

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977



ENROLLED

Committee Substitute for
SENATE BILL NO. 285

(By Mr. Swanson)



PASSED April 9, 1977

In Effect ninty days from Passage



285
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COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 285
(By Mr. SUSMAN)

[Passed April 9, 1977; in effect ninety days from passage.]

AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-b; to amend and reenact sections one, two, four, eleven, thirteen, twenty, twenty-one and thirty, article one, chapter twenty-two of said code; to further amend article one of said chapter twenty-two by adding thereto one new section, designated section thirty-a; to amend and reenact sections seven, eight, twelve, thirteen, fourteen, twenty-six, thirty-seven, thirty-eight, forty, forty-two, forty-nine and sixty, article two of said chapter twenty-two; to further amend article two of said chapter twenty-two by adding thereto six new sections, designated sections twenty-eight-a, fifty-three-a, seventy-a, seventy-b, seventy-c and seventy-d; to further amend chapter twenty-two, by adding thereto two new articles, designated article two-a and two-c; to amend and reenact section five, article six of said chapter; and to amend and reenact section five, article six-a of said chapter twenty-two, all relating to coal miners' health and safety; certification of surface mine foremen; definitions: duties of the director; contents of annual report; eligibility for appointment as mine inspector and qualifications and salary thereof; duties of inspectors and foremen and removal thereof; duties of mine foremen and assistant mine foremen; suspension of foremen; foremen suspended out of state; supervision of

apprentices; daily inspection of working places; records; safety inspection and removal of gases; roof control; equipment to conform with height of seam; haulage roads and equipment; transportation of men by cars; general provisions; telephone service or communication facilities; safeguards for mechanical equipment; creation of board of coal mine health and safety; power of the board to promulgate rules and regulations, rules and regulations not to be promulgated pursuant to chapter twenty-nine-a; outlets and emergency roadways; access roads; shafts, slopes and underground construction; right of miner to refuse to operate unsafe equipment; promulgation of regulation of long wall and short wall mining; construction of surface facilities; control of respirable dust; emergency medical personnel; definitions; permit of apprenticeship of underground mines; supervision of apprentices; certificate of competency and qualifications of underground or surface miners; limitations of article; board of miner training powers and duties; and providing for penalties thereof.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, eleven, thirteen, twenty, twenty-one and thirty, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections seven, eight, twelve, thirteen, fourteen, twenty-six, thirty-seven, thirty-eight, forty, forty-two, forty-nine and sixty, article two of said chapter, be amended and reenacted; that section five, article six of said chapter, be amended and reenacted; that section five, article six-a of said chapter, be amended and reenacted; that article six, chapter twenty of said code, be amended by adding thereto a new section, designated section twenty-b; that article one, chapter twenty-two of said code, be further amended by adding thereto a new section, designated section thirty-a; that article two of said chapter be further amended by adding thereto six new sections, designated sections twenty-eight-a, fifty-three-a, seventy-a, seventy-b, seventy-c and seventy-d; and that said chapter twenty-two be further amended by adding thereto two new articles, designated article two-a and two-c, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.**ARTICLE 6. SURFACE MINING AND RECLAMATION.****§20-6-20b. Certification of surface mine foremen.**

1 (a) In every surface mine where five or more persons
2 are employed in a period of twenty-four hours, the
3 operator shall employ at least one person certified in
4 accordance with the provisions of article six-a of this
5 chapter as a mine foreman. Each applicant for certifica-
6 tion as a mine foreman shall, at the time he is issued
7 a certificate of competency: (1) Be a resident or employed
8 in a mine in this state; (2) have had at least three years'
9 experience in surface mining, which shall include at least
10 eighteen months' experience on or at a working section
11 of a surface mine or be a graduate of the school of mines
12 at West Virginia University or of another accredited
13 mining engineering school and have had at least two
14 years' practical experience in a surface mine, which shall
15 include at least eighteen months' experience on or at a
16 working section of a surface mine; and (3) have demon-
17 strated his knowledge of mine safety, first aid, safety
18 appliances, emergency procedures relative to all equip-
19 ment, state and federal mining laws and regulations and
20 other subjects by completing such training, education
21 and examinations as may be required of him under article
22 six-a of this chapter.

23 (b) In surface mines in which the operations are so
24 extensive that the duties devolving upon the mine fore-
25 man cannot be discharged by one man, one or more
26 assistant mine foremen may be designated. Such persons
27 shall act under the instruction of the mine foreman who
28 shall be responsible for their conduct in the discharge of
29 their duties. Each assistant so designated shall be certified
30 under the provisions of article six-a of this chapter. Each
31 applicant for certification as assistant mine foreman shall,
32 at the time he is issued a certificate of competency,
33 possess all of the qualifications required of a mine fore-
34 man: *Provided*, That he shall at the time he is certified be
35 required to have at least two years' experience in surface
36 mining, which shall include eighteen months on or at a
37 working section of a surface mine or be a graduate of the

38 school of mines at West Virginia University or of another
39 accredited mining engineering school and have had
40 twelve months' practical experience in a surface mine, all
41 of which shall have been on or at a working section.

42 (c) The director shall by the first day of July, one
43 thousand nine hundred seventy-eight, promulgate such
44 rules and regulations as may be necessary to carry out
45 the provisions of this section.

CHAPTER 22. MINES AND MINERALS.

ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

§22-1-1. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, the following definitions shall apply
3 to articles one and two of this chapter:

4 (a) General.

5 (1) Accident: The term "accident" shall mean any
6 mine explosion, mine ignition, mine fire, or mine inunda-
7 tion, or injury to, or death of any person.

8 (2) Agent: The term "agent" means any person
9 charged with responsibility for the operation of all or
10 a part of a mine or the supervision of the miners in a
11 mine.

12 (3) Approved: The term "approved" shall mean in
13 strict compliance with mining law, or, in the absence of
14 law, accepted by a recognized standardizing body or
15 organization whose approval is generally recognized as
16 authoritative on the subject.

17 (4) Face equipment: The term "face equipment" shall
18 mean mobile or portable mining machinery having elec-
19 tric motors or accessory equipment normally installed or
20 operated in by the last open crosscut in an entry or
21 room.

22 (5) Imminent danger: The term "imminent danger"
23 means the existence of any condition or practice in a
24 coal mine which could reasonably be expected to cause
25 death or serious physical harm before such condition or
26 practice can be abated.

27 (6) Mine: The term "mine" includes the shafts, slopes,
28 drifts or inclines connected with, or intended in the
29 future to be connected with, excavations penetrating coal
30 seams or strata, which excavations are ventilated by
31 one general air current or divisions thereof, and con-
32 nected by one general system of mine haulage over which
33 coal may be delivered to one or more points outside the
34 mine, and the surface structures or equipment connected
35 or associated therewith which contribute directly or in-
36 directly to the mining, preparation or handling of coal,
37 or construction thereof.

38 (7) Miner: The term "miner" shall mean any indi-
39 vidual working in a coal mine.

40 (8) Operator: The term "operator" shall mean any
41 firm, corporation, partnership or individual operating
42 any coal mine or part thereof, or engaged in the con-
43 struction of any facility associated with a coal mine.

44 (9) Permissible: The term "permissible" shall mean
45 any equipment, device or explosive that has been ap-
46 proved as permissible by the United States bureau of
47 mines and meets all requirements, restrictions, excep-
48 tions, limitations and conditions attached to such classifi-
49 cation by the bureau.

50 (10) Person: The term "person" shall mean any indi-
51 vidual, partnership, association, corporation, firm, sub-
52 sidiary of a corporation or other organization.

53 (11) Work of preparing the coal: The term "work of
54 preparing the coal" shall mean the breaking, crushing,
55 sizing, cleaning, washing, drying, mixing, storing and
56 loading of bituminous coal or lignite, and such other work
57 of preparing such coal as is usually done by the operator
58 of the coal mine.

59 (b) *Department of Mines.*

60 (1) Board of appeals: The term "board of appeals"
61 shall mean as provided for in section thirty-one of this
62 article.

63 (2) Department: The term "department" shall mean
64 the state department of mines provided for in section
65 two of this article.

66 (3) Director of the department of mines: The term
67 "director of the department of mines" shall mean the
68 director of the department of mines provided for in sec-
69 tion three of this article, and is synonymous with the
70 term "chief of the department of mines."

71 (4) Mine inspector: The term "mine inspector" shall
72 mean a state mine inspector provided for in section
73 seven of this article.

74 (5) Mine inspectors' examining board: The term
75 "mine inspectors' examining board" shall mean the mine
76 inspectors' examining board provided for in section
77 twelve of this article.

78 (c) *Mine areas.*

79 (1) Abandoned workings: The term "abandoned work-
80 ings" shall mean excavation, either caved or sealed, that
81 is deserted and in which further mining is not intended,
82 or open workings which are ventilated and not inspected
83 regularly.

84 (2) Active workings: The term "active workings"
85 shall mean all places in a mine that are ventilated and
86 inspected regularly.

87 (3) Drift: The term "drift" shall mean a horizontal
88 or approximately horizontal opening through the strata
89 or in a coal seam and used for the same purposes as a
90 shaft.

91 (4) Excavations and workings: The term "excavations
92 and workings" shall mean any or all parts of a mine
93 excavated or being excavated, including shafts, slopes,
94 drifts, tunnels, entries, rooms and working places,
95 whether abandoned or in use.

96 (5) Inactive workings: The term "inactive workings"
97 shall include all portions of a mine in which operations
98 have been suspended for an indefinite period, but have
99 not been abandoned.

100 (6) Mechanical working section: The term "mechani-
101 cal working section" shall mean an area of a mine (1) in
102 which coal is loaded mechanically, (2) which is com-
103 prised of a number of working places that are generally

104 contiguous, and (3) which is of such size to permit neces-
105 sary supervision during shift operation, including pre-
106 shift and on-shift examinations and tests required by law.

107 (7) Panel: The term "panel" shall mean workings that
108 are or have been developed off of submain entries which
109 do not exceed three thousand feet in length.

110 (8) Return air: The term "return air" shall mean a
111 volume of air that has passed through and ventilated
112 all the working places in a mine section.

113 (9) Shaft: The term "shaft" shall mean a vertical
114 opening through the strata that is or may be used for
115 the purpose of ventilation, drainage, and the hoisting
116 and transportation of men and material, in connection
117 with the mining of coal.

118 (10) Slope: The term "slope" shall mean a plane or
119 incline roadway, usually driven to a coal seam from the
120 surface and used for the same purposes as a shaft.

121 (11) Working face: The term "working face" shall
122 mean any place in a coal mine in which work of extract-
123 ing coal from its natural deposit in the earth is performed
124 during the mining cycle.

125 (12) Working place: The term "working place" shall
126 mean the area of a coal mine in by the last open crosscut.

127 (13) Working section: The term "working section"
128 shall mean all area of the coal mine from the loading
129 point of the section to and including the working faces.

130 (14) Working unit: The term "working unit" shall
131 mean an area of a mine in which coal is mined with a
132 set of production equipment; a conventional mining unit
133 by a single loading machine; a continuous mining unit
134 by a single continuous mining machine, which is com-
135 prised of a number of working places.

136 (d) *Mine Personnel.*

137 (1) Assistant mine foreman: The term "assistant mine
138 foreman" shall mean a certified person designated to
139 assist the mine foreman in the supervision of a portion
140 or the whole of a mine or of the persons employed
141 therein.

142 (2) Certified electrician: The term "certified electrician"
143 shall mean any person who is qualified as a mine
144 electrician and who has passed an examination given by
145 the department of mines, or has at least three years of
146 experience in performing electrical work underground
147 in a coal mine, in the surface work areas of an under-
148 ground coal mine, in a surface coal mine, in a noncoal
149 mine, in the mine equipment manufacturing industry,
150 or in any other industry using or manufacturing similar
151 equipment, and has satisfactorily completed a coal mine
152 electrical training program approved by the department
153 of mines.

154 (3) Certified person: The term "certified person",
155 when used to designate the kind of person to whom the
156 performance of a duty in connection with the operation
157 of a mine shall be assigned, shall mean a person who is
158 qualified under the provisions of this law to perform
159 such duty.

160 (4) Interested persons: The term "interested persons"
161 shall include the operator, members of any mine safety
162 committee at the mine affected and other duly authorized
163 representative of the mine workers and department of
164 mines.

165 (5) Mine foreman: The term "mine foreman" shall
166 mean the certified person whom the operator or super-
167 intendent shall place in charge of the inside workings
168 of the mine and of the persons employed therein.

169 (6) Qualified person: The term "qualified person"
170 shall mean a person who has completed an examination
171 and is considered qualified on record by the department
172 of mines.

173 (7) Shot firer: The term "shot firer" shall mean any
174 person having had at least two years of practical experi-
175 ence in coal mines, who has a knowledge of ventilation,
176 mine roof and timbering, and who has demonstrated his
177 knowledge of mine gases, the use of a flame safety lamp,
178 and other approved detecting devices by examination
179 and certification given him by the department of mines.

180 (8) Superintendent: The term "superintendent" shall
181 mean the person who shall have, on behalf of the oper-
182 ator, immediate supervision of one or more mines.

183 (9) Supervisor: The term "supervisor" shall mean a
184 superintendent, mine foreman, assistant mine foreman,
185 or any person specifically designated by the superin-
186 tendent or mine foreman to supervise work or employees
187 and who is acting pursuant to such specific designation
188 and instructions.

189 (e) *Electrical.*

190 (1) Armored cable: The term "armored cable" shall
191 mean a cable provided with a wrapping of metal, usually
192 steel wires or tapes, primarily for the purpose of mechani-
193 cal protection.

194 (2) Borehole cable: The term "borehole cable" shall
195 mean a cable designed for vertical suspension in a bore-
196 hole or shaft and used for power circuits in the mine.

197 (3) Branch circuit: The term "branch circuit" shall
198 mean any circuit, alternating current or direct current,
199 connected to and leading from the main power lines.

200 (4) Cable: The term "cable" shall mean a standard
201 conductor (single conductor cable) or a combination of
202 conductors insulated from one another (multiple con-
203 ductor cable).

204 (5) Circuit breaker: The term "circuit breaker" shall
205 mean a device for interrupting a circuit between sep-
206 arable contacts under normal or abnormal conditions.

207 (6) Delta connected: The term "delta connected" shall
208 mean a power system in which the windings or trans-
209 formers or a.c. generators are connected to form a tri-
210 angular phase relationship, and with phase conductors
211 connected to each point of the triangle.

212 (7) Effectively grounded: The term "effectively
213 grounded" is an expression which means grounded
214 through a grounding connection of sufficiently low im-
215 pendance (inherent or intentionally added or both) so
216 that fault grounds which may occur cannot build up

217 voltages in excess of limits established for apparatus,
218 circuits or systems so grounded.

219 (8) Flame-resistant cable, portable: The term "flame-
220 resistant cable, portable" shall mean a portable flame-
221 resistant cable that has passed the flame tests of the
222 federal bureau of mines.

