



# Section-by-Section

COMMITTEE ON EDUCATION & THE WORKFORCE DEMOCRATS

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The Hon. Bobby Scott • Ranking Member

## The Robert C. Byrd Mine Safety Protection Act of 2017 (H.R. \_\_\_\_)

### TITLE I – ADDITIONAL INSPECTION AND INVESTIGATION AUTHORITY

**Section 101.--Independent Investigations:** Requires the National Institute for Occupational Safety and Health (NIOSH) to empanel a group of experts to investigate major mine accidents. Provides subpoena authority to NIOSH and the independent panel.

**Section 102.--Subpoena Authority and Miner Rights During Inspections and Investigations:** Authorizes the Mine Safety and Health Administration (MSHA), for purposes of investigations and inspections, to subpoena documents and witnesses. Allows miners the right to speak privately to MSHA during an investigation, without the knowledge or presence of a mine operator’s attorney.

**Section 103.--Designation of Miner Representative:** A “miner’s representative” may be selected by a miner’s closest relative when a miner is entrapped, disabled, killed or otherwise unable to designate a representative as a result of an accident. Miners’ representatives provided the full right of participation in any investigation, except where such participation may hinder pursuit of a criminal case.

**Section 104.--Inspection and Investigations Improvements:** Requires MSHA to inspect on all shifts and days of the week; mandates full injury and illness reporting for independent contractors at each mine site; provides individual sanctions for falsification of injury and illness reports; and prohibits an attorney from representing an operator and a miner in an MSHA investigation or litigation, unless the miner knowingly and voluntarily waives all conflicts.

### TITLE II – ENHANCED ENFORCEMENT AUTHORITY

**Section 201.--Technical Amendment:** Fixes a technical error that excluded violations of “regulations” and the “Mine Act” with respect to “unwarrantable failure” citations and orders.

**Section 202.--Pattern of Violations:** Codifies MSHA’s January 23, 2013, Pattern of Violations (POV) regulations that allows MSHA to use citations instead of “final orders” to impose pattern of violations sanctions on a mine with repeated serious violations; and eliminates the need for “potential” POV warning letters and a waiting period before placing a mine on POV.

**Section 203.--Injunctive Authority:** Clarifies MSHA’s existing authority to secure court injunctions to mandate safety improvements or close a mine where there is a “course of conduct that constitutes a continuing threat to the health and safety of miners.” Eliminates legal uncertainty that might obligate MSHA to use administrative procedures to place a mine on a “pattern of violations” prior to seeking a court injunction.

**Section 204.--Mine Plan Revocation:** Allows MSHA to revoke mine plans, such as roof control or ventilation plans, if they contain inaccurate information or conditions change rendering the plan a threat to safety.

**Section 205.—Challenging a Decision to Approve, Modify or Revoke a Coal or Other Mine Plan:** A party which is challenging MSHA’s decision to approve, modify or revoke a mine plan, has the burden of demonstrating to the Federal Mine Safety and Health Review Commission that the Secretary’s decision was arbitrary, capricious, an abuse of discretion or otherwise contrary to law.

**Section 206.—GAO Study on Mine Plan Approval:** GAO is directed to study the cause of delays in MSHA’s plan approval process and propose reforms to improve timeliness.

### **TITLE III – PENALTIES**

**Section 301.—Civil Penalties:** Authorizes a maximum civil penalty of \$220,000 for 4 categories of major violations which were contributing factors to the Upper Big Branch mine disaster: changes to required ventilation systems or controls without approval by the Secretary; violations of mandatory health and safety standards requiring rock dusting or examination of work areas in an underground coal mine; or providing advance notice of an MSHA inspection. Doubles civil penalties for violations when a mine is placed on POV. Authorizes civil penalties up to \$100,000 (for the first offense, and double that amount for a repeated offense) for violations of the Mine Act’s anti-retaliation provisions.

**Section 302.—Civil and Criminal Liability of Officers, Directors and Agents:** Expands individual civil and criminal liability to also include circumstances where an officer, director or agent “knowingly authorizes, orders or carries out policies or practices.”

**Section 303.—Criminal Penalties:** Establishes a criminal felony for disabling or tampering with a mandatory safety device or knowingly violating safety standards which recklessly expose miners to significant risk. Also establishes a felony for: (1) knowingly providing advance notice of an unannounced MSHA inspection with intent to impede the investigation, and (2) knowingly retaliating against a whistleblower who reports information to a state or federal official.

**Section 304.—Commission Review of Penalty Assessments:** Requires consistency in the methods used by MSHA to propose a penalty and the methods used by Federal Mine Safety and Health Review Commission to assess such penalty.

