

Making Work Safer for America's Miners

THE ROBERT C. BYRD MINE SAFETY PROTECTION ACT OF 2015

Despite progress over the last several decades, more than 500 miners have been killed in the last ten years. On April 5, 2010, a massive explosion ripped through Massey Energy's Upper Big Branch Mine in West Virginia, killing 29 miners and injuring others. Tools the Mine Safety and Health Administration (MSHA) could use to hold rogue mine operators like Massey accountable were ineffective. Multiple reports following the tragedy recommended that Congress plug loopholes and strengthen the Mine Act.

Making Mines with Serious and Repeated Violations Safer

Problem: MSHA does not have the tools to take timely action to close down mine operations which have had repeated and significant safety problems that endanger miners.

Solution: Expands MSHA's authority to issue an administrative "imminent danger" withdrawal order when there are "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."

Codifies MSHA's new 'pattern of violations' regulations that were issued in January 2013. New rules reformed flaws that had allowed chronic violators to evade stronger sanctions through litigation and built-in delays. Mines with "pattern of violations" sanctions will also face doubled civil penalties for any violations, up to the statutory maximum.

Clarifies MSHA's statutory authority to also 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."

Holding Irresponsible Mine Operators Accountable

Problem: It is only a misdemeanor for underground mine operators to violate health and safety standards where they knowingly subject miners to a significant risk of serious bodily injury or death.

Solution: Criminal violations for knowing violations of safety standards that recklessly expose a miner to a significant risk of serious bodily injury or death in the first instance would be a felony for mine operators. Punishment is up to five years in jail and a maximum of \$1 million fine, or both for a first offense, and ten years or \$2 million or both for the second offense. Knowingly tampering with or disabling a safety device which recklessly exposes miners to a significant risk of serious bodily injury or death is also punishable by imprisonment for up to 5 years and or a \$1 million fine, or both.

Problem: Violations of the type which contributed to the Upper Big Branch (UBB) mine disaster, and which other mines still violate not deterred by current civil penalty levels.

Solution: Instead of a maximum of \$70,000 for a violation, the bill authorizes a maximum civil penalty of up to \$220,000 for 4 categories of violations which were contributing factors to catastrophic explosions such as UBB: (i) changes to required ventilation systems or controls without approval by the Secretary; (ii) failure to conduct required rock dusting, (iii) required examinations of work areas in an underground coal mine; and (iv) providing advance notice of an MSHA inspection without the approval of the Secretary.

Problem: More than \$73 million in fines are currently unpaid.

Solution: Mines that are more than 180 days in arrears on paying fines, or failing to live up to a payment plan, would face a mine-wide withdrawal order until payments are made.

Problem: A backlog of more than 6,000 mine operator contests of health and safety violations are clogging up the system, which delays MSHA's ability to hold our nation's most dangerous mine operators accountable.

Solution: The legislation requires the Federal Mine Safety and Health Review Commission to use MSHA's penalty formulas as a floor when assessing fines, instead of setting fines based on each judge's interpretation of broad statutory criteria. By making the system more predictable, there is less incentive for operators to roll the dice on an appeal in the hope of reducing a fine.

Giving MSHA Better Enforcement Tools

Problem: MSHA lacks subpoena power for investigations and inspections.

Solution: The legislation grants MSHA the ability to subpoena in conjunction with the agency's investigations and inspections. Under current law, MSHA may only issue a subpoena when it is conducting an investigation through a public hearing.

Problem: Miners are concerned MSHA does not inspect mines during weekend or night-owl operations.

Solution: The legislation would require that inspections occur on all shifts and days of the week. If inspection times are unpredictable, operators will be motivated to work more safely across all shifts.

Problem: Some mine operators alert underground miners of an impending MSHA inspection in order to cover up safety problems and direct inspectors away from problem areas. Currently, it is only a misdemeanor to give advance warning of a mine inspection, even though such a “tip off” interferes with MSHA’s ability to detect violations.

Solution: Any person who knowingly provide advance notice of an inspection with the intent to impede, interfere or adversely affect the results of an inspection, could face a felony count, with a maximum five years in prison and a maximum penalty to \$250,000 per individual and \$500,000 per organization. Miners who are directed by a superior to provide advance notice could be charged with a misdemeanor in the first instance, and a felony if they repeat the conduct.

Ensuring Miners’ Right to Blow the Whistle on Unsafe Conditions

Problem: Operators are not deterred from retaliating against miners for blowing the whistle on dangerous working conditions.

