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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
2006 Regular Session



ENROLLED

Committee Substitute for
SENATE BILL NO. 247

(By Senators Tamblin, Mr. President, and ~~†~~
Sprouse, By Request of Executive)



PASSED January 23, 2006

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 247

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed January 23, 2006; in effect from passage.]

AN ACT to repeal §22A-2-69 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §15-5B-1, §15-5B-2, §15-5B-3, §15-5B-4 and §15-5B-5; to amend and reenact §22A-2-55 and §22A-2-66 of said code; and to amend said code by adding thereto a new section, designated §24-6-14, all relating to mine and industrial emergencies; creating the Mine and Industrial Accident Rapid Response System; providing requirements for protective equipment in underground mines; providing for criminal penalties for the unauthorized removal of or tampering with certain protective equipment; defining certain terms; providing for notification requirements in the event of an accident in or about any mine and imposing a civil administrative penalty for the failure to comply with such notification requirements; providing rule-making authority; and clarifying the responsibilities of county answering points.

Be it enacted by the Legislature of West Virginia:

That §22A-2-69 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new article, designated §15-5B-1, §15-5B-2, §15-5B-3, §15-5B-4 and §15-5B-5; that §22A-2-55 and §22A-2-66 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §24-6-14, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.

§15-5B-1. Legislative purpose; Mine and Industrial Accident Rapid Response System created.

1 (a) The Legislature finds that the health and safety of
2 persons working in and around the mining industry and
3 other industries is of paramount concern to the people of
4 West Virginia and that deaths and serious injuries result-
5 ing from dangerous working conditions cause grief and
6 suffering to workers and their families. The Legislature
7 further finds that there is an urgent need to provide more
8 effective means and measures for improving emergency
9 response and communications for dealing with mine and
10 industrial accidents. The Legislature declares that it is in
11 the best interest of the citizens of West Virginia to desig-
12 nate an emergency telephone number for mining or
13 industrial personnel to initiate a rapid emergency response
14 to any mine or industrial accident. Provision of a single,
15 primary emergency number through which emergency
16 services can be quickly and efficiently obtained and
17 through which the response of various state agencies
18 charged by law with responding to mine and industrial
19 emergencies can be coordinated will significantly contrib-
20 ute to the public good. The Mine and Industrial Accident
21 Rapid Response System will provide a vital resource to the
22 citizens of West Virginia by providing a critical connection
23 between the Director of the Office of Miners' Health,
24 Safety and Training, the Division of Homeland Security

25 and Emergency Management, local and regional emer-
26 gency services organizations and other responsible agen-
27 cies.

28 (b) The Mine and Industrial Accident Rapid Response
29 System is hereby created and shall consist of:

30 (1) The Mine and Industrial Accident Emergency Opera-
31 tions Center established in section two of this article; and

32 (2) The 24-hour-a-day statewide telephone number
33 established by the Director of the Division of Homeland
34 Security and Emergency Management.

§15-5B-2. Mine and industrial accident emergency operations center.

1 (a) The Director of the Division of Homeland Security
2 and Emergency Management, working in conjunction with
3 the Office of Miners' Health, Safety and Training, shall
4 maintain the Mine and Industrial Accident Emergency
5 Operations Center, which shall be the official and primary
6 state government 24-hour-a-day communications center
7 for dealing with mine and industrial accidents.

8 (b) The emergency operations center shall be operated
9 twenty-four hours a day, seven days a week by emergency
10 service personnel employed by the director to provide
11 emergency assistance and coordination to mine and
12 industrial accidents or emergencies.

13 (c) The emergency operations center shall be readily
14 accessible twenty-four hours a day at a statewide tele-
15 phone number established and designated by the director.

§15-5B-3. Emergency mine response.

1 (a) To assist the Division of Homeland Security and
2 Emergency Management in implementing and operating
3 the Mine and Industrial Accident Rapid Response System,
4 the Office of Miners' Health, Safety and Training shall, on
5 a quarterly basis, provide the emergency operations center
6 with a mine emergency contact list. In the event of any

7 change in the information contained in the mine emer-
8 gency contact list, such changes shall be provided immedi-
9 ately to the emergency operations center. The mine
10 emergency contact list shall include the following infor-
11 mation:

12 (1) The names and telephone numbers of the Director of
13 the Office of Miners' Health, Safety and Training, or his or
14 her designee, including at least one telephone number at
15 which the Director or designee may be reached at any
16 time;

17 (2) The names and telephone numbers of all district mine
18 inspectors, including at least one telephone number for
19 each inspector at which each inspector may be reached at
20 any time;

21 (3) A current listing of all regional offices or districts of
22 the Office of Miners' Health, Safety and Training, includ-
23 ing a detailed description of the geographical areas served
24 by each regional office or district; and

25 (4) The names, locations and telephone numbers of all
26 mine rescue stations, including at least one telephone
27 number for each station that may be called twenty-four
28 hours a day and a listing of all mines that each mine rescue
29 station serves in accordance with the provisions of section
30 thirty-five, article one, chapter twenty-two-a of this code.