223 (9) Ground or grounding conductor (mining): The
224 term "ground or grounding conductor (mining)", also
225 referred to as a safety ground conductor, safety ground,
226 and frame ground, shall mean a metallic conductor used
227 to connect the metal frame or enclosure of any equip-
228 ment, device or wiring system with a mine track or
229 other effective grounding medium.

230 (10) Grounded (earthed): The term "grounded
231 (earthed)" shall mean that the system, circuit, or appa-
232 ratus referred to is provided with a ground.

233 (11) High voltage: The term "high voltage" shall
234 mean voltages of more than one thousand volts.

235 (12) Lightning arrester: The term "lightning arrester"
236 shall mean a protective device for limiting surge volt-
237 age on equipment by discharging or by passing surge
238 current; it prevents continued flow of follow current to
239 ground and is capable of repeating these functions as
240 specified.

241 (13) Low voltage: The term "low voltage" shall mean
242 up to and including six hundred sixty volts.

243 (14) Medium voltage: The term "medium voltage"
244 shall mean voltages from six hundred sixty-one to one
245 thousand volts.

246 (15) Mine power center or distribution center: The
247 term "mine power center or distribution center" shall
248 mean a combined transformer or distribution unit, com-
249 plete within a metal enclosure from which one or more
250 low-voltage power circuits are taken.

251 (16) Neutral (derived): The term "neutral (derived)"
252 shall mean a neutral point or connection established by

253 the addition of a "zig-zag" or grounding transformer to
254 a normally underground power system.

255 (17) Neutral point: The term "neutral point" shall
256 mean the connection point of transformer or generator
257 windings from which the voltage to ground is nominally
258 zero, and is the point generally used for system ground-
259 ings in wye-connected a.c. power system.

260 (18) Portable (trailing) cable: The term "portable
261 (trailing) cable" shall mean a flexible cable or cord used
262 for connecting mobile, portable or stationary equipment
263 in mines to a trolley system or other external source
264 of electric energy where permanent mine wiring is pro-
265 hibited or is impracticable.

266 (19) Wye-connected: The term "wye-connected" shall
267 mean a power system connection in which one end of
268 each phase windings or transformers or a.c. generators
269 are connected together to form a neutral point, and a
270 neutral conductor may or may not be connected to the
271 neutral point, and the neutral point may or may not be
272 grounded.

273 (20) Zig-zag transformer (grounding transformer):
274 The term "zig-zag transformer (grounding transformer)"
275 shall mean a transformer intended primarily to provide
276 a neutral point for grounding purposes.

§22-1-2. Department of mines; purposes; rules and regulations.

1 The department of mines heretofore created is hereby
2 continued and shall have as its purpose the supervision
3 of the execution and enforcement of the provisions of
4 this chapter and, in carrying out the aforesaid purposes,
5 it shall give prime consideration to the protection of the
6 safety and health of persons employed within or at the
7 mines of this state. In addition, the department shall,
8 consistent with the aforesaid prime consideration, pro-
9 tect and preserve mining property and property used in
10 connection therewith.

11 The department is hereby given authority, where au-
12 thorized and in the manner prescribed in this chapter,
13 to enact such rules and regulations as may be necessary
14 to effectuate the above stated purposes.

§22-1-4. Director of the department of mines—powers and duties.

1 The director of the department of mines shall have
2 full charge of the department. He shall have the power
3 and duty to:

4 (1) Supervise and direct the execution and enforce-
5 ment of the provisions of this chapter.

6 (2) Appoint a deputy director of the department of
7 mines, fix his compensation and prescribe his powers and
8 duties.

9 (3) Employ such assistants, clerks, stenographers and
10 other employees as may be necessary to fully and effec-
11 tively carry out the provisions of this law and fix their
12 compensation, except as otherwise provided in this ar-
13 ticle.

14 (4) Employ mine inspectors, and assign them to divi-
15 sions or districts in accordance with the provisions of
16 section seven of this article as may be necessary to fully
17 and effectively carry out the provisions of this law, in-
18 cluding the hiring and training of inspectors for the spe-
19 cialized requirements of surface mining, shaft and
20 slope sinking, and surface installations and to super-
21 vise and direct such mine inspectors in the performance
22 of their duties.

23 (5) Suspend, for good cause, any mine inspector with-
24 out compensation for a period not exceeding thirty
25 days in any calendar year.

26 (6) Prepare report forms to be used by mine inspec-
27 tors in making their findings, orders and notices, upon
28 inspections made in accordance with this chapter.

29 (7) Hear and determine applications made by mine
30 operators for the annulment or revision of orders made
31 by mine inspectors, and to make inspections of mines,
32 in accordance with the provisions of this article.

33 (8) Cause a properly indexed permanent and public
34 record to be kept of all inspections made by himself or
35 by mine inspectors.

36 (9) Make annually a full and complete written re-
37 port of the administration of his department to the gov-
38 ernor and the Legislature of the state for the year ending
39 the thirtieth day of June. Such report shall include
40 the number of visits and inspections of mines in the
41 state by mine inspectors, the quantity of coal, coke and
42 other minerals (including oil and gas) produced in the
43 state, the number of men employed, number of mines
44 in operation, statistics with regard to health and safety
45 of persons working in the mines including the causes
46 of injuries and deaths, improvements made, prosecutions,
47 the total funds of the department from all sources
48 identifying each source of such funds, the expendi-
49 tures of the department, the surplus or deficit of the
50 department at the beginning and end of the year, the
51 amount of fines collected, the amount of fines imposed,
52 the value of fines pending, the number and type of viola-
53 tions found, the amount of fines imposed, levied and
54 turned over for collection, the total amount of fines
55 levied but not paid during the prior year, the titles and
56 salaries of all inspectors and other officials of the depart-
57 ment, the number of inspections made by each inspector,
58 the number and type of violations found by each inspec-
59 tor: *Provided*, That no inspector shall be identified by
60 name in this report. Such reports shall be filed with
61 the governor and the Legislature on or before the thirty-
62 first day of December of the same year for which it was
63 made, and shall upon proper authority be printed and dis-
64 tributed to interested persons.

65 (10) Call or subpoena witnesses, for the purpose of
66 conducting hearings into mine fires, mine explosions or
67 any mine accident; to administer oaths and to require
68 production of any books, papers, records, or other docu-
69 ments relevant or material to the hearing. Any witness
70 so called or subpoenaed shall receive forty dollars per
71 diem and shall receive mileage at the rate of fifteen
72 cents for each mile actually traveled, which shall be
73 paid out of the state treasury upon a requisition upon the
74 state auditor, properly certified by such witness.

75 (11) Institute civil actions for relief, including per-
76 manent or temporary injunctions, restraining orders, or

77 any other appropriate action in the appropriate federal
78 or state court whenever any operator or his agent violates
79 or fails or refuses to comply with any lawful order,
80 notice or decision issued by the director or his rep-
81 resentative.

82 (12) Perform all other duties which are expressly
83 imposed upon him by the provisions of this chapter.

84 (13) Make all records of the department open for
85 inspection of interested persons and the public.

**§22-1-11. Eligibility for appointment as mine inspector; quali-
fications; salary and expenses; removal.**

1 (a) No person shall be eligible for appointment as a
2 mine inspector unless, at the time of his probationary
3 appointment, he (1) is a citizen of West Virginia, in good
4 health, not less than twenty-four nor more than sixty
5 years of age, and of good character, reputation and tem-
6 perate habits; (2) has had at least six years' practical
7 experience in coal mines, at least three years of which,
8 immediately preceding his original appointment, shall
9 have been in mines of this state: *Provided*, That gradu-
10 ation from any accredited college of mining engineering
11 shall be considered the equivalent of two years' practical
12 experience; (3) has had practical experience with dan-
13 gerous gases found in coal mines; and (4) has a good
14 theoretical and practical knowledge of mines, mining
15 methods, mine ventilation, sound safety practices and
16 applicable mining laws.

17 (b) In order to qualify for appointment as a mine in-
18 spector, an eligible applicant shall submit to a written
19 and oral examination by the mine inspectors' examin-
20 ing board and furnish such evidence of good health,
21 character and other facts establishing eligibility as the
22 board may require. If the board finds after investigation
23 and examination that an applicant: (1) is eligible for
24 appointment and (2) has passed all written and oral ex-
25 aminations, with a grade of at least eighty percent, the
26 board shall add such applicant's name and grade to the
27 register of qualified eligible candidates and certify its
28 action to the director of the department of mines. No

29 candidate's name shall remain in the register for more
30 than three years without requalifying.

31 (c) Salaries of district inspectors shall not be less
32 than fifteen thousand three hundred dollars per year,
33 with graduations of two hundred seventy dollars an-
34 nually for a ten-year period; assistant inspector-at-large,
35 not less than sixteen thousand eight hundred seventy-
36 five dollars per year, with graduations of two hundred
37 seventy dollars annually for a ten-year period; inspec-
38 tors-at-large, not less than eighteen thousand dollars per
39 year, with graduations of two hundred seventy dollars
40 annually for a ten-year period, and they shall receive
41 mileage at the rate of not less than fifteen cents for each
42 mile actually traveled in the discharge of their official
43 duties in a privately owned vehicle. Within the limits
44 provided by law, the salary of each inspector shall be
45 fixed by the director of the department of mines, subject
46 to the approval of the mine inspectors' examining board.
47 In fixing salaries of mine inspectors, the director of the
48 department of mines shall consider ability, performance
49 of duty and experience. No reimbursement for traveling
50 expenses shall be made except on an itemized account of
51 such expenses submitted by the inspector, who shall
52 verify upon oath, that such expenses were actually in-
53 curred in the discharge of his official duties. Every in-
54 spector shall be afforded compensatory time or compen-
55 sation of at least his regular rate for all time in excess
56 of forty-two hours per week.

57 (d) Any mine inspector who has fulfilled the require-
58 ments of this section with respect to employment and
59 who has served satisfactorily as a mine inspector for a
60 minimum period of one year and who has terminated
61 his employment as a mine inspector, upon successfully
62 passing a physical examination, may be reinstated as a
63 mine inspector within two years after terminating his
64 employment with the approval of the examining board
65 and the director of the department of mines.

66 (e) A mine inspector, after having received a per-
67 manent appointment, shall be removed from office only
68 for physical or mental impairment, incompetency, neglect

69 of duty, drunkenness, malfeasance in office, or other
70 good cause.

71 Proceedings for the removal of a mine inspector may
72 be initiated by the director of the department of mines
73 whenever he has reasonable cause to believe and does
74 believe that adequate cause exists, warranting removal.
75 Such a proceeding shall be initiated by a verified peti-
76 tion, filed with the board by the director of the depart-
77 ment of mines, setting forth with particularity the facts
78 alleged. Not less than twenty reputable citizens, who are
79 operators or employees in mines in the state, may
80 petition the director of the department of mines for
81 the removal of a mine inspector. If such petition is
82 verified by at least one of the petitioners, based on ac-
83 tual knowledge of the affiant and alleged facts, which,
84 if true, warrant the removal of the inspector, the director
85 of the department of mines shall cause an investigation
86 of the facts to be made. If, after such investigation, the
87 director finds that there is substantial evidence, which,
88 if true, warrants removal of the inspector, he shall file
89 a petition with the board requesting removal of the in-
90 spector.

91 On receipt of a petition by the director of the depart-
92 ment of mines seeking removal of a mine inspector, the
93 board shall promptly notify the inspector to appear before
94 it at a time and place designated in said notice, which
95 time shall be not less than fifteen days thereafter. There
96 shall be attached to the copy of the notice served upon
97 the inspector a copy of the petition filed with the board.

98 At the time and place designated in said notice, the
99 board shall hear all evidence offered in support of the
100 petition and on behalf of the inspector. Each witness
101 shall be sworn, and a transcript shall be made of all
102 evidence taken and proceedings had at any such hearing.
103 No continuance shall be granted except for good cause
104 shown. The chairman of the board and the director of
105 the department of mines shall have power to administer
106 oaths and subpoena witnesses.

107 Any mine inspector who shall willfully refuse or fail
108 to appear before the board, or having appeared, shall

109 refuse to answer under oath any relevant question on
110 the ground that his testimony or answer might incrim-
111 inate him, or shall refuse to waive immunity from prose-
112 cution on account of any relevant matter about which
113 he may be asked to testify at any such hearing before
114 the board, shall forfeit his position.

115 If, after hearing, the board finds that the inspector
116 should be removed, it shall enter an order to that effect.
117 The decision of the board shall be final and shall not be
118 subject to judicial review.

**§22-1-13. Director and inspectors authorized to enter mines;
duties of inspectors to examine mines; no advance
notice; reports after fatal accidents.**

1 The director of the department of mines shall have
2 authority to visit, enter, and examine any mine, whether
3 underground or on the surface, and may call for the as-
4 sistance of any district mine inspector or inspectors when-
5 ever such assistance is necessary in the examination of
6 any mine. The operator of every coal mine shall furnish
7 the director of the department of mines or mine inspector
8 proper facilities for entering such mine and making
9 examination or obtaining information.

10 If miners at any mine or one of their authorized rep-
11 resentatives have reason to believe that dangerous con-
12 ditions are existing or that the law is not being complied
13 with, they may request the director to have an immediate
14 investigation made.

15 Mine inspectors shall devote their full time and un-
16 divided attention to the performance of their duties, and
17 they shall examine all of the mines in their respective
18 districts at least four times annually, and as often, in addi-
19 tion thereto, as the director of the department of mines
20 may direct, or the necessities of the case or the condition
21 of the mine or mines may require, with no advance notice
22 of inspection provided to any person, and they shall make
23 a personal examination of each working face and all
24 entrances to abandoned parts of the mine where gas is
25 known to liberate, for the purpose of determining whether
26 a danger, described in section fourteen of this article,
27 exists in any such mine, or whether any provision of

28 article two of this chapter is being violated or has been
29 violated within the past forty-eight hours in any such
30 mine.

31 In addition to the other duties imposed by articles one
32 and two of this chapter, it shall be the duty of each
33 inspector to note each violation he finds and issue a
34 finding order or notice, as appropriate for each violation
35 so noted. During the investigation of any accident, any
36 violation may be noted whether or not the inspector
37 actually observes the violation and whether or not the
38 violation exists at the time the inspector notes the vio-
39 lation, so long as the inspector has clear and convincing
40 evidence the violation has occurred or is occurring.

41 The mine inspector shall visit the scene of each fatal
42 accident occurring in any mine within his district and
43 shall make an examination into the particular facts of
44 such accident; make a report to the director of the de-
45 partment of mines, setting forth the results of such
46 examination, including the condition of the mine and the
47 cause or causes of such fatal accident, if known, and
48 all such reports shall be made available to the interested
49 parties, upon written requests.

50 At the commencement of any inspection of a coal mine
51 by an authorized representative of the director, the autho-
52 rized representative of the miners at the mine at the time
53 of such inspection shall be given an opportunity to ac-
54 company the authorized representative of the director on
55 such inspection.

§22-1-20. Penalties.