Solution: The bill would grant miners the right to refuse to work in unsafe conditions and would extend the statute of limitations for filing a whistleblower complaint from 60 to 180 days. Miners would be able to seek punitive damages in addition to back pay and reinstatement. Direct family members employed in a mine would also receive protection.

The bill would establish civil penalties for whistleblower violations of a \$10,000 minimum and a \$100,000 maximum for first whistleblower violation, and a \$20,000 minimum and a \$200,000 maximum for repeated violations in a three-year window.

Felony criminal sanctions would be authorized for those who knowingly retaliate with the intent to adversely impact directly or indirectly the employment or livelihood of those who provide information on health and safety conditions to MSHA or law enforcement officers.

Problem: Mine management or their lawyers often demand attendance when MSHA interviews miners during investigations, which increase fears of intimidation.

Solution: Miners would have the right to meet with MSHA confidentially. The bill would also prevent mine operator attorneys from also representing individual miners unless the miners knowingly and voluntarily waived the conflict of interest.

Problem: Some miners fear loss of income for reporting dangerous conditions to safety officials because MSHA may temporarily close a mine and cause a loss of pay.

Solution: Workers will get full pay after the first two shifts when a mine is temporarily closed by MSHA because of safety problems, and full pay thereafter to a maximum of 60 days. Current law only provides 7 days pay after the first two shifts. MSHA can close a mine if a mine operator does not pay miners what they are due by the next pay period after the mine reopens.

Problem: Even with improved whistleblower protections, at-will employment in inherently dangerous workplaces like underground coal mines leaves miners subject to fear and intimidation when it comes to speaking out on workplace safety. Under current law, employers are free to fire miners for no reason whatsoever, if they are not covered by a labor agreement.

Solution: The bill would provide underground coal miners working at mines “on pattern of violations” with protections from dismissal for three years, unless the employer has just cause based on reasonable job-related grounds or for other legitimate business reasons.

Updating Mine Safety Standards to Prevent Explosions

Problem: Combustible coal dust limits are based on scientific studies nearly a century old and could allow coal dust explosions to readily propagate.

Solution: The bill would require the use of greater amounts of rock dusting, which holds down the levels of combustible coal dust. The bill mandates new monitoring technology to provide real time measurements of the explosibility of mine dust.

Coal mine operators will be required to use monitoring systems to detect explosive levels of methane and elevated levels of carbon monoxide in underground mines.

Problem: Miners starting a new shift do not know what hazards may be present in their working area from the previous shift.

Solution: The bill would require verbal pre-shift communications to incoming miners on hazards, violations and other problems in the mine.

Problem: Additional health and safety training is needed to protect miners and ensure they know their rights.

Solution: The bill would allow MSHA to prescribe additional training beyond current law where a history of non-compliance or accidents indicates a need for additional training. MSHA would also be allowed to include a one-hour refresher training on worker rights

and obligations in addition to the eight hours already required by law. The Brookwood Sago grants program would be expanded to cover mine rescue training.

Problem: Even though some mine operators employ more contractors than employees at mine sites, MSHA does not have data on contractor injury rates for each mine, and is too often blind to whether a mine has excessive injuries or illnesses

Solution: Contractors would be responsible for reporting injuries, illnesses and hours worked at each mine site. Reports to MSHA have to be signed by a responsible individual who holds a certification, which can be revoked for knowingly submitting a false report.

Increasing MSHA's Accountability

Problem: MSHA's investigations into mine tragedies are not independent.

Solution: The Secretary of Health and Human Services would appoint a five member independent investigative panel to investigate mine accidents with three or more deaths, chaired by a staff member from NIOSH's Office of Mine Safety and Health Research. The investigation would identify all factors that caused or contributed to the accident, assess whether any actions or inactions by MSHA, states, operators or others contributed to accident; and review MSHA's investigation report. The panel has subpoena authority.

Problem: Some states do not establish adequate minimum requirements for certifications and do not reach to superintendents.

Solution: The legislation would allow MSHA to certify, recertify, and decertify mine foremen, superintendants and others, if equivalent certification requirements were not established under state law. The bill would allow MSHA to charge a fee for certification. A grant program would be established to help states improve miner certification programs.

Problem: The Internal Review of the Upper Big Branch tragedy found that a lack of inspector experience allowed violations at this mine to go undetected. MSHA does not have a way to ensure that inspector and technical specialist positions, which can require up to two years of training, can be filled and training begun even before older inspectors retire.

Solution: The bill would direct MSHA to develop a succession plan, and authorizes the "double encumbrance" of positions for inspectors and specialists, so that these mission-critical positions can be filled even before older inspectors/specialists retire.