC. 301. CIVIL PENALTIES.**

9 (a) **MAXIMUM CIVIL PENALTIES.**—Section 110(a)(1)
10 (30 U.S.C. 820(a)(1)) is amended—

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

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

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

20 “(3) Notwithstanding any other provision of this Act,
21 an operator of a coal or other mine that is in pattern sta-
22 tus under section 104(e) and that fails to meet the per-
23 formance benchmarks set forth by the Secretary under
24 section 104(e)(5)(A) during any performance review of the
25 mine following the first performance review shall be as-

1 sessed an increased civil penalty for any violation of this
2 Act, including any mandatory health or safety standard
3 or regulation promulgated under this Act. Such increased
4 penalty shall be twice the amount that would otherwise
5 be assessed for the violation under this Act, including the
6 regulations promulgated under this Act, subject to the
7 maximum civil penalty established for the violation under
8 this Act. This paragraph shall apply to violations at such
9 mine that occur during the period beginning after the
10 failed performance review following the first performance
11 review, and ending when the Secretary determines at a
12 subsequent performance review that the mine meets the
13 performance benchmarks under section 104(e)(5)(A).”.

14 (c) CIVIL PENALTY FOR RETALIATION.—Section
15 110(a) (30 U.S.C. 820(a)) is further amended—

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

18 (2) by inserting after paragraph (3) the fol-
19 lowing:

20 “(4) If any person violates section 105(e), the Sec-
21 retary shall propose, and the Commission shall assess, a
22 civil penalty of not less than \$10,000 or more than
23 \$100,000 for the first occurrence of such violation, and
24 not less than \$20,000 or more than \$200,000 for any sub-
25 sequent violation, during any 3-year period.”.

1 **SEC. 302. CIVIL AND CRIMINAL LIABILITY OF OFFICERS, DI-**
2 **RECTORS, AND AGENTS.**

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

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

19 **SEC. 303. CRIMINAL PENALTIES.**

20 (a) INTENT REQUIREMENTS FOR CRIMINAL PEN-
21 ALTY STANDARDS.—Section 110(d) (30 U.S.C. 820(d)) is
22 amended—

23 (1) by striking “willfully” and inserting “know-
24 ingly”;

25 (2) by striking “\$250,000, or by imprisonment
26 for not more than one year” and inserting

1 “\$1,000,000, or by imprisonment for not more than
2 5 years”; and

3 (3) by striking “\$500,000, or by imprisonment
4 for not more than five years” and inserting
5 “\$2,000,000, or by imprisonment for not more than
6 10 years”.

7 (b) CRIMINAL PENALTY FOR RETALIATION.—Section
8 110(d) is further amended—

9 (1) by inserting “(1)” before “Any operator”;
10 and

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

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

22 (c) ADVANCE NOTICE OF INSPECTIONS.—

23 (1) IN GENERAL.—Section 110(e) (30 U.S.C.
24 820(e)) is amended—

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

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

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

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

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

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

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

3 **SEC. 304. COMMISSION REVIEW OF PENALTY ASSESS-**
4 **MENTS.**

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

20 **SEC. 305. DELINQUENT PAYMENTS AND PREJUDGMENT IN-**
21 **TEREST.**

22 (a) PRE-FINAL ORDER INTEREST.—Section 110(j)
23 (30 U.S.C. 820(j)) is amended by striking the second and
24 third sentences and inserting the following: “Pre-final
25 order interest on such penalties shall begin to accrue on

1 the date the operator contests a citation issued under this
2 Act, including any mandatory health or safety standard
3 or regulation promulgated under this Act, and shall end
4 upon the issuance of the final order. Such pre-final order
5 interest shall be calculated at the current underpayment
6 rate determined by the Secretary of the Treasury pursu-
7 ant to section 6621 of the Internal Revenue Code of 1986,
8 and shall be compounded daily. Post-final order interest
9 shall begin to accrue 30 days after the date a final order
10 of the Commission or the court is issued, and shall be
11 charged at the rate of 8 percent per annum.”.

