

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974



ENROLLED

Committee Substitute for

SENATE BILL NO. 503

(By Mr. Susman)



PASSED March 9 1974

In Effect July 1, 1974 ~~Passage~~



503

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 3/29/74

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 503

(By MR. SUSMAN, *original sponsor*)

[Passed March 9, 1974; in effect July 1, 1974.]

AN ACT to repeal section twenty, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article two of said chapter; to amend and reenact article six of said chapter; to further amend said chapter twenty-two by adding thereto a new article, designated article six-a; and to amend article six, chapter twenty of said code by adding thereto a new section, designated section twenty-a, all relating to coal miner and prospective miner training, education and certification; requiring certification of all surface miners after the first day of July, one thousand nine hundred seventy-six; requiring the employment of a mine foreman—fire boss; assistants; requirements for certification; equivalency of certificates; certification of underground and surface coal miners; definitions; permits of apprenticeship; requiring adequate supervision of apprentices; refusal to issue certificates; appeal; limitations of article; making working without a certificate, employing an uncertified miner or failure to supervise apprentices a misdemeanor and providing penalties; establishing a board of miner training, education and certification; declarations of legislative findings and purposes; board powers; methods of appointment; meet-

ings; duties of director and departments; and authorizing the payment of a stipend to prospective miners in training.

Be it enacted by the Legislature of West Virginia:

That section twenty, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section seven, article two of said chapter be amended and reenacted; that article six of said chapter be amended and reenacted; that said chapter twenty-two be further amended by adding thereto a new article, designated article six-a; and that article six, chapter twenty of said code be amended by adding thereto a new section, designated section twenty-a, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-20a. Surface miner; certification required.

1 After the first day of July, one thousand nine hundred
2 seventy-six, certification shall be required of all surface
3 miners in accordance with the provisions of articles six
4 and six-a, chapter twenty-two of this code.

CHAPTER 22.....MINES AND MINERALS.

ARTICLE 2. COAL MINES.

§22-2-7. When underground mine foreman—fire boss required; assistants; certification.

1 (a) In every underground mine where five or more
2 persons are employed in a period of twenty-four hours,
3 the operator shall employ at least one person certified
4 in accordance with the provisions of article six-a of this
5 chapter as a mine foreman—fire boss. Each applicant for
6 certification as a mine foreman—fire boss shall, at the
7 time he is issued a certificate of competency; (1) Be a
8 resident or employed in a mine in this state; (2) have had
9 at least five years' experience in the underground work-
10 ing, ventilation, and drainage of a coal mine, which shall
11 include at least eighteen months' experience on or at a
12 working section of an underground mine or be a graduate
13 of the School of Mines at West Virginia University or of

14 another accredited mining engineering school and have
15 had at least two years' practical experience in an under-
16 ground mine, which shall include at least eighteen
17 months' experience on or at a working section of an
18 underground mine; and (3) have demonstrated his know-
19 ledge of dangerous mine gases and their detection, mine
20 safety, first aid, safety appliances, state and federal
21 mining laws and regulations and other subjects by com-
22 pleting such training, education, and examinations as may
23 be required of him under article six-a of this chapter.

24 (b) In mines in which the operations are so extensive
25 that the duties devolving upon the mine foreman—fire
26 boss cannot be discharged by one man, one or more
27 assistant mine foreman—fire bosses may be designated.
28 Such persons shall act under the instruction of the mine
29 foreman—fire boss, who shall be responsible for their
30 conduct in the discharge of their duties. Each assistant
31 so designated shall be certified under the provisions of
32 article six-a of this chapter. Each applicant for certifi-
33 cation as assistant mine foreman—fire boss shall, at the
34 time he is issued a certificate of competency, possess
35 all of the qualifications required of a mine foreman—
36 fire boss: *Provided*, That he shall at the time he is certified
37 be required to have at least three years' experience in
38 the underground working, ventilation and drainage of
39 coal mines, which shall include eighteen months on or
40 at a working section of an underground mine or be a
41 graduate of the School of Mines at West Virginia Uni-
42 versity or of another accredited mining engineering
43 school and have had twelve months' practical experience
44 in an underground mine, all of which shall have been
45 on or at a working section.

