

## HR 5663

Robert C. Byrd Miner Safety and Health Act of 2010

**Congress:** 111 (2009–2011, Ended)

**Chamber:** House

**Policy Area:** Labor and Employment

**Introduced:** Jul 1, 2010

**Current Status:** Placed on the Union Calendar, Calendar No. 334.

**Latest Action:** Placed on the Union Calendar, Calendar No. 334. (Jul 29, 2010)

**Official Text:** <https://www.congress.gov/bill/111th-congress/house-bill/5663>

### Sponsor

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**Name:** Rep. Miller, George [D-CA-7]

**Party:** Democratic • **State:** CA • **Chamber:** House

**Cosponsors** (55 total)

Cosponsor	Party / State	Role	Date Joined
Rep. Andrews, Robert E. [D-NJ-1]	D · NJ		Jul 1, 2010
Rep. Bishop, Timothy H. [D-NY-1]	D · NY		Jul 1, 2010
Rep. Clarke, Yvette D. [D-NY-11]	D · NY		Jul 1, 2010
Rep. Courtney, Joe [D-CT-2]	D · CT		Jul 1, 2010
Rep. Grijalva, Raúl M. [D-AZ-7]	D · AZ		Jul 1, 2010
Rep. Hare, Phil [D-IL-17]	D · IL		Jul 1, 2010
Rep. Hirono, Mazie K. [D-HI-2]	D · HI		Jul 1, 2010
Rep. Holt, Rush [D-NJ-12]	D · NJ		Jul 1, 2010
Rep. Kildee, Dale E. [D-MI-5]	D · MI		Jul 1, 2010
Rep. Mollohan, Alan B. [D-WV-1]	D · WV		Jul 1, 2010
Rep. Rahall, Nick J., II [D-WV-3]	D · WV		Jul 1, 2010
Rep. Sestak, Joe [D-PA-7]	D · PA		Jul 1, 2010
Rep. Shea-Porter, Carol [D-NH-1]	D · NH		Jul 1, 2010
Rep. Shuler, Heath [D-NC-11]	D · NC		Jul 1, 2010
Rep. Sutton, Betty [D-OH-13]	D · OH		Jul 1, 2010
Rep. Woolsey, Lynn C. [D-CA-6]	D · CA		Jul 1, 2010
Resident Commissioner Pierluisi, Pedro R. [D-PR-At Large]	D · PR		Jul 1, 2010
Rep. Chu, Judy [D-CA-32]	D · CA		Jul 14, 2010
Rep. Costello, Jerry F. [D-IL-12]	D · IL		Jul 14, 2010
Rep. Kucinich, Dennis J. [D-OH-10]	D · OH		Jul 14, 2010
Rep. Baca, Joe [D-CA-43]	D · CA		Jul 19, 2010
Rep. Michaud, Michael H. [D-ME-2]	D · ME		Jul 19, 2010
Rep. Schiff, Adam B. [D-CA-29]	D · CA		Jul 19, 2010
Rep. Slaughter, Louise McIntosh [D-NY-28]	D · NY		Jul 19, 2010
Rep. Arcuri, Michael A. [D-NY-24]	D · NY		Jul 20, 2010
Rep. Brady, Robert A. [D-PA-1]	D · PA		Jul 20, 2010
Rep. Lofgren, Zoe [D-CA-16]	D · CA		Jul 20, 2010
Rep. Polis, Jared [D-CO-2]	D · CO		Jul 20, 2010
Rep. Tierney, John F. [D-MA-6]	D · MA		Jul 20, 2010
Rep. Towns, Edolphus [D-NY-10]	D · NY		Jul 20, 2010
Rep. Velazquez, Nydia M. [D-NY-12]	D · NY		Jul 20, 2010
Rep. Hinchey, Maurice D. [D-NY-22]	D · NY		Jul 21, 2010
Rep. Pingree, Chellie [D-ME-1]	D · ME		Jul 21, 2010
Rep. Filner, Bob [D-CA-51]	D · CA		Jul 22, 2010
Rep. Space, Zachary T. [D-OH-18]	D · OH		Jul 22, 2010
Rep. Stark, Fortney Pete [D-CA-13]	D · CA		Jul 22, 2010
Rep. Tonko, Paul [D-NY-21]	D · NY		Jul 22, 2010
Rep. Blumenauer, Earl [D-OR-3]	D · OR		Jul 26, 2010
Rep. Honda, Michael M. [D-CA-15]	D · CA		Jul 26, 2010
Rep. Kagen, Steve [D-WI-8]	D · WI		Jul 26, 2010
Rep. Nadler, Jerrold [D-NY-8]	D · NY		Jul 26, 2010

