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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

— ● —

ENROLLED

HOUSE BILL No. 2807

(By Delegates Staton, Collins, Reed, Linch,
Pribett, Whitman and Manuel)

— ● —

Passed April 10, 1993

In Effect From Passage

ENROLLED
H. B. 2807

(By DELEGATES STATON, COLLINS, REED, LINCH,
TRIBETT, WHITMAN AND MANUEL)

[Passed April 10, 1993; in effect from passage.]

AN ACT to amend article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two; to amend and reenact section nineteen, article one-a, chapter twenty-two-a of said code; and to amend and reenact section sixty-three, article two of said chapter, all relating to the powers and authority of the director of the office of miners' health, safety and training; transferring certain review functions of the director to the board of appeals; authorizing the director to promulgate a rule setting forth the procedure for assessing certain civil penalties; the revision of such rule; the director's approval and permit to open or reopen mine; certificate of approval for operator of mine; fees; revocation of certificate of approval; notice prior to revocation; effect of revocation; printing statutory provisions on permit; and district mine inspector's inspections.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 5. BOARD OF APPEALS.

§22-5-2. Powers transferred to the board of appeals.

1 (a) There are hereby transferred to the board of
2 appeals all functions of the director of the office of
3 miners' health, safety and training relating to the
4 review of orders and notices as set forth in section
5 fifteen, article one-a, chapter twenty-two-a.

6 (b) There are hereby transferred to the board of
7 appeals all functions of the director of the office of
8 miners' health, safety and training relating to the
9 review of penalty assessments as set forth in subdivision
10 (3), subsection (a), section nineteen, article one-a,
11 chapter twenty-two-a of this code.

12 (c) Judicial review of decisions by the board of appeals
13 shall be available and conducted in the same fashion as
14 set forth in section seventeen, article one-a, chapter
15 twenty-two-a of this code.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.

§22A-1A-19. Penalties.

1 (a) (1) Any operator of a coal mine in which a violation
2 occurs of any health or safety rule or regulation or who
3 violates any other provisions of this law, shall be
4 assessed a civil penalty by the director under subdivi-
5 sion (3) of this subsection, which penalty shall be not
6 more than three thousand dollars, for each such
7 violation. Each such violation shall constitute a separate
8 offense. In determining the amount of the penalty, the
9 director shall consider the operator's history of previous
10 violations, the appropriateness of such penalty to the size
11 of the business of the operator charged, the gravity of the
12 violation and the demonstrated good faith of the
13 operator charged in attempting to achieve rapid
14 compliance after notification of a violation. Not later
15 than the thirtieth day of June, one thousand nine
16 hundred ninety-three, the director shall promulgate as
17 a rule the procedure for assessing such civil penalties

18 in effect as of the fifteenth day of January, one thousand
19 nine hundred ninety-three, without regard to the
20 provisions of chapter twenty-nine-a of this code: *Pro-*
21 *vided*, That any revisions to such rules after this date
22 shall be promulgated as in the case of legislative rules
23 in accordance with the provisions of chapter twenty-
24 nine-a of this code.

25 (2) Any miner who knowingly violates any health or
26 safety provision of this chapter or health or safety rule
27 or regulation promulgated pursuant to this chapter shall
28 be subject to a civil penalty assessed by the director
29 under subdivision (3) of this subsection which penalty
30 shall not be more than two hundred fifty dollars for each
31 occurrence of such violation.

32 (3) A civil penalty shall be assessed by the director
33 only after the person charged with a violation under this
34 chapter or rule or regulation promulgated pursuant to
35 this chapter has been given an opportunity for a public
36 hearing and the director has determined, by a decision
37 incorporating his findings of fact therein, that a
38 violation did occur, and the amount of the penalty which
39 is warranted, and incorporating, when appropriate, an
40 order therein requiring that the penalty be paid. Any
41 hearing under this section shall be of record.