46 (c) Until the first day of January, one thousand nine
47 hundred seventy-seven, in mines in which the operations
48 are so extensive that all the duties devolving upon the
49 mine foreman—fire boss cannot be discharged by one man,
50 competent persons having had at least three years' ex-
51 perience in coal mines may be designated as assistants,
52 who shall act under the mine foreman—fire boss' instruc-
53 tions and the mine foreman—fire boss shall be responsible

54 for their conduct in the discharge of their duties under
55 such designation.

56 (d) Any person holding a mine foreman's certificate
57 issued by any other state may act in the capacity of mine
58 foreman—fire boss in any mine in this state until the next
59 regular mine foreman—fire boss' examination held by the
60 department, but not to exceed a maximum of ninety days.

61 (e) After the effective date of this act, all duties
62 heretofore performed by persons certified as mine fore-
63 man, assistant mine foreman or fire bosses shall be per-
64 formed by persons certified as underground mine fore-
65 man—fire bosses or an assistant underground mine fore-
66 man and fire bosses.

67 After the effective date of this act, every certificate
68 heretofore issued to an assistant mine foreman or fire
69 boss shall be deemed to be of equal value to a certificate
70 issued hereafter to an assistant mine foreman—fire boss,
71 and every certificate heretofore issued to a mine foreman
72 shall be deemed to be of equal value to a certificate
73 issued hereafter to a mine foreman—fire boss.

**ARTICLE 6. CERTIFICATION OF UNDERGROUND AND SURFACE
COAL MINERS.**

**§22-6-1. Certificate of competency and qualification or permit
of apprenticeship required of all surface and un-
derground miners.**

1 Except as hereinafter provided, no person shall work
2 or be employed for the purpose of performing normal
3 duties as a surface or underground miner in any mine
4 in this state unless he holds at the time he performs
5 such duties a certificate of competency and qualification
6 or a permit of apprenticeship issued under the provisions
7 of this article.

§22-6-2. Definitions.

1 For purposes of this article the term "surface miner"
2 means a person employed at a "surface mine," as that
3 term is defined in section two, article six, chapter twenty
4 of this code.

5 For purposes of this article, the term "underground
6 miner" means an underground worker in a bituminous
7 coal mine, except as hereinafter provided.

8 For purposes of this article, the term "board of miner
9 training, education and certification" means that board
10 established in article six-a of this chapter.

§22-6-3. Permit of apprenticeship—underground miner.

1 A permit of apprenticeship—underground miner shall
2 be issued by the director to any person who has demon-
3 strated by examination a knowledge of the subjects and
4 skills pertaining to employment in underground mines,
5 including, but not limited to general safety, first aid,
6 miner and operator rights and responsibilities, general
7 principles of electricity, general mining hazards, roof
8 control, ventilation, mine health and sanitation, mine
9 mapping, state and federal mining laws and regulations
10 and such other subjects as may be required by the board
11 of miner training, education and certification: *Provided,*
12 That each applicant for said permit shall complete a pro-
13 gram of education and training of at least eighty hours,
14 which shall be determined by the board of miner training,
15 education and certification and provided for and imple-
16 mented by the director of the department of mines: *And*
17 *provided further,* That if a sufficient number of qualified
18 applicants having successfully completed the state train-
19 ing provided by the state department of mines are not
20 available, the operator may request approval from the di-
21 rector to conduct his own pre-employment training pro-
22 gram so long as such training adequately covers the mini-
23 mum criteria determined by the board and such trainees
24 shall be eligible for the same certification as provided
25 for trainees undergoing training provided by the state.

§22-6-4. Permit of apprenticeship—surface miner.