31 (b) Upon the receipt of an emergency call regarding any
32 accident, as defined in section sixty-six, article two,
33 chapter twenty-two-a of this code, in or about any mine,
34 the emergency operations center shall immediately notify:

35 (1) The Director of the Office of Miners' Health, Safety
36 and Training or his or her designee;

37 (2) The district mine inspector assigned to the district or
38 region in which the accident occurred; and

39 (3) Local emergency service personnel in the area in
40 which the accident occurred.

41 (c) The director or his or her designee shall determine the
42 necessity for and contact all mine rescue stations that
43 provide rescue coverage to the mine in question.

44 (d) In the event that an emergency call regarding any
45 accident, as defined in section sixty-six, article two,
46 chapter twenty-two-a of this code, in or about any mine,
47 is initially received by a county answering point, as
48 defined in article six, chapter twenty-four of this code, the
49 call shall be immediately forwarded to the Mine and
50 Industrial Accident Emergency Operations Center.

51 (e) Nothing in this section shall be construed to relieve
52 an operator, as defined in section two, article one, chapter
53 twenty-two-a of this code, from any reporting or notifica-
54 tion obligation under federal law.

55 (f) The Mine and Industrial Accident Rapid Response
56 System and the emergency operations center are designed
57 and intended to provide communications assistance to
58 emergency responders and other responsible persons.
59 Nothing in this section shall be construed to conflict with
60 the responsibility and authority of an operator to provide
61 mine rescue coverage in accordance with the provisions of
62 section thirty-five, article one, chapter twenty-two-a of
63 this code or the authority of the Director of the Office of
64 Miners' Health, Safety and Training to assign mine rescue
65 teams under the provisions of subsection (d) of said section
66 or to exercise any other authority provided in chapter
67 twenty-two-a of this code.

§15-5B-4. Study of other industrial emergencies.

1 The Director of the Division of Homeland Security and
2 Emergency Management shall immediately cause a study
3 to be conducted to determine the feasibility of providing
4 emergency coverage to other industrial, manufacturing,
5 chemical or other emergencies through the Mine and
6 Industrial Accident Rapid Response System. On or before
7 the first day of November, two thousand six, the director
8 shall submit a report to the Governor, the President of the
9 Senate and the Speaker of the House of Delegates setting

10 forth the findings of his or her study and recommendations
11 for legislation consistent with the purposes of this article.

§15-5B-5. Rule-making authority.

1 The Director of the Division of Homeland Security and
2 Emergency Management shall propose emergency and
3 legislative rules for promulgation in accordance with
4 article three, chapter twenty-nine-a of this code regarding
5 the implementation and administration of the Mine and
6 Industrial Accident Rapid Response System. The require-
7 ments of this article enacted during the regular session of
8 the Legislature in January, two thousand six, shall not be
9 implemented until the emergency rule authorized herein
10 has been approved.

**CHAPTER 22A. MINERS' HEALTH,
SAFETY AND TRAINING.**

ARTICLE 2. UNDERGROUND MINES.

§22A-2-55. Protective equipment and clothing.

1 (a) Welders and helpers shall use proper shields or
2 goggles to protect their eyes. All employees shall have
3 approved goggles or shields and use the same where there
4 is a hazard from flying particles or other eye hazards.

5 (b) Employees engaged in haulage operations and all
6 other persons employed around moving equipment on the
7 surface and underground shall wear snug-fitting clothing.

8 (c) Protective gloves shall be worn when material which
9 may injure hands is handled, but gloves with gauntleted
10 cuffs shall not be worn around moving equipment.

11 (d) Safety hats and safety-toed shoes shall be worn by all
12 persons while in or around a mine: *Provided*, That meta-
13 tarsal guards are not required to be worn by persons when
14 working in those areas of underground mine workings
15 which average less than forty-eight inches in height as
16 measured from the floor to the roof of the underground
17 mine workings.

18 (e) Approved eye protection shall be worn by all persons
19 while being transported in open-type man trips.