42 (4) If the person against whom a civil penalty is
43 assessed fails to pay the penalty within the time
44 prescribed in such order, the director may file a petition
45 for enforcement of such order in any appropriate circuit
46 court. The petition shall designate the person against
47 whom the order is sought to be enforced as the
48 respondent. A copy of the petition shall forthwith be sent
49 by certified mail, return receipt requested, to the
50 respondent and to the representative of the miners at the
51 affected mine or the operator, as the case may be, and
52 thereupon the director shall certify and file in such
53 court the record upon which such order sought to be
54 enforced was issued. The court shall have jurisdiction to
55 enter a judgment enforcing, modifying, and enforcing as
56 so modified, or setting aside in whole or in part the
57 order and decision of the director or it may remand the
58 proceedings to the director for such further action as it

59 may direct. The court shall consider and determine de
60 novo all relevant issues, except issues of fact which were
61 or could have been litigated in review proceedings
62 before a circuit court under section eighteen of this
63 article, and upon the request of the respondent, such
64 issues of fact which are in dispute shall be submitted
65 to a jury. On the basis of the jury's findings the court
66 shall determine the amount of the penalty to be imposed.
67 Subject to the direction and control of the attorney
68 general, attorneys appointed for the commissioner may
69 appear for and represent him in any action to enforce
70 an order assessing civil penalties under this subdivision.

71 (b) Any operator who knowingly violates a health or
72 safety provision of this chapter or health or safety rule
73 or regulation promulgated pursuant to this chapter, or
74 knowingly violates or fails or refuses to comply with any
75 order issued under section thirteen of this article, or any
76 order incorporated in a final decision issued under this
77 article, except an order incorporated in a decision under
78 subsection (a) of this section or subsection (b), section
79 twenty of this article, shall be assessed a civil penalty
80 by the director under subdivision (3), subsection (a) of
81 this section, of not more than five thousand dollars, and
82 for a second or subsequent violation assessed a civil
83 penalty of not more than ten thousand dollars.

84 (c) Whenever a corporate operator knowingly violates
85 a health or safety provision of this chapter or health or
86 safety rules or regulations promulgated pursuant to this
87 chapter, or knowingly violates or fails or refuses to
88 comply with any order issued under this law or any
89 order incorporated in a final decision issued under this
90 law, except an order incorporated in a decision issued
91 under subsection (a) of this section or subsection (b),
92 section twenty of this article, any director, officer or
93 agent of such corporation who knowingly authorized,
94 ordered or carried out such violation, failure or refusal,
95 shall be subject to the same civil penalties that may be
96 imposed upon a person under subsections (a) and (b) of
97 this section.

98 (d) Whoever knowingly makes any false statement,
99 representation or certification in any application,

100 record, report, plan or other document filed or required
101 to be maintained pursuant to this law or any order or
102 decision issued under this law, shall be guilty of a
103 misdemeanor, and, upon conviction thereof, shall be
104 fined not more than five thousand dollars or imprisoned
105 in the county jail not more than six months, or both
106 fined and imprisoned. The conviction of any person
107 under this subsection shall result in the revocation of
108 any certifications held by him under this chapter which
109 certified him or authorized him to direct other persons
110 in coal mining by operation of law and shall bar him
111 from being issued any such license under this chapter,
112 except a miner's certification, for a period of not less
113 than one year or for such longer period as may be
114 determined by the director.

115 (e) Whoever willfully distributes, sells, offers for sale,
116 introduces or delivers in commerce any equipment for
117 use in a coal mine, including, but not limited to,
118 components and accessories of such equipment, who
119 willfully misrepresents such equipment as complying
120 with the provisions of this law, or with any specification
121 or regulation of the director applicable to such equip-
122 ment, and which does not so comply, shall be guilty of
123 a misdemeanor, and, upon conviction thereof, shall be
124 subject to the same fine and imprisonment that may be
125 imposed upon a person under subsection (d) of this
126 section.

127 (f) There is hereby created under the treasury of the
128 state of West Virginia a special health, safety and
129 training fund. All civil penalty assessments collected
130 under section nineteen of this article shall be collected
131 by the director and deposited with the treasurer of the
132 state of West Virginia to the credit of the special health,
133 safety and training fund. The fund shall be used by the
134 director and he is authorized to expend the moneys in
135 the fund for the administration of this chapter and
136 chapter twenty-two of this code.