1 A permit of apprenticeship—surface miner, shall be is-
2 sued by the director to any person who has demonstrated
3 by examination a knowledge of the subjects and skills
4 pertaining to employment in the surface mining industry,
5 including, but not limited to general safety, first aid, miner
6 and operator rights and responsibilities, general principles

7 of electricity, health and sanitation, heavy equipment
8 safety, high walls and spoil banks, haulage, welding safety,
9 tippie safety, state and federal mining laws and regula-
10 tions and such other subjects as may be required by the
11 board of miner training, education and certification: *Pro-*
12 *vided*, That each applicant for said permit shall complete
13 a program of education and training of at least forty hours,
14 which program shall be determined by the board of miner
15 training, education and certification and provided for and
16 implemented by the director of the department of mines:
17 *And provided further*, That if a sufficient number of
18 qualified applicants having successfully completed the
19 state training provided by the state department of mines
20 are not available, the operator may request approval from
21 the director to conduct his own pre-employment training
22 program so long as such training adequately covers the
23 minimum criteria determined by the board and such
24 trainees shall be eligible for the same certification as
25 provided for trainees undergoing training provided by
26 the state.

§22-6-5. Supervision of apprentices.

1 Each holder of a permit of apprenticeship shall be
2 known as an apprentice. Any miner holding a certificate
3 of competency and qualification may have one person
4 working with him, and under his direction, as an appren-
5 tice, and any mine foreman—fire boss or assistant mine
6 foreman—fire boss may have not more than five persons
7 working with him and under his immediate supervision
8 and direction, as apprentices, for the purpose of learning
9 and being instructed in the duties and calling of mining.

10 Every apprentice working at a surface mine shall be at
11 all times under the supervision and control of at least one
12 person who holds a certificate of competency and qualifi-
13 cation: *Provided*, That whenever the director determines
14 that a person trained, qualified or certified by the federal
15 government to act in a supervisory capacity is competent
16 to supervise five or more surface mine apprentices, such
17 person may have not more than five apprentices working
18 with him and under his supervision and direction.

19 In all cases, it shall be the duty of every mine operator
 20 who employes apprentices to insure that such persons are
 21 effectively supervised and to instruct such persons in safe
 22 mining practices. Each apprentice shall wear a red hat
 23 which identifies him as such while employed at or near
 24 a mine. No person shall be employed as an apprentice
 25 for a period in excess of eight months, except that in the
 26 event of illness or injury, time extensions shall be per-
 27 mitted as established by the director of the department
 28 of mines.

§22-6-6. Certificate of competency and qualification—underground or surface miner.

1 A certificate of competency and qualification as an un-
 2 derground miner or as surface miner shall be issued by
 3 the director to any person who has at least six months'
 4 total experience as an apprentice and demonstrated his
 5 competence as a miner by successful completion of an
 6 examination given by the director or his representative
 7 in a manner and place to be determined by the board of
 8 miner training, education and certification: *Provided,*
 9 That all examinations shall be conducted in the English
 10 language and shall be of a practical nature, so as to
 11 determine the competency and qualifications of the appli-
 12 cant to engage in the mining of coal with reasonable
 13 safety to himself and his fellow employees: *And provided*
 14 *further,* That notice of the time and place of such exami-
 15 nation shall be given to management at the mine, to the
 16 local union thereat if there is a local union, and notice
 17 shall also be posted at the place or places in the vicinity
 18 of the mine where notices to employees are ordinarily
 19 posted. Examinations shall also be held at such times and
 20 places, and after such notice, as the board finds necessary
 21 to enable all applicants for certificates to have an oppor-
 22 tunity to qualify for certification.

§22-6-7. Refusal to issue certificate; appeal.

1 If the director or his representative finds that an appli-
 2 cant is not qualified and competent, he shall so notify the
 3 applicant not more than ten days after the date of ex-
 4 amination.

5 Any applicant aggrieved by an action of the director
6 in failing or refusing to issue a certificate of qualification
7 and competency may, within ten days of notice of the
8 action complained of, appeal to the director who shall
9 promptly give the applicant a hearing and either affirm
10 the action or take such action as should have been taken.

§22-6-8. Limitations of article.