**Section 305.—Delinquent Penalty Payments:** Improves MSHA’s ability to collect delinquent fines by authorizing MSHA to close a mine whose fines are more than 180 days overdue, unless the mine is complying with a payment plan. Authorizes pre-judgment interest.

### **TITLE IV – MINERS RIGHTS AND PROTECTIONS**

**Section 401.—Protection from Retaliation:** Protects miners and their immediate family members for exercising rights under the Mine Act, including an express right to refuse unsafe work or to refuse to violate a provision of the Mine Act; increases the time for a miner to file a retaliation complaint from 60 to 180 days; authorizes judges to award exemplary damages (in addition to the make-whole provisions).

**Section 402.—Protection from Loss of Pay:** Miners must be paid for up to 60 days following MSHA-ordered mine withdrawals, so that miners are not discouraged from reporting unsafe practices. Requires payments to miners when closures are made in advance of an MSHA order, except when the operator withdraws miners

promptly upon discovery of the hazard. Authorizes attorney fees for miners who prevail in proceedings to recover compensation that is due.

**Section 403.—Underground Coal Miner Employment Standard for Mines Placed on Pattern of Violations:** Prohibits firing underground coal miners, except for “just cause” related to unsatisfactory performance or failure to comply with safety requirements, while the mine is on Pattern of Violation status and three years thereafter.

## **TITLE V – MODERNIZING HEALTH AND SAFETY STANDARDS**

**Section 501.—Pre-shift Review of Mine Conditions:** Requires operators to ensure miners are orally briefed on hazards and violations in the mine before they commence work on each shift.

**Section 502.—Rock Dust Standards:** Increases amount of rock dusting to 80% of total incombustible content in all working areas of a coal mine, and mandates that operators use new direct reading technology to measure the explosibility of coal and rock dust mixtures for purposes of compliance. Requires studies to assess whether the new direct reading monitors are sufficiently accurate to be used for enforcement purposes, prior to use in enforcement actions.

**Section 503.—Atmospheric Monitoring System:** Requires atmospheric monitoring and recording devices on mining equipment. Requires supplemental monitoring systems which can, to the maximum extent practicable, withstand fires and explosions and continuously measure mine atmospheres for methane, carbon monoxide and oxygen following fires, explosions or entrapments.

**Section 504.—Study on Respirable Dust Standards:** Requires MSHA to commence a retrospective study on the implementation of the agency’s August 2014 final rule which reduces coal miner exposure to respirable dust and improves monitoring by requiring the use of continuous personal dust monitors.

**Section 505.—Refresher Training on Miners Rights and Responsibilities:** Requires at least one hour per year of refresher training on miners’ rights and responsibilities under the Mine Act, which is to be delivered by a party independent of the operator. Requires MSHA to establish national toll-free hotline number for miners to call, and distribution of a wallet-type card to each miner with a summary of their rights and responsibilities and the toll-free number.

**Section 506.—Authority to Mandate Additional Training:** Authorizes MSHA to order additional training beyond that required under the law when a mine’s safety record falls below the industry average or there is a history of accidents or fatalities.

**Section 507.—Brookwood Sago Mine Safety grants:** Expands training grant program to cover “underground mine rescue training which simulate mine accident conditions.”

**Section 508.—Certification of Personnel:** Authorizes MSHA to set minimum standards for certification of individuals to carry out mandatory duties under the Mine Act, requires coordination with the state certifying agencies, sets up a database of mine certifications that have been revoked in any state, and authorizes collection of fees for certification of individuals.

**Section 509.—Electronic Records Requirement:** Requires MSHA to establish rules for the retention of records that are created, stored or transmitted in electronic form (such as methane levels), and the minimum capabilities of equipment to retain, store and recover data.

## **TITLE VI – ADDITIONAL MINE SAFETY PROVISIONS**

**Section 601.—Definitions:** Expands definition of “operator” to cover those with authority to make management of operational decisions that affect, directly or indirectly, the health and safety at a mine. Broadens the definition of “imminent danger” to include “multiple conditions or practices, that when considered in the aggregate, could reasonably be expected to cause death or serious physical harm before such conditions or practices can be abated.”

**Section 602.—Assistance to States:** Allows grants for state mining programs to implement certification requirements (set forth in Section 508 of this bill), and increases current authorization for state grants from \$10 million to \$20 million per year.

**Section 603.—Authorization of Cooperative Agreements by NIOSH Office of Mine Safety and Health:** Authorizes NIOSH to enter into cooperative agreements with international institutions and private entities to improve mine safety.

**Section 604.—Double Encumbrance; Succession Plan:** Directs the Secretary to issue a succession plan to ensure timely replacement of critical personnel needed for mine safety; authorizes MSHA to use early replacement hiring (double encumbrance) to ensure a sufficient number of qualified inspectors and technical specialists are deployed at any given time.

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