12 (b) ENSURING PAYMENT OF PENALTIES.—

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

15 (A) by redesignating subsection (l) as sub-
16 section (m); and

17 (B) by inserting after subsection (k) the
18 following:

19 “(l) ENSURING PAYMENTS OF PENALTIES.—

20 “(1) DELINQUENT PAYMENT LETTER.—If the
21 operator of a coal or other mine fails to pay any civil
22 penalty assessment that has become a final order of
23 the Commission or a court within 90 days after such
24 assessment became a final order, the Secretary shall
25 send the operator a letter advising the operator of

1 the consequences under this subsection of such fail-
2 ure to pay. The letter shall also advise the operator
3 of the opportunity to enter into or modify a payment
4 plan with the Secretary based upon a demonstrated
5 inability to pay, the procedure for entering into such
6 plan, and the consequences of not entering into or
7 not complying with such plan.

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

1 referred to in section 104(c), to be withdrawn from
2 the mine that is covered by such final order, and to
3 be prohibited from entering such mine, until the op-
4 erator rectifies the noncompliance with the payment
5 plan in the manner specified in such payment
6 plan.”.

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

19 **TITLE IV—WORKER RIGHTS AND** 20 **PROTECTIONS**

21 **SEC. 401. PROTECTION FROM RETALIATION.**

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

24 “(c) PROTECTION FROM RETALIATION.—

25 “(1) RETALIATION PROHIBITED.—

1 “(A) RETALIATION FOR COMPLAINT OR
2 TESTIMONY.—No person shall discharge or in
3 any manner discriminate against or cause to be
4 discharged or cause discrimination against or
5 otherwise interfere with the exercise of the stat-
6 utory rights of any miner or other employee of
7 an operator, representative of miners, or appli-
8 cant for employment, because—

9 “(i) such miner or other employee,
10 representative, or applicant for employ-
11 ment—

12 “(I) has filed or made a com-
13 plaint, or is about to file or make a
14 complaint, including a complaint noti-
15 fying the operator or the operator’s
16 agent, or the representative of the
17 miners at the coal or other mine of an
18 alleged danger or safety or health vio-
19 lation in a coal or other mine;

20 “(II) instituted or caused to be
21 instituted, or is about to institute or
22 cause to be instituted, any proceeding
23 under or related to this Act or has
24 testified or is about to testify in any
25 such proceeding or because of the ex-

1 exercise by such miner or other em-
2 ployee, representative, or applicant for
3 employment on behalf of him or her-
4 self or others of any right afforded by
5 this Act;

6 “(III) has testified or is about to
7 testify before Congress or any Federal
8 or State proceeding related to safety
9 or health in a coal or other mine; or

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

12 “(ii) such miner is the subject of med-
13 ical evaluations and potential transfer
14 under a standard published pursuant to
15 section 101.

16 “(B) RETALIATION FOR REFUSAL TO PER-
17 FORM DUTIES.—

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

1 to the miner or other employee or to any
2 other miner or employee.

3 “(ii) STANDARD.—For purposes of
4 clause (i), the circumstances causing the
5 miner’s or other employee’s good-faith be-
6 lief that performing such duties would pose
7 a safety or health hazard shall be of such
8 a nature that a reasonable person, under
9 the circumstances confronting the miner or
10 other employee, would conclude that there
11 is such a hazard. In order to qualify for
12 protection under this paragraph, the miner
13 or other employee, when practicable, shall
14 have communicated or attempted to com-
15 municate the safety or health concern to
16 the operator and have not received from
17 the operator a response reasonably cal-
18 culated to allay such concern.

19 “(2) COMPLAINT.—Any miner or other em-
20 ployee or representative of miners or applicant for
21 employment who believes that he or she has been
22 discharged, disciplined, or otherwise discriminated
23 against by any person in violation of paragraph (1)
24 may file a complaint with the Secretary alleging

1 such discrimination not later than 180 days after
2 the later of—

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

5 “(B) the date on which the miner or other
6 employee or representative knows or should rea-
7 sonably have known that such alleged violation
8 occurred.