1 All persons possessing certificates of qualification issued
2 by the department of mines of this state, entitling them to
3 act as mine foreman—fire bosses; or assistant mine fore-
4 man—fire bosses; shall be eligible to engage at any time
5 as miners in the mines of this state. Supervisory and tech-
6 nically trained employees of the operator, whose work
7 contributes only indirectly to mine operations, shall not
8 be required to possess a miners' certificate.

9 Notwithstanding the provisions of this article, every
10 person working as a surface miner in this state on or be-
11 fore the first day of July, one thousand nine hundred and
12 seventy-four shall, upon application to the director, be
13 issued a certificate of competency and qualification.

§22-6-9. Violations; penalties.

1 Any person who knowingly works in or at a mine with-
2 out a certificate issued under the provisions of this ar-
3 ticle, any person who knowingly employs an uncertified
4 miner to work in or at a coal mine in this state, or, any
5 operator who fails to insure the supervision of miners
6 holding a certificate of apprenticeship as provided for
7 in section five of this article, shall be guilty of a mis-
8 demeanor, and, upon conviction thereof, shall be fined
9 not less than fifty dollars nor more than five hundred
10 dollars.

**ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND
CERTIFICATION.**

§22-6A-1. Short title.

1 This article shall be cited as "The West Virginia Miner
2 Training, Education and Certification Act."

§22-6A-2. Declaration of legislative findings and policy.

1 The Legislature hereby finds and declares that:

2 (a) The continued prosperity of the coal industry is of
3 primary importance to the state of West Virginia;

4 (b) The highest priority and concern of this Legisla-
5 ture and all in the coal mining industry must be the
6 health and safety of the industry's most valuable resource
7 —the miner;

8 (c) A high priority must also be given to increasing
9 the productivity and competitiveness of the mines in this
10 state;

11 (d) An inordinate number of miners, working on both
12 the surface in surface mining and in and at underground
13 mines, are injured during the first few months of their
14 experience in a mine;

15 (e) These injuries result in the loss of life and serious
16 injury to miners and are an impediment to the future
17 growth of West Virginia's coal industry;

18 (f) Injuries can be avoided through proper miner
19 training, education and certification;

20 (g) Mining is a technical occupation with various
21 specialties requiring individualized training and educa-
22 tion; and

23 (h) It is the general purpose of this article to:

24 (1) Require adequate training, education and mean-
25 ingful certification of all persons employed in coal mines;

26 (2) Establish a board of miner training, education,
27 and certification and empower it to require certain train-
28 ing and education of all prospective miners and miners
29 certified by the state;

30 (3) Authorize a stipend for prospective miners en-
31 rolled in this state's miner training, education and certi-
32 fication program;

33 (4) Direct the director of the department of mines to
34 apply and implement the standards set by the board of

35 miner training, education, and certification by estab-
36 lishing programs for miner and prospective miner educa-
37 tion and training; and

38 (5) Provide for a program of continuing miner educa-
39 tion for all categories of certified miners.

§22-6A-3. Definitions.

1 Unless the context in which a word or phrase appears
2 clearly requires a different meaning, the words defined in
3 section one, article one of this chapter shall have when
4 used in this article the meaning therein assigned to them.
5 These words include but are not limited to the following:
6 Department, director of the department of mines, mine
7 inspector, operator, miner, shot firer and certified elec-
8 trician.

9 "Board" means the board of miner training, education
10 and certification established by section four of this article.

11 "Mine" means any mine, including a "surface mine," as
12 that term is defined in subsection (k), section two, ar-
13 ticle six, chapter twenty and a "mine" as that term is
14 defined in section one, article one, chapter twenty-two of
15 this code.