1 (a) (1) Any operator of a coal mine in which a
2 violation occurs of any health or safety rule or regulation
3 or who violates any other provision of this law, shall be
4 assessed a civil penalty by the director under subdivision
5 (3) of this subsection, which penalty shall be not more
6 than three thousand dollars, for each such violation. Each
7 such violation shall constitute a separate offense. In de-
8 termining the amount of the penalty, the director shall
9 consider the operator's history of previous violations, the
10 appropriateness of such penalty to the size of the business
11 of the operator charged, the gravity of the violation and

12 the demonstrated good faith of the operator charged in
13 attempting to achieve rapid compliance after notification
14 of a violation.

15 (2) Any miner who knowingly violates any health or
16 safety provision of this chapter or health or safety rule or
17 regulation promulgated pursuant to this chapter shall be
18 subject to a civil penalty assessed by the director under
19 subdivision (3) of this subsection which penalty shall not
20 be more than two hundred fifty dollars for each occurrence
21 of such violation.

22 (3) A civil penalty shall be assessed by the director
23 only after the person charged with a violation under this
24 chapter or rule or regulation promulgated pursuant to
25 this chapter has been given an opportunity for a public
26 hearing and the director has determined, by a decision
27 incorporating his findings of fact therein, that a violation
28 did occur, and the amount of the penalty which is war-
29 ranted, and incorporating, when appropriate, an order
30 therein requiring that the penalty be paid. Any hearing
31 under this section shall be of record.

32 (4) If the person against whom a civil penalty is
33 assessed fails to pay the penalty within the time pre-
34 scribed in such order, the director shall file a petition for
35 enforcement of such order in any appropriate circuit
36 court. The petition shall designate the person against
37 whom the order is sought to be enforced as the respon-
38 dent. A copy of the petition shall forthwith be sent by
39 certified mail, return receipt requested, to the respondent
40 and to the representative of the miners at the affected
41 mine or the operator, as the case may be, and thereupon
42 the director shall certify and file in such court the record
43 upon which such order sought to be enforced was
44 issued. The court shall have jurisdiction to enter a
45 judgment enforcing, modifying, and enforcing as so modi-
46 fied, or setting aside in whole or in part the order and
47 decision of the director or it may remand the proceedings
48 to the director for such further action as it may direct.
49 The court shall consider and determine de novo all rele-
50 vant issues, except issues of fact which were or could
51 have been litigated in review proceedings before a circuit

52 court under section eighteen of this article, and upon the
53 request of the respondent, such issues of fact which are in
54 dispute shall be submitted to a jury. On the basis of the
55 jury's findings the court shall determine the amount of
56 the penalty to be imposed. Subject to the direction and
57 control of the attorney general, attorneys appointed for
58 the director may appear for and represent him in any
59 action to enforce and order assessing civil penalties under
60 this subdivision.

61 (b) Any operator who knowingly violates a health or
62 safety provision of this chapter or health or safety rule or
63 regulation promulgated pursuant to this chapter, or
64 knowingly violates or fails or refuses to comply with any
65 order issued under section fourteen of this article, or any
66 order incorporated in a final decision issued under this
67 article, except an order incorporated in a decision under
68 subsection (a) of this section or subsection (b), section
69 twenty-one of this article, shall be assessed a civil penalty
70 by the director under subdivision (3) of subsection (a) of
71 this section, of not more than five thousand dollars, and
72 for a second or subsequent violation assessed a civil
73 penalty of not more than ten thousand dollars.

74 (c) Whenever a corporate operator knowingly violates
75 a health or safety provision of this chapter or health or
76 safety rules or regulation promulgated pursuant to this
77 chapter, or knowingly violates or fails or refuses to com-
78 ply with any order issued under this law or any order
79 incorporated in a final decision issued under this law,
80 except an order incorporated in a decision issued under
81 subsection (a) of this section or subsection (b), section
82 twenty-one of this article, any director, officer, or agent of
83 such corporation who knowingly authorized, ordered, or
84 carried out such violation, failure, or refusal shall be
85 subject to the same civil penalties that may be imposed
86 upon a person under subsections (a) and (b) of this
87 section.

88 (d) Whoever knowingly makes any false statement,
89 representation or certification in any application, record,
90 report, plan or other document filed or required to be
91 maintained pursuant to this law or any order or de-

92 cision issued under this law shall be guilty of a misde-
93 meanor, and, upon conviction thereof, shall be fined not
94 more than five thousand dollars or imprisoned in the
95 county jail not more than six months, or both fined and
96 imprisoned. The conviction of any person under this
97 subsection shall result in the revocation of any certifica-
98 tions held by him under this chapter which certify him
99 or authorized him to direct other persons in coal mining
100 by operation of law and shall bar him from being issued
101 any such license under this chapter, except a miner's certi-
102 fication, for a period of not less than one year or for such
103 longer period as may be determined by the director.

104 (e) Whoever willfully distributes, sells, offers for sale,
105 introduces or delivers in commerce any equipment for
106 use in a coal mine, including, but not limited to, compo-
107 nents and accessories of such equipment, who willfully
108 misrepresents such equipment as complying with the
109 provisions of this law, or with any specification or regula-
110 tion of the director applicable to such equipment, and
111 which does not so comply, shall be guilty of a misde-
112 meanor, and, upon conviction thereof, shall be subject
113 to the same fine and imprisonment that may be imposed
114 upon a person under subsection (d) of this section.

§22-1-21. Discrimination.

1 (a) No person shall discharge or in any other way dis-
2 criminate against or cause to be discharged or dis-
3 criminated against any miner or any authorized repre-
4 sentative of miners by reason of the fact that he believes
5 or knows that such miner or representative (1) has
6 notified the director, his authorized representative, or
7 an operator, directly or indirectly, of any alleged viola-
8 tion or danger, (2) has filed, instituted or caused to be
9 filed or instituted any proceeding under this law, (3) has
10 testified or is about to testify in any proceeding resulting
11 from the administration or enforcement of the provisions
12 of this law. No miner or representative shall be dis-
13 charged or in any other way discriminated against or
14 caused to be discriminated against because a miner or
15 representative has done (1), (2) or (3) above.

16 (b) Any miner or a representative of miners who be-
17 lieves that he has been discharged or otherwise dis-
18 criminated against, or any miner who has not been
19 compensated by an operator for lost time due to the
20 posting of a withdrawal order, may, within thirty days
21 after such violation occurs, apply to the appeals board
22 for a review of such alleged discharge, discrimination, or
23 failure to compensate. A copy of the application shall
24 be sent to such person who shall be the respondent. Upon
25 receipt of such application, the appeals board shall cause
26 such investigation to be made as it deems appropriate.
27 Such investigation shall provide an opportunity for a
28 public hearing at the request of any party to enable the
29 parties to present information relating to such violation.
30 The parties shall be given written notice of the time and
31 place of the hearing at least five days prior to the hear-
32 ing. Mailing of the notice of hearing to the charged party
33 at his last address of record as reflected in the records
34 of the department of mines shall be deemed adequate
35 notice to the charged party. Such notice shall be by
36 certified mail, return receipt requested. Any such hearing
37 shall be of record. Upon receiving the report of such
38 investigation, the board shall make findings of fact. If
39 it finds that such violation did occur, it shall issue a deci-
40 sion within forty-five days, incorporating an order therein,
41 requiring the person committing such violation to take
42 such affirmative action to abate the violation as the board
43 deems appropriate, including, but not limited to, the
44 rehiring or reinstatement of the miner or representative
45 of miners to his former position with back pay, and also
46 pay compensation for the idle time as a result of a
47 withdrawal order. If it finds that there was no such
48 violation, it shall issue an order denying the applica-
49 tion. Such order shall incorporate the board's findings
50 therein. If the proceedings under this section relative to
51 discharge are not completed within forty-five days of
52 the date of discharge due to delay caused by the operator,
53 the miner shall be automatically reinstated until the final
54 determination. If such proceedings are not completed
55 within forty-five days of the date of discharge due to
56 delay caused by the board, then the board may, at its
57 option, reinstate the miner until the final determination.

58 If such proceedings are not completed within forty-five
59 days of the date of discharge due to delay caused by the
60 miner the board shall not reinstate the miner until the
61 final determination.

62 (c) Whenever an order is issued under this section, at
63 the request of the applicant, a sum equal to the aggregate
64 amount of all costs and expenses including the attorney's
65 fees as determined by the board to have been reasonably
66 incurred by the applicant for, or in connection with, the
67 institution and prosecution of such proceedings, shall be
68 assessed against the person committing such violation.

§22-1-30. Withdrawal of certification.

1 (a) *Charge of breach of duty*—A mine inspector or
2 the director may charge a mine foreman, assistant mine
3 foreman, fire boss or any other certified person with
4 neglect or failure to perform any duty mandated pur-
5 suant to article one or two of this chapter. The charge
6 shall state the name of the person charged, the duty or
7 duties he is alleged to have violated, the approximate
8 date and place so far as is known of the violation of duty,
9 the capacity of the person making the charge, and shall
10 be verified on the basis of information and belief or
11 personal knowledge. The charge is initiated by filing
12 it with the director or with the board of appeals. A copy
13 of any charge filed with the board of appeals or any
14 member thereof, shall be transmitted promptly to the
15 director. The director shall maintain a file of each
16 charge and of all related documents which shall be
17 open to the public.

18 (b) *Evaluation of charge by board of appeals*—Within
19 twenty days after receipt of the charge the board shall
20 evaluate the charge and determine whether or not a
21 violation of duty has been stated. In making such a
22 determination the board shall evaluate all documents
23 submitted to it by all persons to determine as nearly as
24 possible the substance of the charge and if the board of
25 appeals is unable to determine the substance of the
26 charge it may request the director to investigate the
27 charge. Upon request, the director shall investigate the
28 charge and report the results of the investigation to the

29 board of appeals within ten days of his receipt of the
30 charge. If the board determines that probable cause
31 exists to support the allegation that the person charged
32 has violated his duty, the board by the end of the twenty-
33 day period shall set a date for hearing which date shall
34 be within eighty days of the filing of the charge. Notice
35 of the hearing or notice of denial of the hearing for failure
36 to state a charge and a copy of the charge shall be mailed
37 by certified mail, return receipt requested, to the charging
38 party, the charged party, the director, the representative
39 of the miner or miners affected, and to any interested
40 person of record. Thereafter the board shall maintain
41 the file of the charge which shall contain all documents,
42 testimony and other matters filed which shall be open
43 for public inspection.

44 (c) *Hearing*—The board of appeals shall hold a hear-
45 ing, may appoint a hearing examiner to take evidence
46 and report to the board of appeals within the time allotted,
47 may direct or authorize taking of oral depositions under
48 oath by any participant, or adopt any other method for
49 the gathering of sworn evidence which affords the charg-
50 ing party, the charged party, the director and any
51 interested party of record due process of law and a fair
52 opportunity to present and make a record of evidence.
53 Any member of the board shall have the power to ad-
54 minister oaths. The board may subpoena witnesses and
55 require production of any books, papers, records, or other
56 documents relevant or material to the inquiry. The board
57 shall consider all evidence offered in support of the
58 charge and on behalf of the persons so charged at the
59 time and place designated in the notice. Each witness
60 shall be sworn and a transcript shall be made of all
61 evidence presented in any such hearing. No continuance
62 shall be granted except for good cause shown.

63 At the conclusion of the hearing the board shall proceed
64 to determine the case upon consideration of all the evi-
65 dence offered and shall render a decision containing its find-
66 ings and conclusions of law. If the board finds by a pre-
67 ponderance of the evidence that the certificate or certifi-
68 cates of the charged person should be suspended or
69 revoked, as hereinafter provided, it shall enter an order

70 to that effect. No renewal of the certificate shall be
71 granted except as herein provided.

72 (d) *Failure to cooperate*—Any person charged who
73 shall, without just cause refuse or fail to appear before
74 the board or cooperate in the investigation or gathering
75 of evidence shall forfeit his certificate or certificates for
76 a period to be determined by the board, not to exceed
77 five years, and such certificate or certificates may not be
78 renewed except upon a successful completion of the
79 examination prescribed by the law for mine foremen,
80 assistant mine foremen, fire boss or other certified per-
81 son.

82 (e) *Penalties*—The board may suspend or revoke the
83 certificate or certificates of a charged party for a minimum
84 of thirty days or more including an indefinite period or
85 may revoke permanently the certificate or certificates of
86 the charged party, as it sees fit, subject to the prescribed
87 penalties and monetary fines imposed elsewhere in this
88 chapter.

89 (f) *Integrity of penalties imposed*—No person whose
90 certification is suspended or revoked under this provision
91 can perform any duties under any other certification
92 issued under chapter twenty or twenty-two of this code,
93 during the period of the suspension imposed herein.

94 (g) Any party adversely affected by a final order or
95 decision issued by the board hereunder shall be entitled
96 to judicial review thereof pursuant to section four, article
97 five, chapter twenty-nine-a of this code.

**§22-1-30a. Certification of mine foreman or assistant mine
foreman whose license to engage in similar ac-
tivities suspended in another state.**

1 Any person whose license, certificate or similar au-
2 thority to perform any supervisory or fire boss duties
3 in another state has been suspended or revoked by that
4 state cannot be certified under any provision of this
5 chapter during the period of such suspension or revoca-
6 tion in the other state.

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
6 for certification as a mine foreman—fire boss shall, at
7 the time he is issued a certificate of competency: (1)
8 Be a resident or employed in a mine in this state; (2)
9 have had at least five years' experience in the under-
10 ground working, ventilation and drainage of a coal mine,
11 which shall include at least eighteen months' experience
12 on or at a working section of an underground mine or
13 be a graduate of the school of mines at West Virginia
14 University or of another accredited mining engineering
15 school or be a graduate of an accredited engineering
16 school with a bachelor's degree in mining engineering
17 technology, electrical, mechanical or civil engineering;
18 and have had at least two years' practical experience in
19 an underground mine, which shall include at least eigh-
20 teen months' experience on or at a working section of
21 an underground mine; or be a graduate of an accredited
22 college or university with an associate degree in mining,
23 electrical, mining engineering technology, mechanical
24 engineering or civil engineering and have had at least
25 four years' practical experience in an underground mine,
26 which shall include at least eighteen months' experience
27 on or at a working section of an underground mine;
28 and (3) have demonstrated his knowledge of dangerous
29 mine gases and their detection, mine safety, first aid,
30 safety appliances, state and federal mining laws and
31 regulations and other subjects by completing such train-
32 ing, education and examinations as may be required of
33 him under article six-a of this chapter.

34 (b) In mines in which the operations are so extensive
35 that the duties devolving upon the mine foreman—fire
36 boss cannot be discharged by one man, one or more as-
37 assistant mine foremen—fire bosses may be designated.