9 “(3) INVESTIGATION AND HEARING.—

10 “(A) COMMENCEMENT OF INVESTIGATION
11 AND INITIAL DETERMINATION.—Upon receipt
12 of such complaint, the Secretary shall forward
13 a copy of the complaint to the respondent, and
14 shall commence an investigation within 15 days
15 of the Secretary’s receipt of the complaint, and,
16 as soon as practicable after commencing such
17 investigation, make the determination required
18 under subparagraph (B) regarding the rein-
19 statement of the miner or other employee.

20 “(B) REINSTATEMENT.—If the Secretary
21 finds that such complaint was not frivolously
22 brought, the Commission, on an expedited basis
23 upon application of the Secretary, shall order
24 the immediate reinstatement of the miner or
25 other employee until there has been a final

1 Commission order disposing of the underlying
2 complaint of the miner or other employee. If ei-
3 ther the Secretary or the miner or other em-
4 ployee pursues the underlying complaint, such
5 reinstatement shall remain in effect until the
6 Commission has disposed of such complaint on
7 the merits, regardless of whether the Secretary
8 pursues such complaint by filing a complaint
9 under subparagraph (D) or the miner or other
10 employee pursues such complaint by filing an
11 action under paragraph (4). If neither the Sec-
12 retary nor the miner or other employee pursues
13 the underlying complaint within the periods
14 specified in paragraph (4), such reinstatement
15 shall remain in effect until such time as the
16 Commission may, upon motion of the operator
17 and after providing notice and an opportunity
18 to be heard to the parties, vacate such com-
19 plaint for failure to prosecute.

20 “(C) INVESTIGATION.—Such investigation
21 shall include interviewing the complainant
22 and—

23 “(i) providing the respondent an op-
24 portunity to submit to the Secretary a
25 written response to the complaint and to

1 present statements from witnesses or pro-
2 vide evidence; and

3 “(ii) providing the complainant an op-
4 portunity to receive any statements or evi-
5 dence provided to the Secretary and rebut
6 any statements or evidence.

7 “(D) ACTION BY THE SECRETARY.—If,
8 upon such investigation, the Secretary deter-
9 mines that the provisions of this subsection
10 have been violated, the Secretary shall imme-
11 diately file a complaint with the Commission,
12 with service upon the alleged violator and the
13 miner or other employee or representative of
14 miners alleging such discrimination or inter-
15 ference and propose an order granting appro-
16 priate relief.

17 “(E) ACTION OF THE COMMISSION.—The
18 Commission shall afford an opportunity for a
19 hearing (in accordance with section 554 of title
20 5, United States Code, but without regard to
21 subsection (a)(3) of such section) and there-
22 after shall issue an order, based upon findings
23 of fact, affirming, modifying, or vacating the
24 Secretary’s proposed order, or directing other
25 appropriate relief. Such order shall become final

1 30 days after its issuance. The complaining
2 miner or other employee, representative, or ap-
3 plicant for employment may present additional
4 evidence on his or her own behalf during any
5 hearing held pursuant to this paragraph.

6 “(F) RELIEF.—The Commission shall have
7 authority in such proceedings to require a per-
8 son committing a violation of this subsection to
9 take such affirmative action to abate the viola-
10 tion and prescribe a remedy as the Commission
11 considers appropriate, including—

12 “(i) the rehiring or reinstatement of
13 the miner or other employee with back pay
14 and interest and without loss of position or
15 seniority, and restoration of the terms,
16 rights, conditions, and privileges associated
17 with the complainant’s employment;

18 “(ii) any other compensatory and con-
19 sequential damages sufficient to make the
20 complainant whole, and exemplary dam-
21 ages where appropriate; and

22 “(iii) expungement of all warnings,
23 reprimands, or derogatory references that
24 have been placed in paper or electronic
25 records or databases of any type relating

1 to the actions by the complainant that
2 gave rise to the unfavorable personnel ac-
3 tion, and, at the complainant's direction,
4 transmission of a copy of the decision on
5 the complaint to any person whom the
6 complainant reasonably believes may have
7 received such unfavorable information.

8 “(4) NOTICE TO AND ACTION OF COMPLAIN-
9 ANT.—

10 “(A) NOTICE TO COMPLAINANT.—Not
11 later than 90 days of the receipt of a complaint
12 filed under paragraph (2), the Secretary shall
13 notify, in writing, the miner or other employee,
14 applicant for employment, or representative of
15 miners of his determination whether a violation
16 has occurred.

