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
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.


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

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

1 (3) A civil penalty shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director's findings of fact in the decision, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order
in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

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

(b) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under section fifteen of this article, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under subsection (a) of this section or subsection (b), section twenty-two of this article, shall be assessed a civil penalty by the director under subdivision (3), subsection (a) of this section, of not more than five thousand dollars, and
for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-two of this article, any director, officer or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal, is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than six months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars that person from being issued any such license under this chapter, except a miner's certification, for a period of not less than one year or for a longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in a coal mine; including, but not limited to, components and accessories of the equipment, who willfully misrepresents the equipment as complying with the provisions of this law, or with any specification or rule of the director applicable to the equipment, and which does not comply with the law, specification or rule, is guilty of a misdemeanor, and, upon conviction thereof, is subject to
the same fine and imprisonment that may be imposed upon a person under subsection (d) of this section.

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

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

(a) No mine may be opened or reopened unless prior approval has been obtained from the director of the office of miners' health, safety and training. The director may not unreasonably withhold approval. The operator shall pay a fee of one hundred dollars for the approval, which shall be tendered with the application for approval: Provided, That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than fifty tons a year.
Within thirty days after the first day of January of each year, the holder of a permit to open a mine shall apply for the extension of the permit for an additional year. The permit, evidenced by a document issued by the director, shall be granted as a matter of right for a fee of one hundred dollars if, at the time application is made, the permit holder is in compliance with the provisions of section seventy-seven of this article and has paid or otherwise appealed all coal mine assessments issued to the mine if operated by the permit holder and imposed under article one of this chapter. Applications for extension of permits not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of one hundred dollars.

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

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

(d) In addition to the director's authority to file a petition for enforcement under subdivision (4), subsection (a), section twenty-one, article one of this chapter, if an operator holding a certificate of approval issued pursuant to subsection (c) of this section, has been assessed a civil penalty in accordance with section twenty-one, article one of this chapter, and its implementing rules, and the penalty has become final, fails to pay the penalty within the time prescribed in the order, the director or the authorized representative of the director, by certified mail, return receipt requested, shall send a notice to the operator
advising the operator of the unpaid penalty. If the penalty is not paid in full within sixty days from the issuance of the notice of delinquency by the director, then the director may revoke the operator's certificate of approval: 

Provided, That the operator to whom the delinquency notice is issued has thirty days from receipt of the delinquency notice to request, by certified mail, return receipt requested, a public hearing held in accordance with the procedures of section seventeen, article one of this chapter, and it's implementing rules, including application for temporary relief. Once the operator's certificate of approval is revoked pursuant to this subsection, the operator may not obtain any certificate of approval under the provisions of this section to operate any other mine until that operator pays the delinquent penalties that have become final.

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

Within thirty days after the first day of January of each year, the holder of a certificate of approval shall apply for the extension of that approval for an additional year. Applications for extension shall be accompanied by a fee of one hundred dollars. An extension shall be granted if, at the time application is made, the applicant has paid or otherwise appealed all coal mine assessments
imposed on the applicant under article one of this chapter.  
All delinquent assessments which have been imposed upon  
a certificate of approval holder or applicants under this  
section may not be imposed upon any permit holder or  
certificate of approval holder or any applicant pursuant to  
subsection (a) or (c) of section sixty-three.  

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

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

(h) After the first day of July, one thousand nine  
hundred ninety-seven, all moneys collected by the office  
of miners' health, safety and training for the approval fees  
set forth in subsections (a), (b) and (e) of this section shall  
be deposited with the treasurer of the state of West  
Virginia to the credit of the general  
administration—operating permit fees fund. The  
operating permit fees fund shall be used by the director  
who is authorized to expend the moneys in the fund for  
the administration of this chapter: Provided, That after the  
thirtieth day of June, one thousand nine hundred ninety-  
eight, all moneys collected by the office of miners' health,  
safety and training for the approval fees set forth in  
subsections (a), (b) and (e) of this section shall be  
deposited with the state treasurer to the credit of the  
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 ______ day of ________, 1998.

Governor