**§22-6A-4. Board of miner training, education and certification
created; membership, method of appointment,
terms.**

1 (a) There is hereby created a board of miner train-
2 ing, education and certification, which shall consist of
3 seven members, who shall be appointed in the following
4 manner:

5 (1) One member shall be appointed to represent the
6 viewpoint of surface mine operators in this state. When
7 such member is to be appointed, the governor shall re-
8 quest from the major association representing surface
9 coal operators in this state a list of three nominees to
10 the board. The governor shall select from said nominees
11 one person to serve on the board. For purposes of this
12 subsection, the major association representing the surface
13 coal operators in this state shall be deemed to be that

14 association, if any, which represents surface mine oper-
15 ators accounting for over one half of the coal produced
16 in surface mines in this state in the year prior to that
17 year in which the appointment is made.

18 (2) Two members shall be appointed to represent
19 the interests of the underground operators of this state.
20 When said members are to be appointed, the governor
21 shall request from the major association representing
22 the underground coal operators in this state a list of
23 six nominees to the board. The governor shall select
24 from said nominees two persons to serve on the board.
25 For purposes of this subsection, the major association
26 representing the underground operators in this state shall
27 be deemed to be that association, if any, which repre-
28 sents underground operators accounting for over one
29 half of the coal produced in underground mines in this
30 state in the year prior to that year in which the appoint-
31 ments are made.

32 (3) Three members shall be appointed who can rea-
33 sonably be expected to represent the interests of the
34 working miners in this state. If the major employee
35 organization representing coal miners in this state is
36 divided into administrative districts, the employee orga-
37 nization of each district shall, upon request by the gover-
38 nor, submit a list of three nominees for membership on
39 the board. If such major employee organization is not so
40 divided into administrative districts, such employee or-
41 ganization shall, upon request by the governor, submit
42 a list of twelve nominees for membership on the board.
43 The governor shall make such appointments from the
44 persons so nominated: *Provided*, That in the event nom-
45 inations are made by administrative districts, not more
46 than one member shall be appointed from the nominees
47 of any one district unless there are less than three such
48 districts in this state.

49 (4) The seventh member of the board, who shall
50 serve as chairman, shall be a person selected and agreed
51 upon by the six persons appointed by the governor.

52 (5) All appointments made by the governor under this

53 section shall be with the advice and consent of the
54 Senate: *Provided*, That persons so appointed while the
55 Senate of this state is not in session shall be permitted
56 to serve up to one year in an acting capacity, or until
57 the next session of the Legislature, whichever is less.

58 (b) The board hereby established shall be appointed
59 by the governor within three months of the effective
60 date of this act. As soon as the members of the board are
61 appointed, the director of the department of mines shall
62 call an organizational meeting of the board. At said
63 meeting, all of the board members then appointed shall
64 select a seventh member of the board to serve as chair-
65 man and draw lots to determine the length of the term
66 they and the chairman shall serve. Three members shall
67 serve for three years; two members shall serve for two
68 years; and two members shall serve for one year. There-
69 after, members shall serve for a term of three years. As
70 so organized, the board shall meet at the call of the
71 chairman, at the call of the director, or upon the request
72 of any two members of the board: *Provided*, That no
73 meeting of the board for any purpose shall be conducted
74 unless the board members are notified at least five days
75 in advance of a proposed meeting. In cases of an emer-
76 gency, members may be notified of a board meeting by
77 the most appropriate means of communication available.

78 (c) Whenever a vacancy on the board occurs, appoint-
79 ments shall be made in the manner prescribed in this sec-
80 tion: *Provided*, That in the case of an appointment to fill a
81 vacancy nominations shall be submitted to the governor
82 within thirty days after the vacancy occurs. The vacancy
83 shall be filled by the governor within thirty days of his
84 receipt of the list of nominations.

85 (d) Each member of the board shall receive seventy-
86 five dollars per diem while actually engaged in the per-
87 formance of the work of the board and shall receive
88 mileage at the rate of fifteen cents for each mile actually
89 traveled going from the home of the member to the place
90 of the meeting of the board and returning therefrom,
91 which shall be paid out of the state treasury upon a

92 requisition upon the state auditor, properly certified by
93 such members of the board.

94 (e) A quorum of the board shall be four members; the
95 board may act officially by a majority of those members
96 who are present.

