

KEY VOTE **ALERT!**



Congressional & Public Affairs
U.S. Chamber of Commerce
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December 7, 2010

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly opposes H.R. 6495, the "Robert C. Byrd Mine Safety Protection Act of 2010," which may be considered by the House this week. This unbalanced and punitive legislation is premature and has the potential to significantly curtail the domestic underground coal mining industry and risk the jobs of tens of thousands of miners.

While this bill would purportedly legislate "solutions" to the conditions that led to the tragedy at the Upper Big Branch coal mine in West Virginia on April 5, 2010, there has been no analysis or study released of what caused that incident. This bill is not an appropriate response to that disaster, and Congress should not act on legislation before the cause of the accident has been ascertained.

The impact of H.R. 6495 would be severe. It would implement a radical restructuring of the relationship between the Mine Safety and Health Administration (MSHA) and its regulated employers that would make it much more difficult for mining companies to operate.

- The bill would replace the existing "pattern of violations" framework with a "pattern of recurring noncompliance or accidents" scheme that would subject operators to "pattern" level sanctions based only on the fact that citations and orders have been issued by MSHA, but not proven. The new "pattern" bar would be so low that it would be difficult for any underground coal mine operator to avoid its reach or to get out of pattern status once in it. Once an operator finds itself in a "pattern of recurring noncompliance or accidents," the entire mine would be shut down, not just the portion related to the citation, subject to correction through a "remedial order," which would allow MSHA to substitute its judgments on how to operate the mine for those of mine management. What constitutes such a "pattern" is not defined in the bill. Thus, mining operators could be forced to suffer significant economic loss without the benefit of due process protections.

- H.R. 6495 would impose pre-judgment interest penalties on employers, which would be compounded daily, should they challenge a citation from MSHA. Such a provision would penalize companies for exercising their due process rights. There is no provision for repayment of this penalty if the employer prevails in a challenge.
- The bill would also impose a ban on underground coal mine operators using at-will employment for three years after the mine operator was placed on “pattern” status. Miners who believe they have been discharged other than for cause would be given the right to sue the operator in federal court within one year of the discharge. This provision would involve MSHA in decisions that are best reserved for management decision makers or the subject of labor negotiations.

This bill would make dramatic changes in how MSHA cites employers for violations, granting MSHA expansive and intrusive authority to impose severe penalties on mine operators without the protections of legal due process rights. A rush to approve such a controversial bill during the waning days of the “lame duck” session of Congress is unwarranted. **The Chamber urges you to oppose H.R. 6495 and may consider including votes on, or in relation to, this issue in our annual *How They Voted* scorecard.**

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first name "R." and last name "Josten" being the most legible parts.

R. Bruce Josten