Cosponsor	Party / State	Role	Date Joined
Rep. Sánchez, Linda T. [D-CA-39]	D · CA		Jul 26, 2010
Rep. Sanchez, Loretta [D-CA-47]	D · CA		Jul 26, 2010
Rep. Chandler, Ben [D-KY-6]	D · KY		Jul 27, 2010
Rep. Green, Gene [D-TX-29]	D · TX		Jul 27, 2010
Rep. Maloney, Carolyn B. [D-NY-14]	D · NY		Jul 27, 2010
Rep. Berkley, Shelley [D-NV-1]	D · NV		Jul 28, 2010
Rep. Jackson, Jesse L., Jr. [D-IL-2]	D · IL		Jul 28, 2010
Rep. Larsen, Rick [D-WA-2]	D · WA		Jul 28, 2010
Rep. McCollum, Betty [D-MN-4]	D · MN		Jul 28, 2010
Rep. Harman, Jane [D-CA-36]	D · CA		Jul 29, 2010
Rep. Langevin, James R. [D-RI-2]	D · RI		Jul 29, 2010
Rep. Murphy, Patrick J. [D-PA-8]	D · PA		Jul 29, 2010
Rep. Sherman, Brad [D-CA-27]	D · CA		Jul 29, 2010
Rep. Visclosky, Peter J. [D-IN-1]	D · IN		Jul 29, 2010

### Committee Activity

Committee	Chamber	Activity	Date
Education and Workforce Committee	House	Reported By	Jul 29, 2010
Judiciary Committee	House	Discharged From	Jul 29, 2010

### Subjects & Policy Tags

#### Policy Area:

Labor and Employment

### Related Bills

Bill	Relationship	Last Action
111 HR 6495	Related bill	<b>Dec 8, 2010:</b> On motion to suspend the rules and pass the bill, as amended Failed by the Yeas and Nays: (2/3 required): 214 - 193 (Roll no. 616). (text: CR H8131-8140)
111 HR 5788	Related bill	<b>Oct 13, 2010:</b> Referred to the Subcommittee on Workforce Protections.
111 S 3671	Related bill	<b>Jul 29, 2010:</b> Read twice and referred to the Committee on Health, Education, Labor, and Pensions.

Robert C. Byrd Miner Safety and Health Act of 2010 - **Title I: Additional Inspection and Investigation Authority** - (Sec. 101) Amends the Federal Mine Safety and Health Act of 1977 (this Act) to require the Secretary of Labor (Secretary), in conducting health and safety related accident investigations in coal or other mines, to: (1) determine why an accident occurred and whether there were violations of law, mandatory health and safety standards, or other requirements; (2) issue citations and penalties in case of violations, and in cases involving possible criminal actions, refer them to the Attorney General; and (3) make recommendations to avoid any recurrence.

Requires an independent accident investigation by an independent panel appointed by the Secretary of Health and Human Services (HHS) for any accident: (1) involving three or more deaths; or (2) whose severity or scale merits an independent investigation.

Requires the Secretary and the Secretary of Health and Human Services (HHS) to issue publicly a memorandum of understanding that: (1) outlines administrative arrangements to facilitate coordination of efforts between the Secretary's and the Panel's investigations; and (2) ensures full Panel participation in the Secretary's investigation (including mine inspections and interviews). Requires the Secretary to establish procedures to ensure consistency of Panel investigations.

Authorizes appropriations.

Requires the Secretary's annual mine safety and health report to Congress to include the status of implementation of recommendations received from each Panel investigation in the preceding five years.

