

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-26-80

Time 9:15 A.M.

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED

Committee Substitute for
SENATE BILL NO. 102

(By Mr. *Harman & Mr. Susman*)

PASSED March 8, 1980

In Effect from Passage



No: 102

ENROLLED

COMMITTEE SUBSTITUTE FOR

Senate Bill No. 102

(Mr. HARMAN and Mr. SUSMAN, *original sponsors*)

[Passed March 8, 1980; in effect from passage.]

AN ACT to amend and reenact section three, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article two-a of said chapter, all relating to the powers and duties of the board of coal mine health and safety.

Be it enacted by the Legislature of West Virginia:

That section three, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section four, article two-a of said chapter be amended and reenacted, all to read as follows:

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

§22-2A-3. Board created; membership; method of nomination and appointment; meetings; vacancies; quorum.

1 (a) There is hereby created a board of coal mine
2 health and safety, which shall consist of seven mem-
3 bers who shall be residents of this state, six of whom
4 shall be appointed as hereinafter specified in this section.

5 (1) The governor shall appoint one member to
6 represent the viewpoint of those operators in this state
7 whose individual aggregate production exceeds one mil-
8 lion tons annually and one member to represent the
9 viewpoint of those operators in this state whose indivi-
10 dual aggregate production exceeds three hundred fifty
11 thousand tons annually but is less than one million

12 tons annually. When such members are to be appointed,
13 the governor may request from the major trade asso-
14 ciation representing operators in this state a list of
15 three nominees for each such position on the board.
16 All such nominees shall be persons with special ex-
17 perience and competence in coal mine health and
18 safety. There shall be submitted with such list a sum-
19 mary of the qualifications of each nominee. For pur-
20 poses of this subsection, the major trade association
21 representing operators in this state shall be deemed
22 to be that association which represents operators ac-
23 counting for over one half of the coal produced in
24 mines in this state in the year prior to the year in which
25 the appointment is to be made.

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

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

51 (4) All appointments made by the governor under

52 this section shall be with the advice and consent of the
53 Senate.

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

60 (c) The six members of the board to be appointed
61 by the governor shall be appointed by him within
62 ninety days of the effective date of this article (July
63 8, 1977). As soon as such members of the board are
64 appointed, the director of the department of mines shall
65 call an organizational meeting of the board. At such
66 meeting, the group of members appointed to represent
67 the viewpoint of operators and the group of members
68 appointed to represent the viewpoint of working miners
69 shall draw lots by group to determine the length of
70 the term the members of each group shall serve. One
71 member from each group shall serve for three years;
72 one member from each group shall serve for two
73 years; and one member from each group shall serve
74 for one year. Thereafter, members shall be nominated
75 and appointed in the manner provided in this section
76 and shall serve for a term of three years. The board
77 shall meet at least once each month, or more often as
78 may be necessary, at the call of the director or upon
79 the request of any three members of the board. The
80 director shall prepare an agenda for each board meet-
81 ing giving priority to the promulgation of rules and
82 regulations as may be required from time to time by
83 this chapter, and as may be required to improve coal
84 mine health and safety. Members of the board may
85 suggest to the director items for inclusion on the board's
86 agenda. Upon a majority vote of the quorum present
87 at any board meeting the item or items suggested shall
88 be placed on the agenda for consideration. A majority
89 of the board must approve the items to be acted upon
90 for that agenda. The director shall provide each mem-
91 ber of the board with notice of the meeting and the
92 agenda as far in advance of the meeting as practical,

93 but in any event, at least five days prior thereto. No
94 meeting of the board shall be conducted unless said
95 notice and agenda are given to the board members at
96 least five days in advance, as provided herein, except
97 in cases of emergency, as declared by the director, in
98 which event members shall be notified of the board
99 meeting and the agenda in a manner to be determined
100 by the director: *Provided*, That upon agreement of a
101 majority of the quorum present, any scheduled meet-
102 ing may be ordered recessed to another day certain
103 without further notice or additional agenda.

104 (d) Whenever a vacancy on the board occurs, nom-
105 inations and appointments shall be made in the manner
106 prescribed in this section: *Provided*, That in the case
107 of an appointment to fill a vacancy, nominations of
108 three persons for each such vacancy shall be requested
109 by and submitted to the governor within thirty days
110 after the vacancy occurs by the major trade associa-
111 tion or major employee organization, if any, which nom-
112 inated the person whose seat on the board is vacant.
113 The vacancy shall be filled by the governor within thirty
114 days of his receipt of the list of nominations.

115 (e) A quorum of the board shall be five members
116 which shall include the director, at least two members
117 representing the viewpoint of operators and at least two
118 members representing the viewpoint of working miners,
119 and the board may act officially by a majority of those
120 members 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,
3 the board shall adopt as standard rules and regula-
4 tions the "coal mine health and safety provisions of
5 this chapter." Such standard rules and regulations and
6 any other rules and regulations shall be adopted by the
7 board without regard to the provisions of chapter
8 twenty-nine-a of this code. The board of coal mine
9 health and safety shall devote its time toward promul-
10 gating rules and regulations in those areas specifically

11 directed by this chapter and those necessary to prevent
12 fatal accidents and injuries.

13 (b) The board shall review such standard rules and
14 regulations and, when deemed appropriate to improve
15 or enhance coal mine health and safety, revise the
16 same or develop and promulgate new rules and regu-
17 lations dealing with coal mine health and safety.