20 (f)(1) A self-contained self-rescue device approved by the
21 Director shall be worn by each person underground or
22 kept within his immediate reach and the device shall be
23 provided by the operator. The self-contained self-rescue
24 device shall be adequate to protect a miner for one hour or
25 longer. Each operator shall train each miner in the use of
26 such device and refresher training courses for all under-
27 ground employees shall be held during each calendar year.

28 (2) In addition to the requirements of subdivision (1) of
29 this subsection, the operator shall also provide caches of
30 additional self-contained self-rescue devices throughout
31 the mine in accordance with a plan approved by the
32 director. Each additional self-contained self-rescue device
33 shall be adequate to protect a miner for one hour or longer.
34 The total number of additional self-contained self-rescue
35 devices, the total number of storage caches and the
36 placement of each cache throughout the mine shall be
37 established by rule pursuant to subsection (i) of this
38 section. Intrinsically safe battery-powered strobe lights
39 shall be affixed to each cache and shall be capable of
40 automatic activation in the event of an emergency. A
41 luminescent sign with the words "SELF-CONTAINED
42 SELF-RESCUER" or "SELF-CONTAINED SELF-
43 RESCUERS" shall be conspicuously posted at each cache
44 and luminescent direction signs shall be posted leading to
45 each cache. Lifeline cords or other similar device, with
46 reflective material at 25-foot intervals, shall be attached
47 to each cache from the last open crosscut to the surface.
48 The operator shall conduct weekly inspections of each
49 cache, the affixed strobe lights and each lifeline cord or
50 other similar device to ensure operability.

51 (3) Any person that, without the authorization of the
52 operator or the director, knowingly removes or attempts to
53 remove any self-contained self-rescue device or battery-
54 powered strobe light from the mine or mine site with the
55 intent to permanently deprive the operator of the device or

56 light or knowingly tampers with or attempts to tamper
57 with such device or light shall be guilty of a felony and,
58 upon conviction thereof, shall be imprisoned in a state
59 correctional facility for not less than one year nor more
60 than ten years or fined not less than ten thousand dollars
61 nor more than one hundred thousand dollars, or both.

62 (g)(1) A wireless emergency communication device
63 approved by the director and provided by the operator
64 shall be worn by each person underground. The wireless
65 emergency communication device shall, at a minimum, be
66 capable of receiving emergency communications from the
67 surface at any location throughout the mine. Each opera-
68 tor shall train each miner in the use of the device and
69 provide refresher training courses for all underground
70 employees during each calendar year. The operator shall
71 install in or around the mine any and all equipment
72 necessary to transmit emergency communications from the
73 surface to each wireless emergency communication device
74 at any location throughout the mine.

75 (2) Any person that, without the authorization of the
76 operator or the director, knowingly removes or attempts to
77 remove any wireless emergency communication device or
78 related equipment, from the mine or mine site with the
79 intent to permanently deprive the operator of the device or
80 equipment or knowingly tampers with or attempts to
81 tamper with the device or equipment shall be guilty of a
82 felony and, upon conviction thereof, shall be imprisoned in
83 a state correctional facility for not less than one year nor
84 more than ten years or fined not less than ten thousand
85 dollars nor more than one hundred thousand dollars, or
86 both.

87 (h)(1) A wireless tracking device approved by the direc-
88 tor and provided by the operator shall be worn by each
89 person underground. In the event of an accident or other
90 emergency, the tracking device shall, at a minimum, be
91 capable of providing real-time monitoring of the physical
92 location of each person underground: *Provided*, That no
93 person shall discharge or discriminate against any miner

94 based on information gathered by a wireless tracking
95 device during nonemergency monitoring. Each operator
96 shall train each miner in the use of the device and provide
97 refresher training courses for all underground employees
98 during each calendar year. The operator shall install in or
99 around the mine all equipment necessary to provide real-
100 time emergency monitoring of the physical location of
101 each person underground.

102 (2) Any person that, without the authorization of the
103 operator or the director, knowingly removes or attempts to
104 remove any wireless tracking device or related equipment,
105 approved by the director, from a mine or mine site with
106 the intent to permanently deprive the operator of the
107 device or equipment or knowingly tampers with or at-
108 tempts to tamper with the device or equipment shall be
109 guilty of a felony and, upon conviction thereof, shall be
110 imprisoned in a state correctional facility for not less than
111 one year nor more than ten years or fined not less than ten
112 thousand dollars nor more than one hundred thousand
113 dollars, or both.

