

RECEIVED  
98 APR -8 AM 8 40  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## Com. Sub. for House Bill No. 4288

(By Delegates Martin, Varner, Kuhn,  
Warner, Collins and Walters)



Passed March 14, 1998

In Effect from Passage

RECEIVED

98 APR -8 AM 8 42

OFFICE OF THE  
SECRETARY OF STATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

# H. B. 4288

(BY DELEGATES MARTIN, VARNER, KUHN,  
WARNER, COLLINS AND WALTERS)

---

[Passed March 14, 1998; in effect from passage.]

---

AN ACT to amend and reenact section two, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend section sixty-three, article two of said chapter, all relating to the office of miners health, safety and training; fees for certificate of approval and permits; providing that the fees collected for certificates of approval and permits be placed in the miners health, safety and training fund; providing for expenditure of moneys placed in the fund; civil penalties assessed on operators of coal mines for health and safety rules; abolishing the special health, safety and training fund; providing that all civil penalties collected be deposited with the state treasurer; and removing the spending authority of the director of the West Virginia office of miners health, safety and training for these funds.

*Be it enacted by the Legislature of West Virginia:*

That section two, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that section sixty-three, article two of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.**

**§22A-1-2. Penalties.**

1 (a) (1) Any operator of a coal mine in which a  
2 violation occurs of any health or safety rule or who  
3 violates any other provisions of this chapter shall be  
4 assessed a civil penalty by the director under subdivision  
5 (3) of this subsection, which shall be not more than three  
6 thousand dollars, for each violation. Each violation  
7 constitutes a separate offense. In determining the amount  
8 of the penalty, the director shall consider the operator's  
9 history of previous violations, the appropriateness of the  
10 penalty to the size of the business of the operator charged,  
11 the gravity of the violation and the demonstrated good  
12 faith of the operator charged in attempting to achieve  
13 rapid compliance after notification of a violation. Any  
14 revisions to rules relating to the assessment of civil  
15 penalties shall be proposed for promulgation as legislative  
16 rules in accordance with the provisions of article three  
17 chapter twenty-nine-a of this code.

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

24 (3) A civil penalty shall be assessed by the director  
25 only after the person charged with a violation under this  
26 chapter or rule promulgated pursuant to this chapter has  
27 been given an opportunity for a public hearing and the  
28 director has determined, by a decision incorporating the  
29 director's findings of fact in the decision, that a violation  
30 did occur, and the amount of the penalty which is  
31 warranted, and incorporating, when appropriate, an order

32 in the decision requiring that the penalty be paid. Any  
33 hearing under this section shall be of record.

34 (4) If the person against whom a civil penalty is  
35 assessed fails to pay the penalty within the time prescribed  
36 in the order, the director may file a petition for  
37 enforcement of the order in any appropriate circuit court.  
38 The petition shall designate the person against whom the  
39 order is sought to be enforced as the respondent. A copy  
40 of the petition shall immediately be sent by certified mail,  
41 return receipt requested, to the respondent and to the  
42 representative of the miners at the affected mine or the  
43 operator, as the case may be. The director shall certify  
44 and file in the court the record upon which such order  
45 sought to be enforced was issued. The court has  
46 jurisdiction to enter a judgment enforcing, modifying, and  
47 enforcing as so modified, or setting aside, in whole or in  
48 part, the order and decision of the director or it may  
49 remand the proceedings to the director for any further  
50 action it may direct. The court shall consider and  
51 determine de novo all relevant issues, except issues of fact  
52 which were or could have been litigated in review  
53 proceedings before a circuit court under section twenty of  
54 this article, and upon the request of the respondent, those  
55 issues of fact which are in dispute shall be submitted to a  
56 jury. On the basis of the jury's findings the court shall  
57 determine the amount of the penalty to be imposed.  
58 Subject to the direction and control of the attorney  
59 general, attorneys appointed for the director may appear  
60 for and represent the director in any action to enforce an  
61 order assessing civil penalties under this subdivision.

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

73 for a second or subsequent violation assessed a civil  
74 penalty of not more than ten thousand dollars.