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

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

33 (2) No rules or regulations promulgated by the board
34 of mines shall reduce or compromise the level of safety
35 or protection afforded miners below the level of safety
36 or protection afforded by this chapter.

37 (3) Any miner or representative of any miner, or
38 any coal operator shall have the power to petition the
39 circuit court of Kanawha County for a determination
40 as to whether any rule or regulation promulgated or
41 revised reduces the protection afforded miners below
42 that provided by this chapter, or is otherwise contrary
43 to law: *Provided, however,* That any rule or regula-
44 tion properly promulgated by the board pursuant to the
45 terms and conditions of this chapter shall create a re-
46 buttable presumption that said rule or regulation does
47 not reduce the protection afforded miners below that
48 provided by this chapter.

49 (4) The director shall cause proposed rules and regu-
50 lations and a notice thereof to be posted and in the

51 same manner as notices, orders and decisions are re-
52 quired to be posted in section seventeen of this article.
53 The director shall deliver a copy of such proposed rules
54 and regulations and accompanying notice to each opera-
55 tor affected. A copy of such proposed rules and regula-
56 tions shall be provided to any individual by the director
57 upon request. The notice of proposed rules and regula-
58 tions shall contain a summary in plain language ex-
59 plaining the effect of the proposed rules and regula-
60 tions.

61 (5) The board shall afford interested persons a period
62 of not less than thirty days after releasing proposed
63 rules and regulations to submit written data or com-
64 ments. The board may, upon the expiration of such
65 period and after consideration of all relevant matters
66 presented, promulgate such rules and regulations with
67 such modifications as it may deem appropriate.

68 (6) On or before the last day of any period fixed
69 for the submission of written data or comments under
70 subdivision (5) of this section, any interested person
71 may file with the board written objections to a pro-
72 posed rule or regulation, stating the grounds therefor
73 and requesting a public hearing on such objections.
74 As soon as practicable after the period for filing such
75 objections has expired, the board shall release a notice
76 specifying the proposed rules or regulations to which
77 objections have been filed and a hearing requested.

78 (7) Promptly after any such notice is released by
79 the board under subdivision (6) of this section, the board
80 shall issue notice of, and hold a public hearing for the
81 purpose of receiving relevant evidence. Within sixty
82 days after completion of the hearings, the board shall
83 make findings of fact which shall be public, and may
84 promulgate such rules and regulations with such modi-
85 fications as it deems appropriate. In the event the board
86 determines that a proposed rule or regulation should
87 not be promulgated or should be modified, it shall within
88 a reasonable time publish the reasons for its determina-
89 tion.

90 (8) All rules and regulations promulgated by the

91 board shall be published in the state register and shall
92 continue in effect until modified or superseded in ac-
93 cordance with the provisions of this chapter.

94 (d) To carry out its duties and responsibilities, the
95 board is authorized to employ such personnel, includ-
96 ing legal counsel, experts and consultants as it deems
97 necessary. In addition, the board, within the appropria-
98 tions provided for by the Legislature, may conduct or
99 contract for research and studies and shall be entitled
100 to the use of the services, facilities and personnel of any
101 agency, institution, school, college or university of this
102 state.

103 (e) The director shall within sixty days of a coal mining
104 fatality or fatalities provide the board with all available
105 reports regarding such fatality or fatalities.

106 The board shall review all such reports, receive any
107 additional information, and may, on its own initiative,
108 ascertain the cause or causes of such coal mining fatality
109 or fatalities. Within one hundred twenty days of such re-
110 view of each such fatality, the board shall promulgate
111 such rules and regulations as are necessary to prevent the
112 recurrence of such fatality, unless a majority of the
113 quorum present determines that no rules and regulations
114 shall assist in the prevention of the specific type of fatal-
115 ity. Likewise, the board shall annually, not later than the
116 first day of July, review the major causes of coal mining
117 injuries during the previous calendar year, reviewing the
118 causes in detail, and shall promulgate such rules and regu-
119 lations as may be necessary to prevent the recurrence of
120 such injuries.

121 Further, the board shall, on or before the tenth day of
122 January of each year, submit a report to the governor,
123 president of the Senate and speaker of the House, which
124 report shall include but not be limited to:

125 (1) The number of fatalities during the previous
126 calendar year, the apparent reason for each fatality as
127 determined by the department of mines and the action,
128 if any, taken by the board to prevent such fatality;

129 (2) Any rules and regulations promulgated by the
130 board during the past year;

131 (3) What rules and regulations the board intends to
132 promulgate during the current calendar year;

133 (4) Any problem the board is having in its effort
134 to promulgate rules and regulations to enhance health
135 and safety in the mining industry;

136 (5) Recommendations, if any, for the enactment, re-
137 peal or amendment of any statute which would cause the
138 enhancement of health and safety in the mining industry;

139 (6) Any other information the board deems appro-
140 priate;

141 (7) In addition to the report by the board, as herein
142 contained, each individual member of said board shall
143 have the right to submit a separate report, setting forth
144 any views contrary to the report of the board, and the
145 separate report, if any, shall be appended to the report
146 of the board and be considered a part thereof.

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

James L. Davis
Chairman Senate Committee

Clarence E. LeMaster Jr
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Todd C. Miller
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. T. Brinkley Jr.
President of the Senate

Clayton M. Lee Jr
Speaker House of Delegates

The within is approved this the 26
day of March 1980.

Paul R. Ryan
Governor

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