ARTICLE 2. UNDERGROUND MINES.

**§22A-2-63. No mine to be opened or reopened without
prior approval of the director of the office**

of miners health, safety and training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferrable; section to be printed on certificates of approval.

1 (a) After the first day of July, one thousand nine
2 hundred seventy-one, no mine shall be opened or
3 reopened unless prior approval has been obtained from
4 the director of the division of health, safety and training,
5 which approval shall not be unreasonably withheld. The
6 operator shall pay for such approval a fee of ten dollars,
7 which payment shall be tendered with the application
8 for such approval: *Provided*, That mines producing coal
9 solely for the operator's use shall be issued a permit
10 without charge if coal production will be less than fifty
11 tons a year.

12 Within thirty days after the first day of January of
13 each year, the holder of such permit to open a mine shall
14 apply for the extension of such permit for an additional
15 year. Such permit, evidenced by a document issued by
16 the director, shall be granted as a matter of right and
17 without charge if, at the time such application is made,
18 the permit holder is in compliance with the provisions
19 of section seventy-seven of this article and has paid or
20 otherwise appealed all coal mine assessments issued to
21 the mine if operated by the permit holder and imposed
22 under article one-a, chapter twenty-two-a of this code.
23 Applications for extension of such permits not submitted
24 within the time required shall be processed as an
25 application to open or reopen a mine and shall be
26 accompanied by a fee of ten dollars.

27 (b) Permits issued pursuant to this section shall not
28 be transferable.

29 (c) If the operator of a mine is not the permit holder
30 as defined in subsection (a) above, then such operator
31 must apply for and obtain a certificate of approval to
32 operate the mine on which the permit is held prior to
33 commencing operations. An operator who is not the
34 permit holder operating such mine on the effective date

35 of this section must apply for a certificate of approval
36 on or before the first day of July, one thousand nine
37 hundred ninety-three. The operator shall pay a fee of ten
38 dollars, which payment shall be tendered with the
39 application for approval. Such approval, evidenced by a
40 certificate issued by the director, shall be granted if, at
41 the time such application is made, the applicant is in
42 compliance with the provisions of section seventy-seven
43 of this article and has paid or otherwise appealed all
44 coal mine assessments imposed on such applicant for the
45 certificate of approval under article one-a, chapter
46 twenty-two-a of this code.

47 (d) In addition to the authority to file a petition for
48 enforcement under subdivision (4), subsection (a) section
49 nineteen, article one-a, chapter twenty-two-a, of this
50 code, if an operator holding a certificate of approval
51 issued pursuant to subsection (c) of this section, against
52 whom a civil penalty is assessed in accordance with
53 section nineteen, article one-a, chapter twenty-two-a of
54 this code, and implementing regulations, and which has
55 become final, fails to pay the penalty within the time
56 prescribed in such order, the director or the authorized
57 representative of the director, by certified mail, return
58 receipt requested, shall send a notice to such operator
59 advising the operator of the unpaid penalty. If the
60 penalty is not paid in full within sixty days from the
61 issuance of the notice of delinquency by the director,
62 then the director may revoke such operator's certificate
63 of approval: *Provided*, That such operator to whom the
64 delinquency notice is issued shall have thirty days from
65 receipt thereof to request, by certified mail, return
66 receipt requested, a public hearing held in accordance
67 with the procedures of section fifteen, article one-a,
68 chapter twenty-two-a of this code, and implementing
69 regulations, including application for temporary relief.
70 Once such operator's certificate of approval is revoked
71 pursuant to this subsection, such operator shall be
72 prohibited from obtaining any certificate of approval
73 under the provisions of this section to operate any other
74 mine until such time as that operator pays the delin-
75 quent penalties that have become final.

76 (e) The provisions of this section shall be printed on
77 the reverse side of every permit issued under subsection
78 (a) and certificate of approval issued under subsection
79 (d) herein.

80 (f) The district mine inspector shall be contacted for
81 a pre-inspection of the area proposed for underground
82 mining prior to issuance of any new opening permit
83 approval.

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

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker of the House of Delegates

The within *is approved* this the *12th*
day of *May* 1993.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/93

Time 3:35 PM