38 Such persons shall act under the instruction of the mine
39 foreman—fire boss, who shall be responsible for their
40 conduct in the discharge of their duties. Each assistant
41 so designated shall be certified under the provisions of
42 article six-a of this chapter. Each applicant for certifica-
43 tion as assistant mine foreman—fire boss shall, at the
44 time he is issued a certificate of competency, possess all
45 of the qualifications required of a mine foreman—fire boss:
46 *Provided*, That he shall at the time he is certified be re-
47 quired to have at least three years' experience in the
48 underground working, ventilation and drainage of coal
49 mines, which shall include eighteen months on or at a
50 working section of an underground mine or be a gradu-
51 ate of the school of mines at West Virginia University
52 or of another accredited mining engineering school or
53 be a graduate of an accredited engineering school with
54 a bachelor's degree in mining engineering technology,
55 electrical, mechanical or civil engineering; and have had
56 twelve months' practical experience in an underground
57 mine, all of which shall have been on or at a working
58 section or be a graduate of an accredited college or uni-
59 versity with an associate degree in mining, electrical,
60 mining engineering technology, mechanical or civil engi-
61 neering and have had at least two years' practical experi-
62 ence in an underground mine, which shall include at
63 least eighteen months' experience on or at a working
64 section of an underground mine.

65 (c) Until the first day of January, one thousand nine
66 hundred seventy-seven, in mines in which the operations
67 are so extensive that all the duties devolving upon the
68 mine foreman—fire boss cannot be discharged by one
69 man, competent persons having had at least three years'
70 experience in coal mines may be designated as assis-
71 tants, who shall act under the mine foreman—fire boss'
72 instructions and the mine foreman—fire boss shall be
73 responsible for their conduct in the discharge of their
74 duties under such designation.

75 (d) Any person holding a mine foreman's certificate
76 issued by any other state may act in the capacity of mine
77 foreman—fire boss in any mine in this state until the
78 next regular mine foreman--fire boss' examination held

79 by the department, but not to exceed a maximum of
80 ninety days.

81 (e) After the effective date of this act, all duties
82 heretofore performed by persons certified as mine fore-
83 man, assistant mine foreman or fire boss shall be per-
84 formed by persons certified as underground mine foreman
85 —fire boss or an assistant underground mine foreman—
86 fire boss.

87 After the effective date of this act, every certificate
88 heretofore issued to an assistant mine foreman or fire
89 boss shall be deemed to be of equal value to a certificate
90 issued hereafter to an assistant mine foreman—fire boss,
91 and every certificate heretofore issued to a mine foreman
92 shall be deemed to be of equal value to a certificate issued
93 hereafter to a mine foreman—fire boss.

**§22-2-8. Duties; ventilation; loose coal, slate or rocks; props;
drainage of water; man doors; instruction of ap-
prentice miners.**

1 (a) The duties of the mine foreman shall be to keep a
2 careful watch over the ventilating apparatus, the airways,
3 traveling ways, pumps and drainage. He shall see that,
4 as the miners advance their excavations, proper break-
5 throughs are made so as to ventilate properly the mine;
6 that all loose coal, slate and rock overhead in the work-
7 ing places and along the haulways are removed or care-
8 fully secured so as to prevent danger to persons em-
9 ployed in such mines, and that sufficient suitable props,
10 caps, timbers, roof bolts, or other approved methods of
11 roof supports are furnished for the places where they are
12 to be used and delivered at suitable points. The mine
13 foreman shall have all water drained or hauled out of the
14 working places where practicable, before the miners enter,
15 and such working places shall be kept dry as far as
16 practicable while the miners are at work. It shall be the
17 duty of the mine foreman to see that proper crosscuts
18 are made, and that the ventilation is conducted by means
19 of such crosscuts through the rooms by means of checks
20 or doors placed on the entries or other suitable places, and
21 he shall not permit any room to be opened in advance of
22 the ventilation current. The mine foreman or other certi-

23 fied persons designated by him, shall measure the air
 24 current with an anemometer or other approved device at
 25 least weekly at the inlet and outlet at or near the faces
 26 of the advanced headings, and shall keep a record of such
 27 measurements in a book or upon a form prescribed by the
 28 director of the department of mines. Signs directing the
 29 way to outlets or escapeways shall be conspicuously
 30 placed throughout the mine.

31 (b) After the effective date of this article, hinged man
 32 doors, at least thirty inches square or the height of the
 33 coal seam, shall be installed between the intake and
 34 return at intervals of three hundred feet when the height
 35 of the coal is below forty-eight inches and at intervals of
 36 five hundred feet when the height of the coal is above
 37 forty-eight inches.

38 (c) The duties of the mine foreman and assistant mine
 39 foreman shall include the instruction of apprentice min-
 40 ers in the hazards incident to any new work assignments;
 41 to assure that any individual given a work assignment in
 42 the working face without prior experience on the face is
 43 instructed in the hazards incident thereto and supervised
 44 by a miner with experience in the tasks to be performed.

**§22-2-12. Instruction of employees; annual examination of
 persons using flame safety lamps; records of ex-
 amination; and supervision of apprentices.**

1 The department of mines shall prescribe and establish
 2 a course of instruction in mine safety and particularly
 3 in dangers incident to such employment in mines and in
 4 mining laws and rules, which course of instruction shall
 5 be successfully completed within twelve weeks after any
 6 person shall be first employed as a miner. It shall further
 7 be the duty and responsibility of the department of mines
 8 to see that such course shall be given to all persons as
 9 above provided after their first being employed in any
 10 mine in this state.

11 It shall be the duty of the mine foreman or the
 12 assistant mine foreman of every coal mine in this state to
 13 see that every person employed to work in such mine
 14 shall, before beginning work therein, be instructed in
 15 the particular danger incident to his work in such mine,

16 and be furnished a copy of the mining laws and rules of
17 such mine. It shall be the duty of every mine operator
18 who employs apprentices, as that term is used in sections
19 three and four of article six of this chapter, to insure that
20 the apprentices are effectively supervised with regard to
21 safety practices and to instruct apprentices in safe mining
22 practices. Every apprentice shall work under the direction
23 of the mine foreman or his assistant mine foreman and
24 they shall be responsible for his safety. The mine foreman
25 or assistant mine foreman may delegate the supervision
26 of an apprentice to an experienced miner, but the fore-
27 man and his assistant mine foreman shall remain re-
28 sponsible for the apprentice. During the first ninety days of
29 employment in a mine, the apprentice shall work within
30 sight and sound of the mine foreman, assistant mine fore-
31 man, or an experienced miner, and in such a location
32 that the mine foreman, assistant mine foreman or ex-
33 perience miner can effectively respond to cries for help
34 of the apprentice. Such location shall be on the same side
35 of any belt, conveyor or mining equipment.

36 Persons whose duties require them to use a flame
37 safety lamp or other approved methane detectors shall
38 be examined at least annually as to their competence by
39 a qualified official from the West Virginia department of
40 mines and a record of such examination shall be kept by
41 the operator and the department of mines. Flame safety
42 lamps and other approved methane detectors shall be
43 given proper maintenance and shall be tested before each
44 working shift. Each operator shall provide for the proper
45 maintenance and care of the permissible flame safety
46 lamp or any other approved device for detecting methane
47 and oxygen deficiency by a person trained in such
48 maintenance, and, before each shift, care shall be taken
49 to insure that such lamp or other device is in a permis-
50 sible condition.

§22-2-13. Daily inspection of working places; records.

1 Before the beginning of any shift upon which they
2 shall perform supervisory duties, the mine foreman or
3 his assistant shall review carefully and countersign all
4 books and records reflecting the conditions and the areas

5 under their supervision, exclusive of equipment logs,
6 which the operator is required to keep under this chapter.
7 The mine foreman, assistant mine foreman or fire boss
8 shall visit and carefully examine each working place in
9 which miners will be working at the beginning of each
10 shift before any face equipment is energized and shall
11 examine each working place in the mine at least once
12 every two hours each shift while such miners are at work
13 in such places, and shall direct that each working place
14 shall be secured by props, timbers, roof bolts, or other
15 approved methods of roof support or both where neces-
16 sary to the end that the working places shall be made
17 safe. The mine foreman or his assistants upon observing
18 a violation or potential violation of article two of this
19 chapter or any regulation or any plan or agreement pro-
20 mulgated or entered into thereunder shall arrange for the
21 prompt correction thereof. The foreman shall not permit
22 any miner other than a certified foreman, fire boss, assis-
23 tant mine foreman, assistant mine foreman—fire boss or
24 pumper to be on a working section by himself. Should
25 the mine foreman or his assistants find a place to be in a
26 dangerous condition, they shall not leave the place until
27 it is made safe, or shall remove the persons working
28 therein until the place is made safe by some competent
29 person designated for that purpose.

30 He shall place his initials, time and the date at or near
31 each place he examines. He shall also record any danger-
32 ous conditions and practices found during his examina-
33 tion in a book provided for that purpose.

§22-2-14. Safety inspections; removal of gases.

1 It shall be the duty of the mine foreman, assistant
2 mine foreman or fire boss to examine all working places
3 under his supervision for hazards at least once every
4 two hours during each coal-producing shift, or more
5 often if necessary for safety. In all mines such examina-
6 tions shall include tests with an approved detector for
7 methane and oxygen deficiency and may also include
8 tests with a permissible flame safety lamp. It shall also
9 be his duty to remove as soon as possible after its dis-
10 covery any accumulations of explosive or noxious gases

11 in active workings, and where practicable, any accumu-
12 lations of explosive or noxious gases in the worked out
13 and abandoned portions of the mine. It shall be the
14 duty of the mine foreman, assistant mine foreman or
15 fire boss to examine each mine within three hours prior
16 to the beginning of a shift and before any miner in such
17 shift enters the active workings of the mine.

§22-2-26. Roof control programs and plans.

1 (a) Each operator shall undertake to carry out on a
2 continuing basis a program to improve the roof control
3 system of each coal mine and the means and measures
4 to accomplish such system. The roof and ribs of all
5 active underground roadways, travelways, and working
6 places shall be supported or otherwise controlled ade-
7 quately to protect persons from falls of the roof or ribs.
8 A roof control plan and revisions thereof suitable to the
9 roof conditions and mining systems of each coal mine and
10 approved by the director of the department of mines
11 shall be adopted and set out in printed form before new
12 operations. The safety committee of the miners of each
13 mine where such committee exists shall be afforded the
14 opportunity to review and to submit comments and
15 recommendations to the director and operator concerning
16 the development, modification or revision of such roof
17 control plans. The plan shall show the type of support
18 and spacing approved by the director. Such plan shall
19 be reviewed periodically, at least every six months by
20 the director, taking into consideration any falls of roof
21 or rib or inadequacy of support of roof or ribs. A copy
22 of the plan shall be furnished to the director of the
23 department of mines or his authorized representative
24 and shall be available to the miners and their representa-
25 tives.

26 (b) The operator, in accordance with the approved
27 plan, shall provide at or near each working face and at
28 such other locations in the coal mine, as the director may
29 prescribe, an ample supply of suitable materials of proper
30 size with which to secure the roof thereof of all working
31 places in a safe manner. Safety posts, jacks, or other

32 approved devices shall be used to protect the workmen
33 when roof material is being taken down, crossbars are
34 being installed, roof bolt holes are being drilled, roof
35 bolts are being installed, and in such other circumstances
36 as may be appropriate. Loose roof and overhanging or
37 loose faces and ribs shall be taken down or supported.
38 When overhangs or brows occur along rib lines they
39 shall be promptly removed. All sections shall be main-
40 tained as near as possible on center. Except in the case
41 of recovery work, supports knocked out shall be replaced
42 promptly. Apprentice miners shall not be permitted to
43 set temporary supports on a working section without
44 the direct immediate supervision of a certified miner.

45 (c) The operator of a mine has primary responsi-
46 bility to prevent injuries and deaths resulting from
47 working under unsupported roof. Every operator shall
48 require that no person may proceed beyond the last
49 permanent support unless adequate temporary support
50 is provided or temporary support is not required under
51 an approved roof control plan and absence of such sup-
52 port will not pose a hazard to the miners.

53 (d) The immediate supervisor of any area in which
54 unsupported roof is located shall not direct or knowingly
55 permit any person to proceed beyond the last permanent
56 support unless adequate temporary support is provided
57 or temporary support is not required under an approved
58 roof control plan and absence of such support will not
59 pose a hazard to the miners.

60 (e) No miner shall proceed beyond the last perma-
61 nent support in violation of a direct or standing
62 order of an operator, a foreman or an assistant foreman,
63 unless adequate temporary support is provided or tem-
64 porary support is not required under an approved roof
65 control plan and absence of such support will not pose
66 a hazard to the miner.

67 (f) The immediate supervisor of each miner who will
68 be engaged in any activity involving the securing of roof
69 or rib during a shift shall, at the onset of any such
70 shift, orally review those parts of the roof control plan

71 relevant to the type of mining and roof control to be
72 pursued by such miner. The time, and parts of the plan
73 reviewed shall be recorded in a log book kept for such
74 purpose. Each log book entry so recorded shall be signed
75 by such immediate supervisor making such entry.

76 (g) Any action taken against a miner due in whole or
77 in part to his refusal to work under unsupported roof,
78 where such work would constitute a violation of this
79 section, is prohibited as an act of discrimination pursuant
80 to section twenty-one, article one of this chapter. Upon
81 a finding of discrimination by the appeals board pur-
82 suant to section twenty-one (b) of article one of this
83 chapter, the miner shall be awarded by the appeals board
84 all reliefs available pursuant to section twenty-one
85 (b) and section twenty-one (c) of article one of this
86 chapter.

§22-2-28a. Equipment to conform with height of seam.

1 The use of underground mining equipment of a size
2 that does not conform to the height of the seam being
3 mined, which creates unsafe working conditions for the
4 miner operating the equipment or others, is prohibited.
5 The board of coal mine health and safety shall promulgate
6 such rules and regulations as are necessary to effectuate
7 this section.

**§22-2-37. Haulage roads and equipment; shelter holes; pro-
hibited practices; signals; inspection.**

1 (a) The roadbed, rails, joints, switches, frogs and other
2 elements of all haulage roads shall be constructed, in-
3 stalled and maintained in a manner consistent with speed
4 and type of haulage operations being conducted to insure
5 safe operation. Where transportation of personnel is
6 exclusively by rail, track shall be maintained to within
7 five hundred feet of the nearest working face.

8 (b) Track switches, except room and entry development
9 switches, shall be provided with properly installed throws,
10 bridle bars, and guard rails; switch throws and stands,
11 where possible, shall be placed on the clearance side.

12 (c) Haulage roads on entries developed after the effec-
13 tive date of this article shall have a continuous, un-

14 obstructed clearance of at least twenty-four inches from
15 the farthest projection of any moving equipment on the
16 clearance side.

17 (d) On haulage roads where trolley lines are used, the
18 clearance shall be on the side opposite the trolley lines.

19 (e) On the trolley wire or "tight" side, after the effective
20 date of this article, there shall be at least twelve
21 inches of clearance from the farthest projection of any
22 moving equipment.

23 (f) Warning lights or reflective signs or tapes shall be
24 installed along haulage roads at locations of abrupt or
25 sudden changes in the overhead clearance.

26 (g) The clearance space on all haulage roads shall be
27 kept free of loose rock, coal, supplies or other material:
28 *Provided*, That not more than twenty-four inches need
29 be kept free of such obstructions.