114 (i) The director may promulgate emergency and legisla-
115 tive rules to implement and enforce this section pursuant
116 to the provisions of article three, chapter twenty-nine-a of
117 this code.

118 (j) The penalties set forth in this article enacted during
119 the regular session of the Legislature in January, two
120 thousand six, shall become effective the first day of July,
121 two thousand six.

**§22A-2-66. Accident; notice; investigation by Office of Miners'
Health, Safety and Training.**

1 (a) For the purposes of this section, the term "accident"
2 means:

3 (1) The death of an individual at a mine;

4 (2) An injury to an individual at a mine which has a
5 reasonable potential to cause death;

6 (3) The entrapment of an individual;

7 (4) The unplanned inundation of a mine by a liquid or
8 gas;

9 (5) The unplanned ignition or explosion of gas or dust;

10 (6) The unplanned ignition or explosion of a blasting
11 agent or an explosive;

12 (7) An unplanned fire in or about a mine not extin-
13 guished within five minutes of ignition;

14 (8) An unplanned roof fall at or above the anchorage
15 zone in active workings where roof bolts are in use or an
16 unplanned roof or rib fall in active workings that impairs
17 ventilation or impedes passage;

18 (9) A coal or rock outburst that causes withdrawal of
19 miners or which disrupts regular mining activity for more
20 than one hour;

21 (10) An unstable condition at an impoundment, refuse
22 pile or culm bank which requires emergency action in
23 order to prevent failure, or which causes individuals to
24 evacuate an area, or the failure of an impoundment, refuse
25 pile or culm bank;

26 (11) Damage to hoisting equipment in a shaft or slope
27 which endangers an individual or which interferes with
28 use of the equipment for more than thirty minutes; and

29 (12) An event at a mine which causes death or bodily
30 injury to an individual not at the mine at the time the
31 event occurs.

32 (b) Whenever any accident occurs in or about any coal
33 mine or the machinery connected therewith, it is the duty
34 of the operator or the mine foreman in charge of the mine
35 to give notice, within fifteen minutes of ascertaining the
36 occurrence of an accident, to the Mine and Industrial
37 Accident Emergency Operations Center at the statewide
38 telephone number established by the Director of the
39 Division of Homeland Security and Emergency Manage-

40 ment pursuant to the provisions of article five-b, chapter
41 fifteen of this code stating the particulars of the accident:
42 *Provided*, That the operator or the mine foreman in charge
43 of the mine may comply with this notice requirement by
44 immediately providing notice to the appropriate local
45 organization for emergency services as defined in section
46 eight, article five of said chapter, or the appropriate local
47 emergency telephone system operator as defined in article
48 six, chapter twenty-four of this code: *Provided, however*,
49 That nothing in this subsection shall be construed to
50 relieve the operator from any reporting or notification
51 requirement under federal law.

52 (c) The Director of the Office of Miners' Health, Safety
53 and Training shall impose, pursuant to rules authorized in
54 this section, a civil administrative penalty of one hundred
55 thousand dollars on the operator if it is determined that
56 the operator or the mine foremen in charge of the mine
57 failed to give immediate notice as required in this section:
58 *Provided*, That the director may waive imposition of the
59 civil administrative penalty at any time if he or she finds
60 that the failure to give immediate notice was caused by
61 circumstances wholly outside the control of the operator.

62 (d) If anyone is killed, the inspector shall immediately go
63 to the scene of the accident and make recommendations
64 and render assistance as he or she may deem necessary for
65 the future safety of the men and investigate the cause of
66 the explosion or accident and make a record. He or she
67 shall preserve the record with the other records in his or
68 her office. The cost of the investigation records shall be
69 paid by the Office of Miners' Health, Safety and Training.
70 A copy shall be furnished to the operator and other
71 interested parties. To enable him or her to make an
72 investigation, he or she has the power to compel the
73 attendance of witnesses and to administer oaths or affir-
74 mations. The director has the right to appear and testify
75 and to offer any testimony that may be relevant to the
76 questions and to cross-examine witnesses.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-14. Notification of mining accidents.

1 Each county answering point that receives a call report-
2 ing an accident in or about any mine shall immediately
3 route the call to the Mine and Industrial Accident Emer-
4 gency Operations Center created pursuant to section two,
5 article five-a, chapter fifteen of this code.

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

Clancy White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Parrell E. Eblin
.....
Clerk of the Senate

Bryson W. Smith
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

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

The within *is approved* this the *26th*
Day of *January*, 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

JAN 24 2006

Time 1:50 pm