97 (f) The chairman of the board shall be a nonvoting
98 member: *Provided*, That in cases of a tie, the chairman
99 shall cast the deciding vote on the issue or issues under
100 consideration.

101 (g) The director of the department of mines shall
102 serve as the secretary to the board and shall be present
103 or send an authorized representative to all meetings of
104 the board.

§22-6A-5. Board powers and duties.

1 (a) The board shall establish criteria and standards for
2 a program of education, training and examination to be
3 required of all prospective miners and miners prior to
4 their certification in any of the various miner specialties
5 requiring certification, under this article or any other pro-
6 vision of this code. Such specialties include, but are not
7 limited to underground miner, surface miner, apprentice,
8 underground mine foreman—fire boss, assistant under-
9 ground mine foreman—fire boss, shot firer, mine electri-
10 cian and belt examiner.

11 (b) The board may require certification in other miner
12 occupational specialties: *Provided*, That no new specialty
13 may be created by the board unless certification in a new
14 specialty is made desirable by action of the federal gov-
15 ernment requiring certification in a specialty not enumer-
16 ated in this code.

17 (c) The board may establish criteria and standards for
18 a program of pre-employment education and training to
19 be required of miners working on the surface at under-
20 ground mines who are not certified under the provisions of
21 this article or any other provision of this code.

22 (d) The board shall set minimum standards for a pro-
23 gram of continuing education and training of certified

24 persons and other miners on an annual basis. Prior to
25 issuing said standards, the board shall conduct public
26 hearings at which the parties that may be affected by its
27 actions may be heard. Such education and training shall
28 be provided in a manner determined by the director to be
29 sufficient to meet the standards established by the board.

30 (e) The board may, in conjunction with any state,
31 local or federal agency or any other person or institution,
32 provide for the payment of a stipend to prospective miners
33 enrolled in one or more of the programs of miner educa-
34 tion, training and certification provided for in this article
35 or any other provision of this code.

36 (f) The board may also from time to time conduct
37 such hearings and other oversight activities as may be
38 required to insure full implementation of programs es-
39 tablished by it.

40 (g) Nothing in this article shall be deemed to empower
41 the board to revoke or suspend any certificate issued by
42 the director or the department of mines.

43 (h) The board may, upon its own motion or whenever
44 requested so to do by the director, deem two certificates
45 issued by this state to be of equal value or deem training
46 provided or required by federal agencies to be sufficient
47 to meet training and education requirements set by it, the
48 director, or by the provisions of this code.

§22-6A-6. Duties of director and department.

1 The director shall be empowered to promulgate, pur-
2 suant to chapter twenty-nine-a of this code, such reason-
3 able rules and regulations as are necessary to establish
4 a program to implement the provisions of this article.
5 Such program shall include, but not be limited to im-
6 plementation of a program of instruction in each of the
7 miner occupational specialties and the conduct of examina-
8 tions to test each applicant's knowledge and understand-
9 ing of the training and instruction which he is required
10 to have prior to the receipt of a certificate.

11 The director is authorized and directed to utilize state
12 mine inspectors, mine safety instructors, the state mine

13 foreman examiner, private and public institutions of edu-
14 cation and such other persons as may be available to him
15 in implementing the program of instruction and examina-
16 tions.

17 The director may, at any time, make such recommenda-
18 tions or supply such information to the board as he may
19 deem appropriate.

20 The director is authorized and directed to utilize such
21 state and federal moneys and personnel as may be avail-
22 able to the department for educational and training pur-
23 poses in the implementation of the provisions of this ar-
24 ticle.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Harold Hardy
Chairman Senate Committee

Lawrence C. Johnston, Jr.
Chairman House Committee

Originated in the Senate.

In effect July 1, 1974.

Harold W. Cannon
Clerk of the Senate

L. Blankenship
Clerk of the House of Delegates

H. T. Brotherton, Jr.
President of the Senate

James J. McManus
Speaker House of Delegates

The within approved this the 26th
day of March, 1974.

Mark A. Murray, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/14/74

Time 2:15 p.m.