WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

---

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4021

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

---

Passed March 8, 2008

In Effect April 1, 2008
AN ACT to amend and reenact §22A-2-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §22A-2-55 of said code; and to amend and reenact §61-3-12 and §61-3-29 of said code, all relating generally to coal mine health and safety; clarifying currency of rules and policies relating to transportation of miners and supplies; directing the West Virginia Mine Safety Task Force study possible improvements in transportation of miners and supplies in underground coal mines; eliminating requirement that strobe lights be affixed to caches of self-contained self-rescue devices; expanding criminal penalties for theft of certain coal mine equipment; establishing criminal penalties for illegal entry into underground coal mines; creating a criminal penalty for damage or destruction of coal mine equipment and property; and creating a criminal penalty for damage or destruction of coal mine equipment and property when a serious bodily injury results.
Be it enacted by the Legislature of West Virginia:

That §22A-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; §22A-2-55 of said code be amended and reenacted; and that §61-3-12 and §61-3-29 of said code be amended and reenacted, all to read as follows:

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

ARTICLE 2. UNDERGROUND MINES.


(a) Mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel under the supervision of a certified foreman. When equipment is being transported or trammed, no person shall be permitted to be inby the equipment in the ventilating split that is passing over such equipment. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

(b) The task force shall, upon the effective date of the amendments to this section made during the two-thousand eight Regular Session of the West Virginia Legislature, undertake a study of methods and technologies available related to transporting miners, mining equipment and supplies in underground mines.

(c) Upon completion of the study directed by the provisions of subsection (b) of this section, the task force may present recommendations to the West Virginia Board of Coal Mine Health and Safety designed to improve the safety and efficiency of underground mines transportation systems.
The board may upon the consideration of any such task force recommendations, promulgate rules governing the movement of mining equipment within coal mines in the State of West Virginia.

(d) The current legislative rule 36CSR4, effective the nineteenth day of July, one thousand nine hundred seventy-nine, relating to “Rules and Regulations Governing the Movement of Mining Equipment within Coal Mines in the State of West Virginia”, is hereby limited and qualified as to its force and effect and shall only be read to be effective to the extent provided as follows:

To the extent that the rule permits the movement of major pieces of heavy mining equipment with men in by the equipment in the ventilating split that is passing over such equipment, to-wit, Section 4: applying the prohibition only to “transporting” and only “where energized D.C. powered trolley or feeder wires are present”; Sections 5.1, 9.1, 10.1, 12.1 and 13.1 to the extent that they involve transporting or tramming such equipment with men in by; Sections 6.1 and 6.2 only to the extent that such equipment is not designed by the manufacturer to operate on track; Section 7.1 only to the extent that such equipment exceeds the length or width of the mine car; and Section 11.1 only to the extent that such equipment in said Section exceeds the length, width or cargo carrying capacity of the unit being used to transport such equipment. Construction work and rehabilitation work are not prohibited except to the extent that such would involve the movement of major pieces of heavy mining equipment into the precise area where such work is to be performed, with men in by.

(e) The provisions of subsection (d) of this section, as enforced upon the first day of February, two thousand eight, shall remain in full force and effect until modified by any rules promulgated pursuant to subsection (c) of this section.
§22A-2-55. Protective equipment and clothing.

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

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

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

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

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

(f)(1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of such device and refresher training courses for all underground employees shall be held during each calendar year.
(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to subsection (i) of this section. A luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at twenty-five foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or other similar device to ensure operability.

(3) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any self-contained self-rescue device or lifeline cord from the mine or mine site with the intent to permanently deprive the operator of the device or lifeline cord or knowingly tampers with or attempts to tamper with such device or lifeline cord shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(g)(1) A wireless emergency communication device approved by the director and provided by the operator shall be worn by each person underground. The wireless emergency communication device shall, at a minimum, be
capable of receiving emergency communications from the
surface at any location throughout the mine. Each operator
shall train each miner in the use of the device and provide
refresher training courses for all underground employees
during each calendar year. The operator shall install in or
around the mine any and all equipment necessary to transmit
emergency communications from the surface to each wireless
emergency communication device at any location throughout
the mine.

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

(h)(1) A wireless tracking device approved by the
director and provided by the operator shall be worn by each
person underground. In the event of an accident or other
emergency, the tracking device shall, at a minimum, be
capable of providing real-time monitoring of the physical
location of each person underground. Provided, That no
person shall discharge or discriminate against any miner
based on information gathered by a wireless tracking device
during nonemergency monitoring. Each operator shall train
each miner in the use of the device and provide refresher
training courses for all underground employees during each
calendar year. The operator shall install in or around the
mine all equipment necessary to provide real-time emergency
monitoring of the physical location of each person
underground.
(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.

If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, underground coal mine, storehouse, warehouse, banking house, or any house or building, other than a dwelling house or outhouse adjoining thereto or occupied therewith, or any railroad or traction car, propelled by steam, electricity or otherwise, or any steamboat or other boat or vessel, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, he or she shall be deemed guilty of a felony, and, upon conviction, shall be confined in a state correctional facility not less than one nor more than ten years. And if any person
shall, at any time, break and enter, or shall enter without
breaking, any automobile, motorcar or bus, with like intent,
within the jurisdiction of any county in this state, he shall be
guilty of a misdemeanor, and, upon conviction, shall be
confined in jail not less than two nor more than twelve
months and be fined not exceeding one hundred dollars.

An indictment for burglary may contain one or more
counts for breaking and entering, or for entering without
breaking, the house or building mentioned in the count for
burglary under the provisions of this and the preceding
section.

§61-3-29. Damage or destruction of railroad or public utility
company property, or real or personal property
used for producing, generating, transmitting,
distributing, treating or collecting electricity,
natural gas, coal, water, wastewater, stormwater,
telecommunications or cable service; penalties;
restitution.

(a) Any person who knowingly and willfully damages or
destroyed any real or personal property owned by a railroad
company, or public utility company, or any real or personal
property used for producing, generating, transmitting,
distributing, treating or collecting electricity, natural gas,
coal, water, wastewater, stormwater, telecommunications or
cable service, is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not more than two thousand
dollars, or confined in jail not more than one year, or both.

(b) Any person who knowingly and willfully: (1)
damages or destroys any real or personal property owned by
a railroad company, or public utility company, or any real or
personal property used for producing, generating,
transmitting, distributing, treating or collecting electricity,
natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; and, (2) causes serious bodily injury to another is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than fifty thousand dollars, or confined in a state correctional facility not less than one nor more than five years, or both.

(c) Nothing in this section may be construed to limit or restrict the ability of an entity referred to in subsection (a) or (b) of this section or a property owner or other person who has been damaged or injured as a result of a violation of this section from seeking recovery for damages arising from violation of this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect April 1, 2008.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 27th day of January, 2008.

Governor