(Sec. 102) Authorizes: (1) the Secretary's representatives and attorneys to question any individual privately during an inspection or investigation; and (2) any individual willing to speak with or provide a statement to such representatives or attorneys to do so without the presence, involvement, or knowledge of the mine operator or mine operator's agents or attorneys. Requires the Secretary to keep the identity of individuals providing statements confidential to the extent permitted by law.

(Sec. 103) Allows the closest relative of a miner who is entrapped or otherwise prevented by an accident to designate a representative for the miner to participate in a mine inspection.

(Sec. 104) Requires mine inspections to be conducted during various shifts and days of the week when miners are normally present.

Directs the Secretary, upon the request of the mine operator, to review with appropriate mine officials the Secretary's most recent evaluation for pattern (of violation) status during the course of a regular mine inspection, or at the Secretary's discretion, during the pre-inspection conference.

Requires mine operators and independent contractors to keep records of occupational injuries and illnesses of miners for each mine and to report them, at least annually, to the Secretary and appropriate state agency.

Repeals the requirement that an authorized representative of the Secretary be physically present to issue a safety order in the event of a mine accident.

Prohibits an attorney from representing both a mine operator and miner during an inspection, investigation, or litigation, unless such miner knowingly waives all possible conflicts of interest.

**Title II: Enhanced Enforcement Authority** - (Sec. 202) Requires the Secretary to take certain action for mine operators having a pattern of recurring citations, withdrawal orders, accidents, injuries, or illnesses, including to: (1) notify the operator that the mine is in pattern status; (2) issue an order to require all persons be withdrawn from the mine; (3) issue a remediation order within three days; and (4) require the number of regular mine inspections to be increased to eight per year while the mine is in pattern status.

Authorizes the Secretary to cite mitigating circumstances and deem as not in pattern status any mine which would otherwise qualify for pattern status, but whose operator has: (1) already implemented remedial measures that have reduced risks to the health and safety of miners to the point that such risks are no longer elevated; and (2) taken sufficient measures to ensure such elevated risk will not recur. Specifies mine performance benchmarks which, if met, will require removal from pattern status.

Directs the Secretary to establish a publicly available and searchable electronic database containing information used to determine pattern status for all coal and other mines.

Requires the Secretary to assess and collect fees from mines in pattern status for the costs of additional inspections.

Authorizes appropriations.

(Sec. 203) Authorizes the Secretary to institute a civil action for injunctive relief in a U.S. district court for a mine operator that engages in a course of conduct that constitutes a continuing hazard to the health or safety miners.

(Sec. 204) Requires the Secretary to revoke the approval of mine operator plans or programs based on certain criteria. Authorizes the Secretary, in such an event, to order withdrawal of all persons from a mine or an area in it, and prohibit them from entering it or the area, until the operator submits and the Secretary approves a new plan.

(Sec. 205) Requires the Federal Mine Safety and Health Review Commission and the courts to affirm the Secretary's decision to approve, modify, or revoke a mine plan unless the decision is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(Sec. 206) Directs the Comptroller General to report to Congress on the timeliness of Mine Safety and Health Administration (MSHA) approval of underground coal mine plans and plan amendments, including factors that contribute to the delay of plan approval as well as recommendations for improving timeliness of plan review.

**Title III: Penalties** - (Sec. 301) Doubles the civil penalty for mine operators who are in pattern status and fail to meet certain mine performance benchmarks.

Requires the Secretary to propose, and the Commission to assess, a civil penalty against mine operators of between \$10,000 and \$100,000 for violations of certain discrimination prohibitions during any three-year period.

(Sec. 302) Revises the civil and criminal liability of directors, officers, or agents of a mine operator who knowingly authorize, order, or carry out a policy or practice that results in a violation of a health and safety standard or a refusal to comply with an order.

(Sec. 303) Changes the criminal intent standard required for violations of mandatory health and safety standards from "willful" to "knowing". Increases the civil penalty for subsequent convictions for repeated violations.