75 (c) Whenever a corporate operator knowingly violates  
76 a health or safety provision of this chapter or health or  
77 safety rules promulgated pursuant to this chapter, or  
78 knowingly violates or fails or refuses to comply with any  
79 order issued under this law or any order incorporated in a  
80 final decision issued under this law, except an order  
81 incorporated in a decision issued under subsection (a) of  
82 this section or subsection (b), section twenty-two of this  
83 article, any director, officer or agent of the corporation  
84 who knowingly authorized, ordered or carried out the  
85 violation, failure or refusal, is subject to the same civil  
86 penalties that may be imposed upon a person under  
87 subsections (a) and (b) of this 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 decision  
92 issued under this law, is guilty of a misdemeanor, and,  
93 upon conviction thereof, shall be fined not more than five  
94 thousand dollars or imprisoned in the county jail not more  
95 than six months, or both fined and imprisoned. The  
96 conviction of any person under this subsection shall result  
97 in the revocation of any certifications held by the person  
98 under this chapter which certified or authorized the person  
99 to direct other persons in coal mining by operation of law  
100 and bars that person from being issued any such license  
101 under this chapter, except a miner's certification, for a  
102 period of not less than one year or for a longer period as  
103 may be determined by the director.

104 (e) Whoever willfully distributes, sells, offers for sale,  
105 introduces or delivers in commerce any equipment for use  
106 in a coal mine, including, but not limited to, components  
107 and accessories of the equipment, who willfully  
108 misrepresents the equipment as complying with the  
109 provisions of this law, or with any specification or rule of  
110 the director applicable to the equipment, and which does  
111 not comply with the law, specification or rule, is guilty of a  
112 misdemeanor, and, upon conviction thereof, is subject to

113 the same fine and imprisonment that may be imposed  
114 upon a person under subsection (d) of this section.

115 (f) (1) There is created in the treasury of the state of  
116 West Virginia a special health, safety and training fund.  
117 All civil penalty assessments collected under section  
118 twenty-one of this article shall be collected by the director  
119 and deposited with the treasurer of the state of West  
120 Virginia to the credit of the special health, safety and  
121 training fund. The fund shall be used by the director who  
122 is authorized to expend the moneys in the fund for the  
123 administration of this chapter.

124 (2) After the thirtieth day of June, one thousand nine  
125 hundred ninety-eight, the special health, safety and  
126 training fund is abolished and any balances remaining in  
127 the fund shall be deposited into the state general revenue  
128 fund. On and after the first day of July, one thousand  
129 nine hundred ninety-eight, all civil penalty assessments  
130 collected under section twenty-one of this article shall be  
131 collected by the director and paid to the state treasurer for  
132 deposit into the state general revenue fund.

**ARTICLE. 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 transferable; section to be printed on certificates of approval.**

1 (a) No mine may be opened or reopened unless prior  
2 approval has been obtained from the director of the office  
3 of miners' health, safety and training. The director may  
4 not unreasonably withhold approval. The operator shall  
5 pay a fee of one hundred dollars for the approval, which  
6 shall be tendered with the application for approval:  
7 *Provided*, That mines producing coal solely for the  
8 operator's use shall be issued a permit without charge if  
9 coal production will be less than fifty tons a year.

10        Within thirty days after the first day of January of  
11 each year, the holder of a permit to open a mine shall  
12 apply for the extension of the permit for an additional  
13 year. The permit, evidenced by a document issued by the  
14 director, shall be granted as a matter of right for a fee of  
15 one hundred dollars if, at the time application is made, the  
16 permit holder is in compliance with the provisions of  
17 section seventy-seven of this article and has paid or  
18 otherwise appealed all coal mine assessments issued to the  
19 mine if operated by the permit holder and imposed under  
20 article one of this chapter. Applications for extension of  
21 permits not submitted within the time required shall be  
22 processed as an application to open or reopen a mine and  
23 shall be accompanied by a fee of one hundred dollars.

24        (b) Permits issued pursuant to this section are not  
25 transferable.

26        (c) If the operator of a mine is not the permit holder  
27 as defined in subsection (a) of this section, then the  
28 operator shall apply for and obtain a certificate of  
29 approval to operate the mine on which the permit is held  
30 prior to commencing operations. The operator shall pay a  
31 fee of one hundred dollars, which payment shall be  
32 tendered with the application for approval. The approval,  
33 evidenced by a certificate issued by the director, shall be  
34 granted if, at the time application is made, the applicant is  
35 in compliance with the provisions of section seventy-seven  
36 of this article and has paid or otherwise appealed all coal  
37 mine assessments imposed on the applicant for the  
38 certificate of approval under article one of this chapter.