30 (h) Ample clearance shall be provided at all points
31 where supplies are loaded or unloaded along haulage
32 roads or conveyors, which in no event shall be less than
33 twenty-four inches.

34 (i) Shelter holes shall be provided along haulage entries
35 driven after the effective date of this article where
36 locomotive, rope or animal haulage is used. Such shelter
37 holes shall be spaced not more than one hundred feet
38 apart; they shall be on the side of the entry opposite the
39 trolley wire: *Provided*, That where belt haulage and
40 secondary track haulage are located in the same entry,
41 shelter holes may be on the trolley wire and feeder
42 wire side if the trolley wire and feeder wire are guarded
43 in a manner approved by the director of the department
44 of mines.

45 (j) Shelter holes made after the effective date of this
46 article shall be at least five feet in depth, not more than
47 four feet in width, and as high as the traveling space.
48 Room necks and crosscuts may be used as shelter holes
49 even though their width exceeds four feet.

50 (k) Shelter holes shall be kept clear of refuse and
51 other obstructions.

52 (l) After the effective date of this article, shelter holes
53 shall be provided at switch throws and manually oper-
54 ated permanent doors.

55 (m) No steam locomotive shall be used in mines where
56 men are actually employed in the extraction of coal, but
57 this shall not prevent operation of a steam locomotive
58 through any tunnel haulway or part of a mine that is not
59 in actual operation and producing coal.

60 (n) Underground equipment powered by internal
61 combustion engines using petroleum products, alcohol,
62 or any other compound shall not be used in a coal mine.

63 (o) Locomotives, personnel carriers, mine cars, supply
64 cars, shuttle cars, and all other haulage equipment shall
65 be maintained in a safe operating condition. Each loco-
66 motive, personnel carrier, barrier tractor and other re-
67 lated equipment shall be equipped with a suitable lifting
68 jack and handle. An audible warning device and head-
69 lights shall be provided on each locomotive and each
70 shuttle car. All other mobile equipment, using the face
71 areas of the mine, purchased after the effective date of
72 this article, shall be provided with an conspicuous light or
73 other approved device so as to reduce the possibility of
74 collision.

75 (p) No persons other than those necessary to operate
76 a trip or car shall ride on any loaded car or on the out-
77 side of any car. Where pusher locomotives are not used,
78 the locomotive operator shall have an assistant to assist
79 him in his duties.

80 (q) The pushing of trips, except for switching purposes,
81 is prohibited on main haulage roads: *Provided*, That
82 nothing herein shall prohibit the use of a pusher loco-
83 motive to assist the locomotive pulling a trip. Motormen
84 and trip riders shall use care in handling locomotives
85 and cars. It shall be their duty to see that there is a
86 conspicuous light on the front and rear of each trip or
87 train of cars when in motion: *Provided*, That trip lights
88 need not be used on cars being shifted to and from
89 loading machines, on cars being handled at loading heads
90 during gathering operations at working faces, or on trips
91 being pulled by animals. No person except the operator

92 or his assistant shall ride on locomotives or loaded cars.
93 An empty car or cars shall be used to provide a safe
94 distance between the locomotive and the material car
95 when rail, pipe or longtimbers are being hauled. A safe
96 clearance shall be maintained between the end car of
97 trips placed on side tracks and moving traffic. On haulage
98 roads the clearance point shall be marked with an ap-
99 proved device.

100 (r) No motorman, trip rider or brakeman shall get on
101 or off cars, trips, or locomotives while they are in motion,
102 except that a trip rider or brakeman may get on or off the
103 rear end of a slowly moving trip or the stirrup of a
104 slowly moving locomotive to throw a switch, align a derail
105 or open or close a door.

106 (s) Flying or running switches and riding on the front
107 bumper of a car or locomotive are prohibited. Back
108 poling shall be prohibited except with precaution to the
109 nearest turning point (not over eighty feet), or when
110 going up extremely steep grades and then only at slow
111 speed. The operator of a shuttle car shall face in the
112 direction of travel except during the loading operation
113 when he shall face the loading machine.

114 (t) (1) A system of signals, methods, or devices shall
115 be used to provide protection for trips, locomotives and
116 other equipment coming out onto tracks used by other
117 equipment.

118 (2) In any coal mine where more than three hundred
119 fifty tons of coal are produced on any shift in each twenty-
120 four hour period, a dispatcher shall be on duty when
121 there are movements of track equipment underground,
122 including time when there is no production of coal. Such
123 traffic shall move only at the direction of the dispatcher.

124 (3) The dispatcher's only duty shall be to direct
125 traffic. Where a dispatcher is employed, no person shall
126 move a locomotive, personnel carrier or self-propelled
127 equipment on or onto haulageways without instructions
128 from the dispatcher.

129 (4) Any dispatcher's station provided after the effec-
130 tive date of this article shall be on the surface.

131 (5) All self-propelled track equipment shall be equip-
132 ped with two-way communications.

133 (u) Motormen shall inspect locomotives, and report
134 any mechanical defects found to the proper supervisor
135 before a locomotive is put in operation.

136 (v) A locomotive following another trip shall maintain
137 a distance of at least three hundred feet from the rear
138 end of the trip ahead, unless such locomotive is coupled
139 to the trip ahead.

140 (w) Positive stopblocks or derails shall be installed on
141 all tracks near the top and at landings of shafts, slopes, and
142 surface inclines. Positive-acting stopblocks or derails
143 shall be used where necessary to protect persons from
144 danger of runaway haulage equipment.

145 (x) Shuttle cars shall not be altered by the addition of
146 sideboards so as to inhibit the view of the operator.

147 (y) Mining equipment shall not be parked within fifteen
148 feet of a check curtain or fly curtain.

**§22-2-38. Transportation of men by cars; self-propelled equip-
ment; belts.**

1 (a) Man trips shall be pulled, unless self-propelled,
2 at safe speeds consistent with the condition of roads and
3 type of equipment used, but not to exceed twelve miles
4 an hour. Each man trip shall be under the charge of a
5 certified person or other competent person designated
6 by a mine foreman or assistant mine foreman. It shall be
7 operated independently of any loaded trip of coal or other
8 heavy material, but may transport tools, small machine
9 parts and supplies. When mine cars are used for man
10 trips, a locomotive shall be used on each end of the trip.

11 (b) Cars on the man trip shall not be overloaded, and
12 sufficient cars in good mechanical condition shall be
13 provided. Sufficient space shall be afforded so that no
14 miner shall have to be transported in a hazardous posi-
15 tion.

16 (c) No person shall ride under the trolley wire unless
17 the man cars used are suitably covered and insulated.
18 No person shall ride on loaded timber cars, loaded supply
19 trucks, empty timber cars or empty supply trucks which

20 are not equipped with side guards, on top of locomotives,
21 on chain conveyors, inside shuttle cars, on the tops of
22 machinery or equipment, or on the sides of machinery or
23 equipment, except for operators of such machinery or
24 equipment.

25 (d) Men shall not load or unload before the cars in
26 which they are to ride, or are riding, come to a full stop.
27 Men shall proceed in an orderly manner to and from man
28 trips.

29 (e) When belts are used for transporting men, a mini-
30 mum clearance of eighteen inches shall be maintained
31 between the belt and the roof or crossbars, projecting
32 equipment, cap pieces, overhead cables, wiring and other
33 objects. Visible reflectors shall be placed where project-
34 ed equipment, cap pieces, overhead cables, wiring or other
35 pieces cross the belt line. Where the height of the coal
36 seam permits, the clearance shall not be less than twenty-
37 four inches.

38 (f) The belt speed shall not exceed two hundred
39 fifty feet per minute where the minimum overhead clear-
40 ance is eighteen inches, or three hundred feet per minute
41 where the minimum overhead clearance is twenty-four
42 inches, while men are loading, unloading, or being trans-
43 ported. A signaling system or method shall be provided
44 for stopping the belt and men shall ride not less than
45 six feet apart.

46 (g) An assistant mine foreman or some other person
47 designated by the mine foreman shall supervise the load-
48 ing and unloading of belts and man trips. Where men
49 are required to cross over belts, adequate and safe facilities
50 shall be provided.

51 (h) Positive-acting stop controls shall be installed
52 along all belt conveyors used to transport men, and such
53 controls shall be readily accessible, and maintained so
54 that the belt can be stopped or started at any location.

55 (i) Belt conveyors used for man trips shall be stopped
56 while men are loading or unloading.

57 (j) There shall be at least thirty-six inches of side
58 clearance where men board or leave such belt con-
59 veyors.

60 (k) Adequate illumination including colored lights or
61 reflective signs shall be installed at all loading and
62 unloading stations. Such colored lights and reflective
63 signs shall be so located as to be observable to all
64 persons riding the belt conveyor.

65 (l) Telephone or other suitable communications shall
66 be provided at points where men are regularly loaded on
67 or unloaded from belt conveyors.

68 (m) After supplies have been transported on man trip
69 cars, such cars shall be examined for unsafe conditions
70 prior to the transportation of men.

71 (n) While trackmen are working on haulageways, the
72 dispatcher, or if there is no dispatcher, such other person
73 responsible for communications with haulage crews shall
74 give notice to haulage crews to maintain traffic under a
75 slow and safe operating speed at the point of construction
76 or repair.

§22-2-40. General provisions.

1 (a) Operators of coal mines in which electricity is
2 used as a means of power shall comply with the follow-
3 ing provisions:

4 (1) All surface transformers, unless of a construction
5 which will eliminate shock hazards, or unless installed
6 at least eight feet above ground, shall be enclosed in a
7 house or surrounded by a fence at least six feet high.
8 If the enclosure is of metal, it shall be grounded effec-
9 tively. The gate or door to the enclosure shall be
10 kept locked at all times, unless authorized persons are
11 present.

12 (2) Underground transformers shall be air cooled or
13 cooled with noninflammable liquid or inert gas.

14 (3) Underground stations containing circuit breakers
15 filled with inflammable liquids shall be put on a separate
16 split of air or ventilated to the return air, and shall be
17 of fireproof construction.

18 (4) Transformers shall be provided with adequate
19 overload protection.

20 (5) "Danger—High Voltage" signs with the voltage
21 indicated shall be posted conspicuously on all transformer
22 enclosures, high-potential switchboards and other high-
23 potential installations.

24 (6) Dry insulating platforms of rubber or other suit-
25 able nonconductive material shall be kept in place at
26 each switchboard and at stationary machinery where
27 shock hazards exist.

28 (7) Capacitors used for power factor connection shall
29 be noninflammable liquid filled. Suitable drain-off re-
30 sistors or other means to protect workman against electric
31 shock following removal of power shall be provided.

32 (8) All unattended underground loading points where
33 electric driven hydraulic systems are used shall utilize
34 a fireproof oil or emulsion.

35 (9) Before electrical changes are made to permissible
36 equipment for use in a mine, they shall be approved by
37 the director of the department of mines.

38 (10) Reverse current protection shall be provided at
39 storage battery charging stations to prevent the storage
40 batteries from energizing the power circuits in the event
41 of power failure.

42 (11) In all mines all junction or distribution boxes
43 used for making multiple power connections inby the
44 last open crosscut shall be permissible.

45 (12) All hand-held electric drills, blower and ex-
46 haust fans, electric pumps, and such other low horse-
47 power electric face equipment which are taken into or
48 used inby the last open crosscut of any coal mine shall be
49 permissible.

50 (13) All electric face equipment which is taken into
51 or used inby the last open crosscut of any coal mine
52 shall be permissible.

53 The phrase "coal seams above the water table" means
54 coal seams in a mine which are located at an elevation
55 above a river or the tributary of a river into which a
56 local surface water system naturally drains.

57 (14) In mines operated in coal seams which are located
58 at elevations above the water table.

59 (15) The operator of each coal mine shall maintain
60 in permissible condition all electric face equipment, which
61 is taken into or used in by the last open crosscut of any
62 mine.

63 (16) Except where permissible power connection units
64 are used, all power-connection points out by the last open
65 crosscut shall be in intake air.

66 (17) All power circuits and electric equipment shall
67 be deenergized before work is done on such circuits and
68 equipment, except when necessary for trouble shooting
69 or testing.

70 (18) Energized trolley wires may be repaired only
71 by a person trained to perform electrical work and to
72 maintain electrical equipment and the operator of a
73 mine shall require that such persons wear approved and
74 tested insulated shoes and wireman's gloves.

75 (19) No electrical work shall be performed on low-,
76 medium-, or high-voltage distribution circuits or equip-
77 ment, except by a qualified person or by a person trained
78 to perform electrical work and to maintain electrical
79 equipment under the direct supervision of a qualified
80 person. Disconnecting devices shall be locked out and
81 suitably tagged by the persons who perform such work,
82 except that in cases where locking out is not possible,
83 such devices shall be opened and suitably tagged by
84 such persons who installed them, or, if such persons are
85 unavailable, by persons authorized by the operator or
86 his agent.

87 (20) All electric equipment shall be examined weekly,
88 tested, and properly maintained by a qualified person to
89 assure safe operating conditions. When a potentially
90 dangerous condition is found on electric equipment, such
91 equipment shall be removed from service until such
92 condition is corrected. A record of such examinations
93 shall be kept and made available to an authorized repre-
94 sentative of the director of the department of mines and
95 to the miners in such mine.

96 (21) All electric conductors shall be sufficient in size
97 and have adequate current-carrying capacity and be of
98 such construction that a rise in temperature resulting
99 from normal operation will not damage the insulating
100 material.

101 (22) All electrical connections or splices in conductors
102 shall be mechanically and electrically efficient, and suit-
103 able connectors shall be used. All electrical connections
104 or splices in insulated wire shall be reinsulated at least
105 to the same degree of protection as the remainder of the
106 wire.

107 (23) Cables shall enter metal frames of motors, splice
108 boxes, and electric compartment only through proper
109 fittings. When insulated wire, other than cables pass
110 through metal frames, the holes shall be substantially
111 bushed with insulated bushings.

112 (24) All power wire (except trailing cables on mobile
113 equipment, specially designed cables conducting high-
114 voltage power to underground rectifying equipment or
115 transformers, or bare or insulated ground and return
116 wires) shall be supported on well-installed insulators and
117 shall not contact combustible material, roof or ribs.

118 (25) Power wires and cables, including but not limited
119 to phone communication and control wires, except trolley
120 wires, trolley feeder wires and bare signal wires, shall
121 be insulated adequately and fully protected. The pro-
122 visions of this paragraph shall not become effective until
123 the first day of January, one thousand nine hundred
124 seventy-eight.

125 (26) Automatic circuit-breaking devices or fuses of
126 the correct type and capacity shall be installed so as to
127 protect all electric equipment and circuits against short
128 circuit and overloads. Three-phase motors on all electric
129 equipment shall be provided with overload protection
130 that will deenergize all three phases in the event that
131 any phase is overloaded.

132 (27) Incandescent lamps installed along haulageways
133 and at other locations shall not contact combustible
134 material, and if powered from trolley or direct current

135 feeder circuits, need not be provided with separate
136 short circuits or overload protection, if the lamp is not
137 more than eight feet in distance from such circuits.