Subjects to certain criminal penalties mine operators who knowingly: (1) expose miners to a significant risk of serious

injury or illness or death; or (2) tamper with or disable a safety device which exposes miners to a significant risk of serious injury or illness or death.

Subjects to certain criminal penalties mine operators who knowingly discriminate against a person who has provided the Secretary, a state or local mine safety or health official, or other law enforcement officer with evidence of health or safety violations or unhealthful or unsafe conditions or practices.

Revises the elements of the criminal offense of knowingly giving advance notice of a mine inspection with the intent to impede, interfere with, or adversely affect the results of such inspection.

Requires a mine operator to post, in a conspicuous place, a notice stating: (1) that giving of such an advance notice is unlawful; and (2) the maximum penalties for violation of such requirements.

(Sec. 304) Prescribes requirements for Commission assessment of penalties following a review of citations and proposed penalty assessments, with permission to assess a penalty for less than the amount proposed in extraordinary circumstances.

(Sec. 305) States that pre-final order interest on any penalties owed shall begin to accrue on the date a mine operator contests a citation, including for violation of any mandatory health or safety standard or regulation promulgated under this Act, at an interest rate calculated at the current underpayment rate.

Prescribes administrative actions in the event a mine operator fails to pay any civil penalty assessment, including delinquency letters and withdrawal orders.

**Title IV: Worker Rights and Protections -** (Sec. 401) Revises certain miner protections against discrimination. Prohibits discriminating against a miner or other employee of a mine operator for refusing to perform duties out of a good-faith and reasonable belief that performing such duties would pose a safety or health hazard.

(Sec. 402) Revises the entitlement of a miner to specified compensation by a mine operator for certain periods for which the miner is idled because of a Secretary's withdrawal order. (Under current law, miners are entitled to full compensation only for the balance of their shift, and up to four hours of the next working shift if an order is not terminated beforehand.) Entitles all miners idled by a withdrawal order to full compensation by the operator at their regular rates of pay and in accordance with their regular schedules of pay for the entire period for which they are idled, up to 60 days. Applies the same compensation entitlement to occasions when the operator closes a mine in anticipation of a withdrawal order. Excepts from this latter pay requirement any operator that promptly withdraws miners upon discovery of a hazard, and timely notifies the Secretary if required.

Extends the entitlement to full pay at regular rates for the entire withdrawal order period, in addition to compensation earned, to all miners who would have been withdrawn from a mine if the operator had complied with the order but instead violated, failed, or refused to comply with it. Requires the Secretary to order a mine that has been subject to a withdrawal order but has reopened to be closed again if such compensation is not paid by a certain date.

(Sec. 403) Prohibits an underground coal mine operator, for three years after being placed on pattern status, from either discharging or constructively discharging a miner paid on an hourly basis without reasonable job-related grounds based on certain failures to perform job duties satisfactorily, if the miner has completed the employer's probationary period of up to six months. Allows a miner aggrieved by violation of this prohibition to file a complaint in federal district court for reinstatement and compensatory damages.

**Title V: Modernizing Health and Safety Standards -** (Sec. 501) Requires each underground coal mine operator to implement a communication program to ensure that each miner entering a mine is orally briefed on and made aware, before traveling to or arriving at the miner's work area and commencing assigned tasks, of current mine conditions, especially if hazardous.

(Sec. 502) Prescribes additional requirements for the monitoring of coal dust in underground mines.

(Sec. 503) Requires the Director of the National Institute for Occupational Safety and Health (NIOSH), acting through the Office of Mine Safety and Health Research, to issue recommendations to the Secretary regarding the use of atmospheric monitoring systems in the underground coal mining industry.

(Sec. 504) Directs the Secretary to promulgate final regulations to require mine operators to use environmental controls to give miners the maximum feasible protection from respirable dust, including coal and silica dust.

(Sec. 505) Revises mine operator health and safety training program requirements. Increases from 8 to 9 the minimum number of hours of refresher training all miners must receive at least once every 12 months, including 1 hour of training on miners' statutory rights and responsibilities.