17 “(B) ACTION OF COMPLAINANT.—If the
18 Secretary, upon investigation, determines that
19 the provisions of this subsection have not been
20 violated, the complainant shall have the right,
21 within 30 days after receiving notice of the Sec-
22 retary's determination, to file an action in his
23 or her own behalf before the Commission,
24 charging discrimination or interference in viola-
25 tion of paragraph (1).

1 “(C) HEARING AND DECISION.—The Com-
2 mission shall afford an opportunity for a hear-
3 ing (in accordance with section 554 of title 5,
4 United States Code, but without regard to sub-
5 section (a)(3) of such section), and thereafter
6 shall issue an order, based upon findings of
7 fact, dismissing or sustaining the complainant’s
8 charges and, if the charges are sustained,
9 granting such relief as it deems appropriate as
10 described in paragraph (3)(D). Such order shall
11 become final 30 days after its issuance.

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

24 “(6) ATTORNEYS’ FEES.—Whenever an order is
25 issued sustaining the complainant’s charges under

1 this subsection, a sum equal to the aggregate
2 amount of all costs and expenses, including attor-
3 ney's fees, as determined by the Commission to have
4 been reasonably incurred by the complainant for, or
5 in connection with, the institution and prosecution of
6 such proceedings shall be assessed against the per-
7 son committing such violation. The Commission
8 shall determine whether such costs and expenses
9 were reasonably incurred by the complainant without
10 reference to whether the Secretary also participated
11 in the proceeding.

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

20 “(8) PROCEDURAL RIGHTS.—The rights and
21 remedies provided for in this subsection may not be
22 waived by any agreement, policy, form, or condition
23 of employment, including by any pre-dispute arbitra-
24 tion agreement or collective bargaining agreement.

1 “(9) SAVINGS.—Nothing in this subsection shall
2 be construed to diminish the rights, privileges, or
3 remedies of any employee who exercises rights under
4 any Federal or State law or common law, or under
5 any collective bargaining agreement.”.

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

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

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

10 “(a) PROTECTION FROM LOSS OF PAY.—

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

20 “(2) CLOSURE IN ADVANCE OF ORDER.—If the
21 Secretary finds that such mine or such area of a
22 mine was closed by the operator in anticipation of
23 the issuance of such an order, all miners who are
24 idled by such closure shall be entitled to full com-
25 pensation by the operator at their regular rates of

1 pay and in accordance with their regular schedules
2 of pay, from the time of such closure until such time
3 as the Secretary authorizes reopening of such mine
4 or such area of the mine.

5 “(3) REFUSAL TO COMPLY.—Whenever an op-
6 erator violates or fails or refuses to comply with any
7 order issued under section 103, 104, 107, 108, or
8 110, all miners employed at the affected mine who
9 would have been withdrawn from, or prevented from
10 entering, such mine or area thereof as a result of
11 such order shall be entitled to full compensation by
12 the operator at their regular rates of pay, in addi-
13 tion to pay received for work performed after such
14 order was issued, for the period beginning when
15 such order was issued and ending when such order
16 is complied with, vacated, or terminated.

17 “(b) ENFORCEMENT.—

18 “(1) COMMISSION ORDERS.—The Commission
19 shall have authority to order compensation due
20 under this section upon the filing of a complaint by
21 a miner or his representative and after opportunity
22 for hearing subject to section 554 of title 5, United
23 States Code. Whenever the Commission issues an
24 order sustaining the complaint under this subsection

1 in whole or in part, the Commission shall award the
2 complainant reasonable attorneys' fees and costs.

3 “(2) FAILURE TO PAY COMPENSATION DUE.—
4 Consistent with the authority of the Secretary to
5 order miners withdrawn from a mine under this Act,
6 the Secretary shall order a mine that has been sub-
7 ject to a withdrawal order under section 103, 104,
8 107, 108, or 110, and has reopened, to be closed
9 again if compensation in accordance with the provi-
10 sions of this section is not paid by the end of the
11 next regularly scheduled payroll period following the
12 lifting of a withdrawal order.”.