138 (28) In all main power circuits, disconnecting
139 switches shall be installed underground within five hun-
140 dred feet of the bottoms of shafts and boreholes through
141 which main power circuits enter the underground area
142 of the mine and within five hundred feet of all other
143 places where main power circuits enter the underground
144 area of the mine.

145 (29) All electric equipment shall be provided with
146 switches or other controls that are safely designed, con-
147 structed and installed.

148 (30) Each underground, exposed power conductor that
149 leads underground shall be equipped with suitable light-
150 ning arrestors of approved type within one hundred
151 feet of the point where the circuit enters the mine.
152 Lightning arrestors shall be connected to a low-resistance
153 grounding medium on the surface which shall be sepa-
154 rated from neutral ground by a distance of not less than
155 twenty-five feet.

156 (31) Except for areas of a coal mine inby the last
157 open crosscut, incandescent lamps may be used to illumi-
158 nate underground areas. When incandescent lamps are
159 used in a track entry or belt entry or near track entries
160 to illuminate special areas other than structures, the
161 lamps shall be installed in weatherproof sockets located
162 in positions such that the lamps will not come in contact
163 with any combustible material. Lamps used in all other
164 places must be of substantial construction and be fitted
165 with a glass enclosure.

166 (32) An authorized representative may require in any
167 mine that electric face equipment be provided with de-
168 vices that will permit the equipment to be deenergized
169 quickly in the event of an emergency.

170 (33) An authorized representative of the director
171 shall require manually operated emergency stop switches,
172 designed to deenergize the traction motor circuit when

173 the contractors or controller fail to open, to be installed
174 on all battery powered tractors, taken into or used in by
175 the last open crosscut of any entry or room.

176 (34) Trailing cables used in coal mines shall meet the
177 requirements for flame-resistant cables.

178 (35) Short circuit protection for trailing cables shall
179 be provided by an automatic circuit breaker or other
180 no less effective device approved by the director of the
181 department of mines of adequate current-interrupting
182 capacity in each ungrounded conductor. Disconnecting
183 devices used to disconnect power from trailing cables
184 shall be plainly marked and identified and such devices
185 shall be equipped or designed in such a manner that it
186 can be determined by visual observation that the power
187 is disconnected.

188 (36) When two or more trailing cables junction to
189 the same distribution center, means shall be provided to
190 assure against connecting a trailing cable to the wrong
191 size circuit breaker.

192 (37) One temporary splice may be made in any trailing
193 cable. Such trailing cable may only be used for the next
194 twenty-four-hour period. No temporary splice shall be
195 made in a trailing cable within twenty-five feet of the
196 machine, except cable reel equipment. Temporary splices
197 in trailing cables shall be made in a workmanlike manner
198 and shall be mechanically strong and well insulated.
199 Trailing cables or hand cables which have exposed wires
200 or which have splices that heat or spark under load
201 shall not be used. As used in this section, the term
202 "splice" means a mechanical joining of one or more con-
203 ductors that have been severed.

204 (38) When permanent splices in trailing cables are
205 made, they shall be:

206 (A) Mechanically strong with adequate electrical
207 conductivity and flexibility,

208 (B) Effectively insulated and sealed so as to exclude
209 moisture, and

210 (C) Vulcanized or otherwise treated with suitable
211 materials to provide flame-resistant qualities and good
212 bonding to the outer jacket.

213 (39) Trailing cables shall be clamped to machines in
214 a manner to protect the cables from damage and to
215 prevent strain on the electrical connections. No cables
216 will be hung in a manner which will damage the insula-
217 tion or conductors.

218 (40) Trailing cables shall be adequately protected to
219 prevent damage by mobile equipment.

220 (41) Trailing cable and power cable connections to
221 junction boxes and to electrical equipment shall not be
222 made or broken under load.

223 (42) All metallic sheaths, armors, and conduits en-
224 closing power conductors shall be electrically continuous
225 throughout and shall be grounded by methods approved
226 by an authorized representative of the director of the
227 department of mines.

228 (43) Except where waived by the director, metallic
229 frames, casings and other enclosures of electric equip-
230 ment that can become alive through failure of insulation
231 or by contact with energized parts shall be grounded,
232 and on or before the first day of January, one thousand
233 nine hundred seventy-eight, shall have a ground monitor-
234 ing system.

235 (44) In instance where single-phase 110-220 volt cir-
236 cuits are used to feed electrical equipment, the only
237 method of grounding that will be approved is the con-
238 nection of all metallic frames, casings and other enclo-
239 sures of such equipment to a separate grounding conduc-
240 tor which establishes a continuous connection to a
241 grounded center tap of the transformer.

242 (45) The attachment of grounding wires to a mine
243 tract or other grounded power conductor will be approved
244 if separate clamps, suitable for such purpose, are used
245 and installed to provide a solid connection.

246 (46) The frames of all offtrack direct-current machines
247 and the enclosures of related detached components shall

248 be effectively grounded or otherwise maintained at no
249 less safe voltages.

250 (47) Installation of silicon diodes shall be restricted
251 to electric equipment receiving power from a direct-
252 current system with one polarity grounded. Where such
253 diodes are used on circuits having a nominal voltage
254 rating of two hundred fifty, they must have a forward
255 current rating of four hundred amperes or more, and
256 have a peak inverse voltage rating of four hundred or
257 more. Where such diodes are used on circuits having
258 nominal voltage rating of five hundred fifty, they must
259 have a forward current rating of two hundred fifty
260 amperes or more, and have a peak inverse voltage rating
261 of eight hundred or more.

262 (48) In addition to the grounding diode, a polarizing
263 diode must be installed in the machine control circuit
264 to prevent operation of the machine when the polarity
265 of a trailing cable is reversed.

266 (49) When installed on permissible equipment, all
267 grounding diodes, over-current devices, and polarizing
268 diodes must be placed in explosion-proof compartments.

269 (50) High-voltage lines, both on the surface and
270 underground, shall be deenergized and grounded before
271 work is performed on them, except that repairs may be
272 permitted, in the case of energized surface high-voltage
273 lines, if such repairs are made by a qualified person in
274 accordance with procedures and safeguards, including,
275 but not limited to, a requirement that the operator of
276 such mine provide, test, and maintain protective devices
277 in making such repairs.

278 (51) When two or more persons are working on an
279 energized high-voltage surface line simultaneously, and
280 any one of them is within reach of another, such per-
281 sons shall not be allowed to work on different phases or
282 on equipment with different potentials.

283 (52) All persons performing work on energized high-
284 voltage surface lines shall wear protective rubber gloves,
285 sleeves, and climber guards if climbers are worn. Pro-

286 tective rubber gloves shall not be worn wrong side
287 out or without protective leather gloves. Protective
288 devices worn by a person assigned to perform repairs
289 on high-voltage surface lines shall be worn continuously
290 from the time he leaves the ground until he returns
291 to the ground, and, if such devices are employed for
292 extended periods, such person shall visually inspect the
293 equipment assigned him for defects before each use, and,
294 in no case, less than twice each day.

295 (53) Disconnecting or cutout switches on energized
296 high-voltage surface lines shall be operated only with
297 insulated sticks, fuse tongs, or pullers which are ade-
298 quately insulated and maintained to protect the operator
299 from the voltage to which he is exposed. When such
300 switches are operated from the ground, the person oper-
301 ating such devices shall wear protective rubber gloves.

302 (54) Solely for purposes of grounding ungrounded
303 high-voltage power systems, grounded messenger wires
304 used to suspend the cables of such systems may be used
305 as a grounding medium.

306 (55) When not in use, power circuits underground
307 shall be deenergized on idle days and idle shifts, except
308 that rectifiers and transformers may remain energized.

309 (56) High-voltage circuits entering the underground
310 area of any coal mine shall be protected by suitable
311 circuit breakers of adequate interrupting capacity. Such
312 breakers shall be equipped with devices to provide pro-
313 tection against undervoltage, grounded phase, short cir-
314 cuit, and overcurrent.

315 (57) Circuit breakers protecting high-voltage circuits
316 entering an underground area of any coal mine shall be
317 located on the surface and in no case installed either
318 underground or within a drift.

319 (58) One circuit breaker may be used to protect two
320 or more branch circuits, if the circuit breaker is adjusted
321 to afford overcurrent protection for the smallest con-
322 ductor.

323 (59) The grounding resistor, where required, shall be
324 of the proper ohmic value to limit the voltage drop in
325 the grounding circuit external to the resistor to not more
326 than one hundred volts under fault conditions. The
327 grounding resistor shall be rated for maximum fault
328 current continuously and insulated from ground for a
329 voltage equal to the phase-to-phase voltage of the system.

330 (60) High-voltage circuits extending underground and
331 supplying portable mobile or stationary high-voltage
332 equipment shall contain either a direct or derived neutral
333 which shall be grounded through a suitable resistor at
334 the source transformers, and a grounding circuit, orig-
335 inating at the grounded side of the grounding resistor,
336 shall extend along with the power conductors and serve
337 as a grounding conductor for the frames of all high-
338 voltage equipment supplied power from the circuit,
339 except that the director or his authorized representative
340 may permit ungrounded high-voltage circuits to be
341 extended underground to feed stationary electrical
342 equipment if such circuits are either steel armored
343 or installed in grounded, rigid steel conduit through-
344 out their entire length, and upon his finding that such
345 exception does not pose a hazard to the miners. Within
346 one hundred feet of the point on the surface where
347 high-voltage circuits enter the underground portion of
348 the mine, disconnecting devices shall be installed and
349 so equipped or designed in such a manner that it can
350 be determined by visual observation that the power
351 is disconnected, except that the director or his authorized
352 representative may permit such devices to be installed
353 at a greater distance from such area of the mine if he
354 determines, based on existing physical conditions, that
355 such installation will be more accessible at a greater
356 distance and will not pose any hazard to the miners.

357 (61) High-voltage resistance grounded systems serv-
358 ing portable or mobile equipment shall include a fail-
359 safe ground check circuit to monitor continuously the
360 grounding circuit to assure continuity, and the fail-safe
361 ground check circuit shall cause the circuit breaker to
362 open when either the ground or pilot check wire is

363 broken, or other no less effective device approved by
364 the director or his authorized representative to assure
365 such continuity.

366 (62) Underground high-voltage cables used in re-
367 sistance grounded systems shall be equipped with metal-
368 lic shields around each power conductor with one or
369 more ground conductors having a total cross-sectional
370 area of not less than one half the power conductor, and
371 with an insulated internal or external conductor not
372 smaller than No. 10 (A.W.G.) for the ground continuity
373 check circuit.

374 (63) All such cables shall be adequate for the intended
375 current and voltage. Splices made in such cables shall
376 provide continuity of all components.

377 (64) Single-phase loads, such as transformer pri-
378 maries, shall be connected phase-to-phase.

379 (65) All underground high-voltage transmission cables
380 shall be installed only in regularly inspected air courses
381 and haulageways, and shall be covered, buried, or placed
382 so as to afford protection against damage, guarded where
383 men regularly work or pass under them unless they
384 are six and one-half feet or more above the floor or
385 rail, securely anchored, properly insulated, and guarded
386 at ends, and covered, insulated, or placed to prevent
387 contact with trolley wires and other low-voltage cir-
388 cuits.

389 (66) Disconnecting devices shall be installed at the
390 beginning of branch lines in underground high-voltage
391 circuits and equipped or designed in such a manner that
392 it can be determined by visual observation that the cir-
393 cuit is deenergized when the switches are open.

394 (67) Circuit breakers and disconnecting switches
395 underground shall be marked for identification.

396 (68) In the case of high-voltage cables used as trailing
397 cables, temporary splices shall not be used and all
398 permanent splices shall be made in accordance with the
399 manufacturers' specifications.

400 (69) Frames, supporting structures and enclosures of
401 stationary, portable, or mobile underground high-voltage
402 equipment and all high-voltage equipment supplying
403 power to such equipment receiving power from resistance
404 grounded systems shall be effectively grounded to the
405 high-voltage ground.

406 (70) Low- and medium-voltage power circuits serving
407 three-phase alternating current equipment serving port-
408 able or mobile equipment shall be protected by suitable
409 circuit breakers of adequate interrupting capacity which
410 are properly tested and maintained as prescribed by the
411 director. Such breakers shall be equipped with devices
412 to provide protection against under-voltage, grounded
413 phase, short circuit, and overcurrent.

414 (71) Power centers and portable transformers shall be
415 deenergized before they are moved from one location to
416 another, except that, when equipment powered by sources
417 other than such centers or transformers is not available,
418 the director may permit such centers and transformers
419 to be moved while energized, if he determines that an-
420 other equivalent or greater hazard may otherwise be
421 created, and if they are moved under the supervision of
422 a qualified person, and if such centers and transformers
423 are examined prior to such movement by such person
424 and found to be grounded by methods approved by an
425 authorized representative of the director and otherwise
426 protected from hazards to the miner. A record shall be
427 kept of such examinations. High-voltage cables, other
428 than trailing cables, shall not be moved or handled at any
429 time while energized, except that such centers and trans-
430 formers are moved while energized as permitted under
431 this section, energized high-voltage cables attached to
432 such centers and transformers may be moved only by a
433 qualified person and the operator of such mine shall
434 require that such person wear approved and tested in-
435 sulated wireman's gloves.

436 (72) Low- and medium-voltage three-phase alternat-
437 ing-current circuits used underground shall contain either
438 a direct or derived neutral which shall be grounded
439 through a suitable resistor at the power center, and a

440 grounding circuit, originating at the grounded side of
441 the grounding resistor, shall extend along with the power
442 conductors and serve as a grounding conductor for the
443 frames of all the electrical equipment supplied power
444 from the circuit, except that the director or his autho-
445 rized representative may permit underground low- and
446 medium-voltage circuits to be used underground to feed
447 such stationary electrical equipment if such circuits are
448 either steel armored or installed in grounded rigid steel
449 conduit throughout their entire length. The grounding
450 resistor, where required, shall be of the proper ohmic
451 value to limit the ground fault current to twenty-five
452 amperes. The grounding resistor shall be rated for
453 maximum fault current continuously and insulated from
454 ground for a voltage equal to the phase-to-phase voltage
455 of the system.

456 (73) Low- and medium-voltage resistance grounded
457 systems serving portable or mobile equipment shall in-
458 clude a fail-safe ground check circuit to monitor con-
459 tinuously the grounding circuit to assure continuity
460 which ground check circuit shall cause the circuit breaker
461 to open when either the ground or pilot check wire is
462 broken, or other not less effective device approved by
463 the director or his authorized representative to assure
464 such continuity, except that an extension of time, not in
465 excess of twelve months, may be permitted by the direc-
466 tor on a mine-to-mine basis if he determines that such
467 equipment is not available. Cable couplers shall be con-
468 structed so that the ground check continuity conductor
469 shall be broken first and the ground conductors shall
470 be broken last when the coupler is being uncoupled.