Requires health and safety training programs to include distribution of: (1) information to miners regarding miners' rights; as well as (2) a durable wallet card containing a toll-free hotline telephone number to report miner complaints regarding hazardous mine conditions, discrimination, or mine safety or health violations or concerns.

(Sec. 506) Requires the Secretary to order a mine operator to provide additional training to miners if a serious or fatal accident has occurred at a mine or it has experienced above-average accident and injury rates, citations, or withdrawal orders.

(Sec. 507) Requires the Secretary to issue mandatory standards to establish certification requirements and procedures for persons authorized by a mine operator to perform duties or provide training under such Act. Requires the Secretary to assess and collect fees from mine operators to fund such certification programs.

Authorizes appropriations.

**Title VI: Additional Mine Safety Provisions -** (Sec. 602) Authorizes the Secretary to make grants to states to assist them in developing and implementing miner certification programs. Increases the authorization of appropriations for assistance to states to cover such grants.

(Sec. 603) Amends the Black Lung Benefits Act to require a mine operator to deliver within 14 days a complete copy of the examining physician's report to any miner required to submit to a medical examination.

(Sec. 604) Exempts from the amendments made by this Act: (1) surface mines, except for surface facilities or impoundments physically connected to underground coal mines, or underground gassy mines; or (2) underground mines which are neither coal mines nor gassy mines.

**Title VII: Amendments to the Occupational Safety and Health Act -** (Sec. 701) Amends the Occupational Safety and Health Act of 1970 to revise certain employee protections against discrimination. Prohibits discriminating against an employee for refusing to perform duties out of a good-faith and reasonable belief that performing such duties would pose a safety or health hazard.

Prescribes procedures for filing a complaint against, investigating, and providing relief from discharge, disciplining, or other discrimination, as well as settlement of a complaint.

(Sec. 702) Prescribes an employee's victim rights before the Secretary or before the Occupational Safety and Health Review Commission with respect to: (1) inspections or investigations of employer violations of federal occupational safety and health standards; or (2) a work-related bodily injury or death.

(Sec. 703) Prescribes administrative requirements for an employer's correction of a serious, willful, or repeated violation of federal occupational safety and health standards pending contest and procedures for a stay.

(Sec. 705) Increases civil penalties for such violations.

(Sec. 706) Subjects to certain increased criminal penalties an employer who knowingly violates a federal occupational safety and health standard, or regulation prescribed by such Act, that causes or contributes to the death of an employee.

Subjects to certain increased criminal penalties a person who knowingly gives advance notice of any mine inspection with the intent to impede, interfere with, or adversely affect the results of such inspection. (Under current law, there is a strict liability standard for giving of such notice.)

Adds criminal penalties for a knowing violation that causes or contributes to serious bodily harm to any employee but does not cause any employee's death.

(Sec. 707) States that pre-final order interest on any penalties owed shall begin to accrue on the date a mine operator contests a citation, at an interest rate calculated at the current underpayment rate.

(Sec. 708) Revises requirements for review of state occupational safety and health plans.

(Sec. 709) Expands the list of persons who can request the Secretary to evaluate whether a substance, piece of equipment, or working condition in a place of employment has potentially toxic or hazardous effects.

(Sec. 710) Authorizes the Director of NIOSH, acting through the Office of Mine Safety and Health, to enter into cooperative agreements with international institutions and private entities to improve mine safety and health through new interventions.

## Actions Timeline

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- **Jul 29, 2010:** Reported (Amended) by the Committee on 111-579, Part I.
- **Jul 29, 2010:** Referred sequentially to the House Committee on the Judiciary for a period ending not later than July 29, 2010 consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X.
- **Jul 29, 2010:** Committee on Judiciary discharged.
- **Jul 29, 2010:** Placed on the Union Calendar, Calendar No. 334.
- **Jul 21, 2010:** Committee Consideration and Mark-up Session Held.
- **Jul 21, 2010:** Ordered to be Reported (Amended) by the Yeas and Nays: 30 - 17.
- **Jul 13, 2010:** Committee Hearings Held.
- **Jul 1, 2010:** Introduced in House
- **Jul 1, 2010:** Referred to the House Committee on Education and Labor.