13 **SEC. 403. UNDERGROUND COAL MINER EMPLOYMENT**
14 **STANDARD.**

15 The Federal Mine Safety and Health Act of 1977 is
16 further amended by adding at the end of title I the fol-
17 lowing:

18 **“SEC. 117. UNDERGROUND COAL MINER EMPLOYMENT**
19 **STANDARD.**

20 “(a) IN GENERAL.—An operator of an underground
21 coal mine may not discharge or constructively discharge
22 a miner who is paid on an hourly basis and employed at
23 an underground coal mine without reasonable job-related
24 grounds based on a failure to satisfactorily perform job
25 duties, including compliance with this Act and with man-

1 datory health and safety standards or other regulations
2 issued under this Act, or other legitimate business reason,
3 where the miner has completed the employer's proba-
4 tionary period, not to exceed 6 months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(1) IN GENERAL.—Where rock”;

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

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

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

6 “(2) METHODS OF MEASUREMENT.—

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

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

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

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

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

22 (b) REPORT.—Not later than 2 years after the date
23 of enactment of this Act, the Secretary of Health and
24 Human Services, in consultation with the Secretary of
25 Labor, shall prepare and submit, to the Committee on

1 Education and Labor of the House of Representatives and
2 the Committee on Health, Education, Labor, and Pen-
3 sions of the Senate, a report—

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

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

16 **SEC. 503. ATMOSPHERIC MONITORING SYSTEMS.**

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

19 “(u) ATMOSPHERIC MONITORING SYSTEMS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(c) OPERATOR FEES FOR CERTIFICATION.—

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

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

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

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

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

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

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

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

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

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

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

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

14 **SEC. 601. DEFINITIONS.**

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

17 “(d) ‘operator’ means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (1) in subsection (a)—

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

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

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

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

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

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

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

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

5 **“SEC. 435. MEDICAL REPORTS.**

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

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

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

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

24 (1) by striking “discharge” and all that follows
25 through “because such” and inserting the following:
26 “discharge or cause to be discharged, or in any man-

1 ner discriminate against or cause to be discriminated
2 against, any employee because—

3 “(A) such”;

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

6 “(B) such employee has”;

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

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

13 “(D) of the exercise”; and

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

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

23 “(2)(A) No person shall discharge, or cause to be dis-
24 charged, or in any manner discriminate against, or cause
25 to be discriminated against, an employee for refusing to

1 perform the employee's duties if the employee has a rea-
2 sonable apprehension that performing such duties would
3 result in serious injury to, or serious impairment of the
4 health of, the employee or other employees.

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

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

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

25 “(4) STATUTE OF LIMITATIONS.—

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

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

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

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

14 “(5) INVESTIGATION.—

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

22 “(i) shall include—

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

1 “(II) providing the respondent an
2 opportunity to—

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

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

10 “(III) providing the complainant
11 an opportunity to—

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

15 “(bb) meet with the Sec-
16 retary; and

17 “(cc) rebut any statements
18 or evidence; and

19 “(ii) may include issuing subpoenas
20 for the purposes of such investigation.

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

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

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

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

18 “(7) HEARING.—

19 “(A) REQUEST FOR HEARING.—

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

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

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

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

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

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

18 “(B) PROCEDURES.—

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

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

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

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

3 “(8) ADMINISTRATIVE APPEAL.—

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

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

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

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

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

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

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

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

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

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

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

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

24 “(11) JUDICIAL REVIEW.—

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

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

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

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

9 “(13) BURDENS OF PROOF.—

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

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

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

3 “(14) RELIEF.—

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

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

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

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

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

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

19 “(i) reasonable attorneys’ fees; and

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

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

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

11 “(17) ELECTION OF VENUE.—

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

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

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

21 “(B) REFERRALS.—If—

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

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

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

10 **SEC. 702. VICTIMS’ RIGHTS.**

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

14 **“SEC. 9A. VICTIMS’ RIGHTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (1) in subsection (a)—

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

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

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

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

7 (2) in subsection (b)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “(A) a substantial risk of death;

16 “(B) protracted unconsciousness;

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

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

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

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

5 **SEC. 707. PENALTIES.**

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

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

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

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

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