471 (74) Disconnecting devices shall be installed in con-
472 junction with circuit breakers serving portable or mobile
473 equipment to provide visual evidence that the power
474 is connected.

475 (75) Circuit breakers shall be marked for identifica-
476 tion.

477 (76) Single-phase loads shall be connected phase-to-
478 phase.

479 (77) Trailing cables for medium-voltage circuits shall
 480 include grounding conductors, a ground check conductor,
 481 and grounded metallic shields around each power con-
 482 ductor or a ground metallic shield over the assembly,
 483 except that on equipment employing cable reels, cables
 484 without shields may be used if the insulation is rated
 485 two thousand volts or more.

486 (78) Trolley wires and trolley feeder wires shall be
 487 provided with cutout switches at intervals of not more
 488 than two thousand feet, and near the beginning of all
 489 branch lines.

490 (79) Trolley wires and trolley feeder wires shall be
 491 provided with overcurrent protection.

492 (80) Trolley wires and trolley feeder wires, high-
 493 voltage cables, and transformers shall not be located
 494 within fifteen feet of the last open crosscut and shall be
 495 kept at least one hundred fifty feet from pillar workings.

496 (81) Trolley wires, trolley feeder wires, and bare
 497 signal wires shall be insulated adequately where they
 498 pass through doors and stoppings and where they cross
 499 other power wires and cables. Trolley wires and trolley
 500 feeder wires shall be guarded adequately.

501 (A) At all points where men are required to work
 502 or pass regularly under the wires.

503 (B) On both sides of all doors and stoppings.

504 (C) At man-trip stations.

505 (82) Temporary guards shall be provided where track-
 506 men and other persons work in proximity to trolley
 507 wires and trolley feeder wires.

508 (83) Adequate precaution shall be taken to insure that
 509 equipment being moved along haulageways will not come
 510 in contact with trolley wires or trolley feeder wires.

511 (84) Trolley and feeder wires shall be installed as
 512 follows: Where installed on permanent haulage, they
 513 shall be:

514 (A) At least six inches outside the track gauge line.

515 (B) Kept taut and not permitted to touch the roof,
516 rib, or crossbars. Particular care shall be taken where
517 they pass through door openings to preclude bare wires
518 from coming in contact with combustible material.

519 (C) Installations of trolley wire hangers shall be pro-
520 vided within three feet of each splice in a trolley wire.

§22-2-42. Telephone service or communication facilities.

1 Telephone service or equivalent two-way communica-
2 tion facilities shall be provided in all mines at least one
3 of which shall be in service at all times as follows:

4 (a) A telephone or equivalent two-way communica-
5 tion facility shall be located on the surface within five
6 hundred feet of all main portals, and shall be installed
7 either in a building or in a box-like structure designed
8 to protect the facilities from damage by inclement
9 weather. At least one of these communication facilities
10 shall be at a location where a responsible person who
11 is always on duty when men are underground can hear
12 the facility and respond immediately in the event of an
13 emergency. "Two-way communication facility" shall mean
14 a system maintained to allow voice contact to come in
15 and out of the working section at all times.

16 (b) (1) Telephones or equivalent two-way communica-
17 tion facilities provided at each working section shall be
18 located not more than five hundred feet outby the last
19 open crosscut and not more than eight hundred feet from
20 the farthest point of penetration of the working places on
21 such section.

22 (2) The incoming communication signal shall activate
23 an audible alarm, distinguishable from the surrounding
24 noise level, or a visual alarm that can be seen by a miner
25 regularly employed on the working section.

26 (3) If a communication system other than telephones
27 is used and its operation depends entirely upon
28 power from the mine electric system, means shall be
29 provided to permit continued communication in the event
30 the mine electric power fails or is cut off: *Provided*, That
31 where trolley phones and telephones are both used, an

32 alternate source of power for the trolley phone system
33 is not required.

34 (4) Telephones or equivalent two-way communication
35 facilities shall be maintained in good operating condition
36 at all times. In the event of any failure in the system
37 that results in loss of communication, repairs shall be
38 started immediately, and the system restored to operat-
39 ing condition as soon as possible.

40 (5) Where required by the director, trucks used for
41 haulage of coal, men or supplies by an operator shall be
42 equipped with two-way communication instruments.

43 (c) On or after the first day of January, one thousand
44 nine hundred seventy-eight, unless the director for good
45 cause grants a waiver, all such telephone or equivalent
46 two-way communications shall be connected to regular
47 telephonic and other means of communication available
48 in the community so that in the event of an emergency,
49 emergency medical attendants or other personnel can
50 communicate from within the mine directly to health care
51 facilities.

52 (d) Telephone lines and cables shall be carried on
53 insulators installed on the opposite side from power of
54 trolley wires, and where they cross power or trolley
55 wires, they shall be insulated adequately. Lightning ar-
56 restors shall be provided at the points where telephone
57 circuits enter the mine.

§22-2-49. Safeguards for mechanical equipment.

1 (a) The cutter chains of mining machines shall be
2 locked securely by mechanical means or electrical inter-
3 locks while such machines are parked or being trammed.
4 Loading machines shall not be trammed with loading
5 arms in motion, except when loading materials.

6 (b) Belt, chain or rope drives and the moving parts of
7 machinery which are within seven feet of the floor,
8 ground or platform level, unless isolated, shall be guarded
9 adequately. Repair pits shall be kept covered or guarded
10 at all times when not in use. Machinery shall not be
11 lubricated or repaired while in motion, except where safe
12 remote lubricating devices are used. Machinery shall not

13 be started until the person lubricating or repairing it
14 has given a clear signal. Guards which have been re-
15 moved shall be replaced before the machinery is again
16 put into use. Provision shall be made to prevent ac-
17 cumulations of spilled lubricants.

18 (c) Mechanically operated grinding wheels shall be
19 equipped with safety washers, substantial retaining hoods,
20 and, unless goggles are used, eye shields.

21 (d) No person shall stand along the side of the boom,
22 or pass or stand along the loading head or cutting head,
23 on a continuous miner or loading machine in operation.

24 (e) Braking devices shall be guarded to prevent ac-
25 cidental release. When required by the director, track
26 mounted mobile equipment shall be equipped with
27 workable sanding devices.

28 (f) On and after the first day of January, one thousand
29 nine hundred seventy-eight, all battery powered equip-
30 ment shall be equipped with an under-voltage indicator
31 which will indicate when the voltage is less than three
32 fourths of its rated capacity, at which time such equipment
33 shall be withdrawn from use except for the purpose of
34 returning the vehicle to the recharging station.

§22-2-53a. Railroad cars; dumping areas.

1 Employees handling railroad cars shall have access to
2 and use an approved distinct audible signaling device to
3 give warning when cars are in motion. Where required by
4 rule or regulation, safety belts shall be worn and properly
5 attached by all car droppers handling railroad cars. All
6 dumping ramps shall be of a sufficient width to insure
7 safe operation of vehicles used thereon.

§22-2-60. Accessible outlets; safe roadways for emergencies.

1 (a) No operator or mine foreman of any coal mines
2 shall employ any person to work in such mine, or permit
3 any persons to be in the mine for the purpose of working
4 therein unless they are provided with two openings or
5 outlets to each seam, separated by natural strata, such
6 openings to be not less than three hundred feet apart,
7 if the mine be worked by shaft; if the mine be worked
8 by shaft and slope, such openings shall be separated by

9 one hundred feet of natural strata; and not less than
10 fifty feet apart at the outlets, if worked by slope or drift;
11 but this requirement of a distance of three hundred feet
12 between openings or outlets to shaft mines shall not apply
13 where such openings or outlets have been made prior
14 to the effective date of this article.

15 (b) At least two separate and distinct travelable pas-
16 sagerways designated as escapeways shall be maintained
17 to insure passage at all times to any person, including
18 disabled persons. The escapeway openings to the surface
19 shall be separated in such manner as shall be prescribed
20 by the director. If at least two escapeways are not
21 available for any reason, all miners in the affected area
22 other than those requisite to remedy the situation shall
23 be withdrawn from the affected area until such time as
24 the escapeway is made passable. Where the height of
25 the coal bed is more than five feet, the escapeways shall
26 be maintained at a height of at least five feet excluding
27 necessary roof support, and the travelway in such escape-
28 way shall be maintained at a width of at least six feet,
29 excluding necessary roof support and in those situations
30 where the height of the coal bed is less than five feet
31 the escapeway should be maintained to the height of
32 the coal bed excluding any necessary roof support, and
33 the travelway in such escapeway shall be maintained
34 at a width of at least six feet. At least one escapeway
35 ventilated with intake air, maintained to the last open
36 crosscut, shall be provided from each working section
37 continuously to the nearest available opening on the
38 surface, and shall be maintained in safe condition and
39 properly marked. Mine openings shall be adequately
40 protected to prevent the entrance into the underground
41 area of the mine of floodwater. Escape facilities ap-
42 proved by the director of the department of mines,
43 properly maintained and frequently tested, shall be
44 present at or in each escape shaft or slope to allow all
45 persons, including disabled persons, to escape quickly
46 to the surface in event of an emergency. Return airways
47 entries designated as escapeways shall be provided with
48 permissible two-way communication systems to the sur-
49 face, and such systems shall be located at points not to

50 exceed every four thousand feet. On or after the first
51 day of April, one thousand nine hundred seventy-eight,
52 each operator shall provide lifeline cords, with reflective
53 material at twenty-five foot intervals, from the last open
54 crosscut to the surface along a designated escapeway
55 ventilated by return air: *Provided*, That in case of a
56 shaft mine such lifeline cords shall extend from the last
57 open crosscut to the bottom of the designated escape
58 shaft. Such lifeline cord shall be of durable construction
59 sufficient to allow miners to see and to use effectively to
60 guide themselves out of the mine in the event of an
61 emergency.

62 (c) Escapeways shall be inspected and traveled at
63 least once each week by a certified mine examiner who
64 shall place his initials and the date in a conspicuous place
65 or places and who shall file a written report thereon which
66 shall be kept on the surface.

67 (d) When new coal mines are opened, not more than
68 twenty men shall be allowed at any one time in any
69 mine until a connection has been made between the two
70 mine openings, and such connections shall be made as
71 soon as possible.

72 (e) When only one opening is available because of
73 final mining of pillars, not more than twenty miners shall
74 be allowed in such mine at any one time, and the dis-
75 tance between the mine opening and working face shall
76 not exceed five hundred feet.

77 (f) First aid materials and such other equipment as
78 the director may require shall be maintained within five
79 hundred feet of each area in which miners are regularly
80 working to which they may have access in case of an
81 emergency and for protection against hazards.

82 (g) Each working area of the mine not serviced by
83 track mounted or rubber tired vehicles which uses con-
84 veyor belts for removal of coal shall be equipped with a
85 special capsule in which an injured person can be placed
86 and transported on the belt to the surface or to other
87 transportation facilities. The director shall within nine
88 months of the effective date of this section promulgate
89 standards and guidelines as to what such "special capsule"

90 as used in this subsection shall include. Each section of
91 the mine using or serviced by track mounted or rubber
92 tired equipment shall have readily available a vehicle
93 which can be used to promptly remove a person in case of
94 injury.

§22-2-70a. Right of miner to refuse to operate unsafe equipment.

1 No miner shall be required to operate unsafe equip-
2 ment. On or before the first day of January, one thousand
3 nine hundred seventy-eight, the board of coal mine health
4 and safety shall by rule or regulation establish a procedure
5 for resolving disputes arising out of the refusal by a
6 miner to operate such alleged unsafe equipment. No
7 action shall be taken against a miner by an operator
8 unless such miner is found to have acted in bad faith
9 and without good cause by the director or his authorized
10 representative.

§22-2-70b. Long wall and short wall mining.

1 (a) The Legislature finds that new methods of extract-
2 ing coal known as long wall or short wall mining is being
3 used in this state. The board of coal mine health and
4 safety shall investigate or cause to be investigated the
5 technology, procedures and techniques used in such
6 mining methods and shall promulgate by the first day
7 of January, one thousand nine hundred seventy-eight, and
8 continuously update the same, rules and regulations
9 governing long wall and short wall mining, which rules
10 and regulations shall have as their paramount objective,
11 the health and safety of the persons involved in such
12 operations, and which said regulations shall include, but
13 not be limited to, the certification of personnel involved in
14 such operation.

15 (b) The director may modify the application of any
16 provision of this section to a mine if the director deter-
17 mines that an alternative method of achieving the result
18 of such provision exists which will at all times guarantee
19 no less than the same measure of protection afforded the
20 miners of such mine by such provision, or that the ap-
21 plication of such provision to such mine will result in
22 a diminution of the health of, or safety to, the miners in

23 such mine. The director shall give notice to the operator
24 and the representative of miners in the affected mine, as
25 appropriate, and shall cause such investigation to be
26 made as he deems appropriate. Such investigation shall
27 provide an opportunity for a hearing, at the request of
28 such operator or representative or other interested party,
29 to enable the operator and the representative of miners
30 in such mine or other interested party to present informa-
31 tion relating to the modification of such provision. The
32 director shall issue a decision incorporating his findings
33 of fact therein, and send a copy thereof to the operator
34 and the representative of the miners, as appropriate. Any
35 such hearing shall be of record.

**§22-2-70c. Shafts, slopes and construction of surface facilities;
legislative findings; duties of director to promul-
gate rules and regulations.**

1 The board of coal mine health and safety shall investi-
2 gate or cause to be investigated the technology, procedures
3 and techniques used in the construction of shafts, slopes
4 and surface facilities, the safety hazards, attendant there-
5 with, and shall promulgate by the first day of January,
6 one thousand nine hundred seventy-eight, and continuous-
7 ly update the same, rules and regulations governing the
8 construction of shafts, slopes and surface facilities, which
9 rules and regulations shall have as their paramount con-
10 cern, the health and safety of the persons involved in
11 such operations, and which said regulations shall include,
12 but not be limited to, the certification of all supervisors,
13 the certification and training of hoist operators and shaft
14 workers, the certification of blasters, and approval of
15 plans. The provisions of such rules and regulations may
16 be enforced against operators and construction companies
17 in accord with the provisions of article one of this chapter.
18 For purposes of this chapter, a construction company
19 shall be deemed an operator.

§22-2-70d. Control of respirable dust.

1 Each operator shall maintain the concentration of
2 respirable dust in the mine atmosphere during each shift
3 to which miners in active workings of such mine are
4 exposed below such level as the board may establish.

5 The board of the department of mines may promulgate
6 rules and regulations governing respirable dust, including,
7 but not limited to, dust standards, sampling procedures,
8 sampling devices, equipment and sample analysis by using
9 the data gathered by the federal bureau of mines.

10 Any operator found to be in violation of such standards
11 shall bring itself into compliance with such standards
12 and rules and regulations of the board or the director of
13 mines may thereafter order such operator to discontinue
14 such operation.

ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-2A-1. Declaration of legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that:

2 (1) The Legislature concurs with the Congressional
3 declaration made in the "Federal Coal Mine Health and
4 Safety Act of 1969" that "the first priority and concern of
5 all in the coal mining industry must be the health and
6 safety of its most precious resource--the miner";

7 (2) Coal mining is highly specialized, technical and
8 complex and it requires frequent review, refinement and
9 improvement of standards to protect the health and
10 safety of miners;

11 (3) During each session of the Legislature, coal mine
12 health and safety standards are proposed which require
13 knowledge and comprehension of scientific and technical
14 data related to coal mining;

15 (4) The formulation of appropriate regulations and
16 practices to improve health and safety and provide in-
17 creased protection of miners can be accomplished more
18 effectively by persons who have experience and compet-
19 ence in coal mining and coal mine health and safety.

20 (b) In view of the foregoing findings, it is the purpose
21 of this article to:

22 (1) Create a board of coal mine health and safety;

23 (2) Require such board to adopt as standard rules and
24 regulations the coal mine health and safety provisions of
25 this chapter;

- 26 (3) Compel the board to review such standard rules
27 and regulations and, when deemed appropriate to improve
28 or enhance coal mine health and safety, to revise the
29 same or develop and promulgate new rules and regula-
30 tions dealing with coal mine health and safety; and
31 (4) Authorize such board to conduct such other acti-
32 vities as it deems necessary to implement the provisions
33 of this chapter.

§22-2A-2. Definitions; references.

1 Unless the context in which a word or phrase appears
2 clearly requires a different meaning, the words and
3 phrases defined in section one, article one of this chapter
4 shall have, when used in this article, the meaning therein
5 assigned to them. For the purpose of this article "board"
6 means the board of coal mine health and safety created
7 by section three of this article.

**§22-2A-3. Board of coal mine health and safety created;
membership; method of nomination and appoint-
ment; vacancies; quorum.**

- 1 (a) There is hereby created a board of coal mine health
2 and safety, which shall consist of seven members who shall
3 be residents of this state, six of whom shall be appointed
4 as hereinafter specified in this section.
5 (1) The governor shall appoint one member to represent
6 the viewpoint of those operators in this state whose in-
7 dividual aggregate production exceeds one million tons
8 annually and one member to represent the viewpoint of
9 those operators in this state whose individual aggregate
10 production exceeds three hundred fifty thousand tons an-
11 nually but is less than one million tons annually. When
12 such members are to be appointed, the governor may
13 request from the major trade association representing
14 operators in this state a list of three nominees for each
15 such position on the board. All such nominees shall be
16 persons with special experience and competence in coal
17 mine health and safety. There shall be submitted with
18 such list a summary of the qualifications of each nominee.
19 For purposes of this subsection, the major trade as-
20 sociation representing operators in this state shall be
21 deemed to be that association which represents operators

22 accounting for over one half of the coal produced in mines
23 in this state in the year prior to the year in which the
24 appointment is to be made.

25 (2) The governor shall appoint one member to represent
26 the viewpoint of those operators in this state whose indi-
27 vidual aggregate production is less than three hundred
28 fifty thousand tons annually which tonnage shall include
29 tonnage produced by affiliated, parent and subsidiary
30 companies and tonnage produced by companies which
31 have a common director or directors, shareholder or share-
32 holders, owner or owners.

33 (3) Three members who can reasonably be expected
34 to represent the interests of the working miners in this
35 state. If the major employee organization representing
36 coal miners in this state is divided into administrative
37 districts, the employee organization of each district shall,
38 upon request by the governor, submit a list of three
39 nominees for membership on the board. If such major
40 employee organization is not so divided into administra-
41 tive districts, such employee organization shall, upon re-
42 quest by the governor, submit a list of twelve nominees for
43 membership on the board. The governor shall make such
44 appointments from the persons so nominated: *Provided,*
45 That in the event nominations are made by administrative
46 districts, not more than one member shall be appointed
47 from the nominees of any one district unless there are
48 less than three such districts in this state.

49 (4) All appointments made by the governor under this
50 section shall be with the advice and consent of the
51 Senate.

52 (b) The seventh member of the board shall be the
53 director of the department of mines who shall serve as
54 chairman of the board. The director shall furnish to the
55 board such secretarial, clerical and other services as are
56 deemed necessary to the conduct of the business of the
57 board.

58 (c) The six members of the board to be appointed by
59 the governor shall be appointed by him within ninety
60 days of the effective date of this article. As soon as such
61 members of the board are appointed, the director of the

62 department of mines shall call an organizational meeting
63 of the board. At such meeting, the group of members
64 appointed to represent the viewpoint of operators and the
65 group of members appointed to represent the viewpoint
66 of working miners shall draw lots by group to determine
67 the length of the term the members of each group shall
68 serve. One member from each group shall serve for
69 three years; one member from each group shall serve for
70 two years; and one member from each group shall serve
71 for one year. Thereafter, members shall be nominated
72 and appointed in the manner provided in this section and
73 shall serve for a term of three years. The board shall
74 meet at the call of the director, or upon the request of
75 any three members of the board: *Provided*, That no meet-
76 ing of the board for any purpose other than an emergency
77 shall be conducted unless the board members are notified
78 at least five days in advance of a proposed meeting. In
79 cases of an emergency, members may be notified of a
80 board meeting by the most practical means of com-
81 munication available.

82 (d) Whenever a vacancy on the board occurs, nomina-
83 tions and appointments shall be made in the manner
84 prescribed in this section: *Provided*, That in the case of
85 an appointment to fill a vacancy, nominations of three
86 persons for each such vacancy shall be requested by and
87 submitted to the governor within thirty days after the
88 vacancy occurs by the major trade association or major
89 employee organization, if any, which nominated the
90 person whose seat on the board is vacant. The vacancy
91 shall be filled by the governor within thirty days of his
92 receipt of the list of nominations.

93 (e) A quorum of the board shall be five members which
94 shall include the director, at least two members represent-
95 ing the viewpoint of operators and at least two members
96 representing the viewpoint of working miners, and the
97 board may act officially by a majority of those members
98 who are present.

§22-2A-4. Board powers and duties.

1 (a) At the organizational meeting of the board re-
2 quired by subsection (c), section three of this article, the

3 board shall adopt as standard rules and regulations the
4 "coal mine health and safety provisions of this chapter".
5 Such standard rules and regulations and any other rules
6 and regulations shall be adopted by the board without
7 regard to the provisions of chapter twenty-nine-a of this
8 code.

9 (b) The board shall review such standard rules and
10 regulations and, when deemed appropriate to improve or
11 enhance coal mine health and safety, revise the same or
12 develop and promulgate new rules and regulations dealing
13 with coal mine health and safety.

14 (c) The board shall develop, promulgate and revise, as
15 may be appropriate, rules and regulations as are necessary
16 and proper to effectuate the purposes of article two of this
17 chapter and to prevent the circumvention and evasion
18 thereof, all without regard to the provisions of chapter
19 twenty-nine-a of this code.

20 (1) Upon consideration of the latest available scientific
21 data in the field, the technical feasibility of standards,
22 and experience gained under this and other safety
23 statutes, such rules and regulations may expand protec-
24 tions afforded by this chapter notwithstanding specific
25 language herein, and such rules and regulations may deal
26 with subject areas not covered by this chapter to the end
27 of affording the maximum possible protection to the
28 health and safety of miners.

29 (2) No rules or regulations promulgated by the board
30 of mines shall reduce or compromise the level of safety
31 or protection afforded miners below the level of safety
32 or protection afforded by this chapter.

33 (3) Any miner or representative of any miner, or any
34 coal operator shall have the power to petition the circuit
35 court of Kanawha county for a determination as to
36 whether any rule or regulation promulgated or revised
37 reduces the protection afforded miners below that provided
38 by this chapter, or is otherwise contrary to law.

39 (4) The director shall cause proposed rules and regula-
40 tions and a notice thereof to be posted and in the same
41 manner as notices, orders and decisions are required to
42 be posted in section seventeen of this article. The dir-

43 irector shall deliver a copy of such proposed rules and
44 regulations and accompanying notice to each operator
45 affected. A copy of such proposed rules and regulations
46 shall be provided to any individual by the director upon
47 request. The notice of proposed rules and regulations
48 shall contain a summary in plain language explaining
49 the effect of the proposed rules and regulations.

50 (5) The board shall afford interested persons a period
51 of not less than thirty days after releasing proposed rules
52 and regulations to submit written data or comments. The
53 board may, upon the expiration of such period and after
54 consideration of all relevant matters presented, promul-
55 gate such rules and regulations with such modifications
56 as it may deem appropriate.

57 (6) On or before the last day of any period fixed for
58 the submission of written data or comments under sub-
59 division (5) of this section, any interested person may
60 file with the board written objections to a proposed
61 rule or regulation, stating the grounds therefor and re-
62 questing a public hearing on such objections. As soon as
63 practicable after the period for filing such objections has
64 expired, the board shall release a notice specifying the
65 proposed rules or regulations to which objections have
66 been filed and a hearing requested.

67 (7) Promptly after any such notice is released by the
68 board under subdivision (6) of this section, the board
69 shall issue notice of, and hold, a public hearing for the
70 purpose of receiving relevant evidence. Within sixty days
71 after completion of the hearings, the board shall make
72 findings of fact which shall be public, and may promulgate
73 such rules and regulations with such modifications as it
74 deems appropriate. In the event the board determines
75 that a proposed rule or regulation should not be promul-
76 gated or should be modified, it shall within a reasonable
77 time publish the reasons for its determination.

78 (8) All rules and regulations promulgated by the board
79 shall be published in the state register and shall continue
80 in effect until modified or superseded in accordance with
81 the provisions of this chapter.

82 (d) To effectuate the purpose of this article, the board

83 may, as it deems necessary, conduct research and studies,
 84 employ experts and consultants and use the services,
 85 facilities and personnel of any agency of this state.

§22-2A-5. Effect of rules and regulations.

1 The standard rules and regulations and any rules and
 2 regulations promulgated by the board shall have the same
 3 force and effect of law as if enacted by the Legislature
 4 as a part of this chapter and any violation of any such
 5 rule and regulation shall be deemed to be a violation of
 6 law or of a health or safety standard within the meaning
 7 of this chapter.

§22-2A-6. Reports.

1 Prior to each regular session of the Legislature, the
 2 board shall submit to the Legislature an annual report
 3 upon the subject matter of this article, the progress
 4 concerning the achievement of its purpose and any other
 5 relevant information, including any recommendations
 6 it deems appropriate.

ARTICLE 2C. EMERGENCY MEDICAL PERSONNEL.

§22-2C-1. Emergency personnel in coal mines.

1 Emergency medical personnel shall be employed in
 2 every mine in the state. On or before the first day of
 3 July, one thousand nine hundred seventy-eight, at least
 4 one emergency medical attendant as defined in section
 5 two, article four-c, chapter sixteen of this code, paramedic
 6 as defined in section two, article three-b, chapter thirty
 7 of this code, or physician assistant as defined in section
 8 one, article three-a, chapter thirty of this code, shall be
 9 employed at a mine for every seventy employees or any
 10 part thereof who are engaged at one time, in the extrac-
 11 tion, production or preparation of coal: *Provided, That*
 12 the provision of this section shall not apply to mines
 13 employing no more than ten employees.

14 Said emergency medical attendants shall be employed
 15 at their regular duties at a central location convenient
 16 for quick response to emergencies, and further shall have
 17 available to them at all times such equipment as shall

18 be prescribed by the director, in consultation with the
19 director of the department of health.

§22-2C-2. First-aid training of coal mine employees.

1 Each coal mine operator shall provide every new em-
2 ployee within six months of the date of his employment
3 with the opportunity for first-aid training as prescribed
4 by the director unless such employee has previously re-
5 ceived such training. Each coal mine employee shall be
6 required to take refresher first-aid training of not less
7 than five hours within each twenty-four months of em-
8 ployment. The employee shall be paid regular wages,
9 or overtime pay if applicable, for all periods of first-aid
10 training.

**ARTICLE 6. CERTIFICATION OF UNDERGROUND AND SUR-
FACE COAL MINERS.**

§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 supervision and direc-
5 tion, as an apprentice, for the purpose of learning and
6 being instructed in the duties and calling of mining. Any
7 mine foreman—fire boss or assistant mine foreman or fire
8 boss may have three persons working with him under
9 his supervision and direction, as apprentices, for the pur-
10 pose of learning and being instructed in the duties and
11 calling of mining: *Provided*, That a mine foreman, as-
12 sistant mine foreman or fire boss supervising apprentices
13 in an area where no coal is being produced or which is
14 outby the working section may have as many as five
15 apprentices under his supervision and direction, as ap-
16 prentices, for the purpose of learning and being in-
17 structed in the duties and calling of mining or where the
18 operator is using a production section under program
19 for training of apprentice miners, approved by the board
20 of miner training, education and certification.

21 Every apprentice working at a surface mine shall be
22 at all times under the supervision and control of at least

23 one person who holds a certificate of competency and
24 qualification.

25 In all cases, it shall be the duty of every mine operator
26 who employs apprentices to insure that such persons are
27 effectively supervised and to instruct such persons in
28 safe mining practices. Each apprentice shall wear a red
29 hat which identifies him as such while employed at or
30 near a mine. No person shall be employed as an appren-
31 tice for a period in excess of eight months, except that
32 in the event of illness or injury, time extensions shall be
33 permitted as established by the director of the depart-
34 ment of mines.

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

§22-6A-5. Board powers and duties.

1 (a) The board shall establish criteria and standards
2 for a program of education, training and examination to
3 be required of all prospective miners and miners prior to
4 their certification in any of the various miner specialities
5 requiring certification, under this article or any other
6 provision of this code. Such specialities include, but
7 are not limited to, underground miner, surface miner,
8 apprentice, underground mine foreman—fire boss, assistant
9 underground mine foreman—fire boss, shotfirer, mine
10 electrician and belt examiner. Notwithstanding the
11 provisions of this section the director may by rule or
12 regulation further subdivide the classification for certifi-
13 cation.

14 (b) The board may require certification in other miner
15 occupational specialities: *Provided*, That no new specialty
16 may be created by the board unless certification in a new
17 specialty is made desirable by action of the federal gov-
18 ernment requiring certification in a specialty not enum-
19 erated in this code.

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

25 (d) The board shall set minimum standards for a
26 program of continuing education and training of certified
27 persons and other miners on an annual basis. Prior to is-
28 suing said standards, the board shall conduct public
29 hearings at which the parties that may be affected by its
30 actions may be heard. Such education and training shall
31 be provided in a manner determined by the director to be
32 sufficient to meet the standards established by the board.

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

39 (f) The board may also, from time to time, conduct such
40 hearings and other oversight activities as may be re-
41 quired to insure full implementation of programs estab-
42 lished by it.

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

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

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

James L. Davis
Chairman Senate Committee

Blair C. Christensen Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Dillon, Jr.
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

W. T. Smith
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 27
day of April, 1977.

John V. Riffe
Governor



Presented to
me on April 21, 1977
2:25 p.m.

APPROVED AND SIGNED BY THE GOVERNOR

Date April 27, 1977
Time 5:45 p.m.

RECEIVED

77 APR 27 10:15

OFFICE
SECY. OF STATE