39        (d) In addition to the director's authority to file a  
40 petition for enforcement under subdivision (4), subsection  
41 (a), section twenty-one, article one of this chapter, if an  
42 operator holding a certificate of approval issued pursuant  
43 to subsection (c) of this section, has been assessed a civil  
44 penalty in accordance with section twenty-one, article one  
45 of this chapter, and its implementing rules, and the penalty  
46 has become final, fails to pay the penalty within the time  
47 prescribed in the order, the director or the authorized  
48 representative of the director, by certified mail, return  
49 receipt requested, shall send a notice to the operator

50 advising the operator of the unpaid penalty. If the penalty  
51 is not paid in full within sixty days from the issuance of  
52 the notice of delinquency by the director, then the director  
53 may revoke the operator's certificate of approval:  
54 *Provided*, That the operator to whom the delinquency  
55 notice is issued has thirty days from receipt of the  
56 delinquency notice to request, by certified mail, return  
57 receipt requested, a public hearing held in accordance with  
58 the procedures of section seventeen, article one of this  
59 chapter, and it's implementing rules, including application  
60 for temporary relief. Once the operator's certificate of  
61 approval is revoked pursuant to this subsection, the  
62 operator may not obtain any certificate of approval under  
63 the provisions of this section to operate any other mine  
64 until that operator pays the delinquent penalties that have  
65 become final.

66 (e) Every firm, corporation, partnership or individual  
67 that contracts to perform services or construction at a coal  
68 mine is considered to be an operator and shall apply for  
69 and obtain a certificate of approval prior to commencing  
70 operations: *Provided*, That these persons shall only be  
71 required to obtain one certificate annually: *Provided*,  
72 *however*, That persons such as, but not limited to,  
73 consultants, mine vendors, office equipment suppliers and  
74 maintenance and delivery personnel are excluded from  
75 this requirement to obtain a certificate of approval.  
76 Operators who are required to obtain a certificate of  
77 approval pursuant to the provisions of this subsection shall  
78 pay a fee of one hundred dollars which shall be tendered  
79 with the application for approval. Approval evidenced by  
80 a certificate issued by the director, shall be granted if, at  
81 the time the application is made, the applicant has paid or  
82 otherwise appealed all coal mine assessments imposed on  
83 the applicant under article one of this chapter.

84 Within thirty days after the first day of January of  
85 each year, the holder of a certificate of approval shall  
86 apply for the extension of that approval for an additional  
87 year. Applications for extension shall be accompanied by  
88 a fee of one hundred dollars. An extension shall be  
89 granted if, at the time application is made, the applicant  
90 has paid or otherwise appealed all coal mine assessments



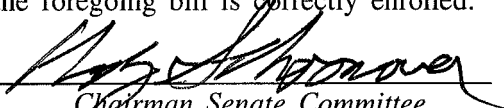
91 imposed on the applicant under article one of this chapter.  
92 All delinquent assessments which have been imposed upon  
93 a certificate of approval holder or applicants under this  
94 section may not be imposed upon any permit holder or  
95 certificate of approval holder or any applicant pursuant to  
96 subsection (a) or (c) of section sixty-three.

97 (f) The provisions of this section shall be printed on  
98 the reverse side of every permit issued under subsection  
99 (a) of this section and certificate of approval issued under  
100 subsection (d) of this section.

101 (g) The district mine inspector shall conduct a pre-  
102 inspection of the area proposed for underground mining  
103 prior to issuance of any new opening permit approval.

104 (h) After the first day of July, one thousand nine  
105 hundred ninety-seven, all moneys collected by the office  
106 of miners' health, safety and training for the approval fees  
107 set forth in subsections (a), (b) and (e) of this section shall  
108 be deposited with the treasurer of the state of West  
109 Virginia to the credit of the general  
110 administration—operating permit fees fund. The  
111 operating permit fees fund shall be used by the director  
112 who is authorized to expend the moneys in the fund for  
113 the administration of this chapter: *Provided*, That after the  
114 thirtieth day of June, one thousand nine hundred ninety-  
115 eight, all moneys collected by the office of miners' health,  
116 safety and training for the approval fees set forth in  
117 subsections (a), (b) and (e) of this section shall be  
118 deposited with the state treasurer to the credit of the  
119 general fund.

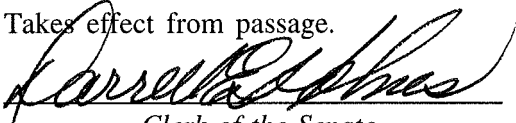
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee


  
Chairman House Committee

Originating in the House.

Takes effect from passage.

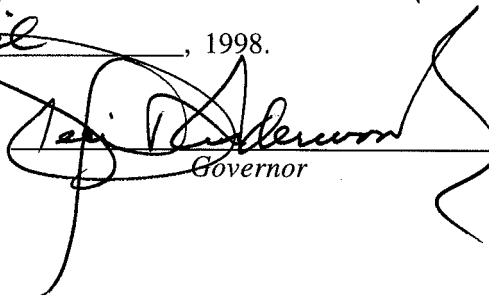
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 7th  
day of April, 1998.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3-31-98

Time 2:58 pm