WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED
Committee Substitute for
SENATE BILL NO. 179

(By Senator Jim Burning, Mr. President, and Senator Sprague
By Request of the Executive)

PASSED March 9, 2002

In Effect from Passage
AN ACT to amend and reenact section twenty-one, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to miners' health and safety; providing additional factor for determining amount of civil penalty for violation of rule or statute; promulgation of legislative and emergency rules; providing circumstances under which special assessment civil penalty may be imposed in lieu of civil penalty; providing amount of special assessment civil penalty that may be imposed; establishing special revenue fund for receipt of penalty moneys; and providing purposes for expenditures from fund.
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Be it enacted by the Legislature of West Virginia:

That section twenty-one, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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 provision 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, unless the director determines that it is appropriate to impose a special assessment for said violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, whether the operator was negligent, 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. Not later than the first day of June, two thousand two, the director shall promulgate as a rule the procedure for assessing such civil penalties. This rule will be in effect upon filing, without regard to the provisions of chapter twenty-nine-a of this code.

2 (2) 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.

26 (3) 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 (4) of this subsection which shall not be more than two hundred fifty dollars for each occurrence of the violation.

(4) A civil penalty under subdivision one or two, subsection (a) of this section or subdivision one or two, subsection (b) of this section 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.

(5) 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 the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as 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) (1) 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 (5), 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, unless the director determines that it is appropriate to impose a special assessment for said violation, pursuant to the provisions of subdivision (2) of this subsection.

(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one of more of the following by the operator:

(A) Violations involving fatalities and serious injuries;
(B) Failure or refusal to comply with any order issued under section fifteen of this article;
(C) Operation of a mine in the face of a closure order;
(D) Violations involving an imminent danger;

(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under section twenty-two of this chapter.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least five thousand dollars and 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
(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) 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 this section 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 21st Day of March, 2002.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/14/02
Time 2:05 p.m.