

SB 279
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WEST VIRGINIA LEGISLATURE

**SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009**



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FOR

Senate Bill No. 279

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

[Passed April 11, 2009; in effect ninety days from passage.]

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Senate Bill No. 279

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
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[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5B-3a, relating generally to industrial and railroad accidents and emergencies; providing definitions; requiring the reporting of certain industrial emergencies to the Mine and Industrial Accident Emergency Operations Center or local emergency telephone system operators; requiring industrial facilities to provide certain information to state and local emergency responders; requiring operators of railroad facilities in this state to provide certain information to state and local emergency responders in the event of a railroad accident or emergency; granting state and local officials access to the

person or persons charged with managing an industrial or railroad emergency and certain areas affected by the emergency; requiring state and local officials to timely provide information related to public health, safety and welfare regarding hazardous waste releases and other emergency events; authorizing the Director of the Division of Homeland Security and Emergency Management to promulgate emergency legislative rules establishing a list of facilities subject to the requirements of this section and establishing procedures; providing for civil penalties; requiring the collected moneys to be deposited into the Hazardous Waste Emergency Response Fund; and authorizing the promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-5B-3a, to read as follows:

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

§15-5B-3a. Industrial facility emergency event notification and access.

1 (a) *Definitions.* – Unless the context in which used
2 clearly requires a different meaning, the following words
3 and phrases as used in this section have the following
4 meanings:

5 (1) “Industrial facility” means:

6 (A) Any facility that is required to submit a risk man-
7 agement plan to the United States Environmental Protec-
8 tion Agency pursuant to regulations promulgated under
9 Section 112(r) of the Clean Air Act of 1990, 42 U. S. C.
10 §7412(r), including the property upon which the facility is
11 located and any buildings appurtenant thereto or associ-
12 ated therewith, including storage facilities; or

13 (B) A facility which is a factory, mill, plant or refinery,
14 other than a coal facility, including the property upon
15 which a factory, mill, plant or refinery is located and any
16 buildings appurtenant thereto or associated therewith,
17 including storage facilities, found by the director to be of
18 a type to have a reasonable potential to have an emergency
19 event: *Provided*, That before any facility may be subject to
20 the provisions of this section, the owner or operator of
21 each facility must be placed on actual written notice via
22 certified mail, return receipt requested, of the facility's
23 inclusion thereon, as well as the requirements imposed by
24 the provisions of this section and any rules promulgated
25 thereunder: *Provided, however*, That the list required by
26 the provisions of this section shall be filed with the
27 President of the Senate and the Speaker of the House of
28 Delegates by the first day of the 2010 legislative session.

29 (2) "Appropriate state and local officials" means the
30 Governor or his or her representative, the Director of the
31 Division of Homeland Security and Emergency Manage-
32 ment, a representative designated by the Director of the
33 Division of Homeland Security and Emergency Manage-
34 ment who has been trained and qualified by the Federal
35 Emergency Management Agency's (FEMA) National
36 Incident Management System (NIMS) program and/or a
37 representative of a local emergency management agency
38 who has been trained and qualified by FEMA's NIMS
39 program.

40 (3) "Director" means the Director of the Division of
41 Homeland Security and Emergency Management.

42 (4) "Emergency event" means an unplanned event,
43 including, but not limited to, an explosion, a fire that
44 cannot be contained within fifteen minutes of discovery,
45 the release of a reportable quantity, as specified in 40 C.
46 F. R. §302 (2009) or its successor, of an extremely hazard-
47 ous substance listed in the appendices to 40 C. F. R. §355

48 (2009) or its successor, loss of life or serious personal
49 injury at an industrial facility: *Provided*, That the director
50 may, by promulgation of a legislative rule, establish a
51 higher threshold report level for a particular extremely
52 hazardous substance than is set in the aforementioned
53 Code of Federal Regulations citation.

54 (b) *Reporting requirement.* –

55 (1) Within fifteen minutes of the industrial facility
56 ascertaining the occurrence of an emergency event at an
57 industrial facility, the industrial facility shall contact the
58 Mine and Industrial Accident Emergency Operations
59 Center by telephone at the statewide telephone number
60 established by the director or shall contact a local emer-
61 gency telephone system, as defined in article six, chapter
62 twenty-four of this code, by telephone at the number
63 established by the system to communicate the occurrence
64 of the emergency event: *Provided*, That if telephone
65 communications fail for any reason, the industrial facility
66 shall contact local emergency services in the most expedi-
67 tious manner possible. The industrial facility shall
68 provide the following information:

69 (A) The name and title of the individual making the
70 report;

71 (B) The name and address of the facility; and

72 (C) Notification that an emergency event has occurred.

73 (2) If the caller has ready access to the following
74 information, he or she shall also provide:

75 (A) Then-available information concerning the nature
76 and extent of the emergency event, including any informa-
77 tion that concerns the existence or nonexistence of poten-
78 tial threats to the public health;

79 (B) In the event of an unplanned fire that cannot be
80 contained within fifteen minutes, explosion or release as
81 defined in this section, preliminary information regarding
82 the type of substance involved and, if a release, the
83 estimated amount released, if known; and

84 (C) The name, title and contact information of the
85 individual designated to serve as a contact person on
86 behalf of the industrial facility.

87 (3) Any call made pursuant to this subsection may be
88 recorded by the agency receiving the call. In the event
89 that an industrial facility contacts a local emergency
90 telephone system to report an emergency event, the local
91 emergency telephone system shall immediately forward all
92 information received to the Mine and Industrial Accident
93 Emergency Operations Center.

94 (c) *Event communications.* – As soon as practicable
95 after providing the notice required under subsection (b) of
96 this section, the industrial facility shall implement a
97 communications system designed to provide timely
98 information to appropriate state and local officials. At a
99 minimum, the industrial facility shall designate a person
100 to serve as a contact for state and local emergency re-
101 sponders. Any person so designated shall, upon the
102 request of an appropriate state or local official, provide
103 such additional information known or subsequently
104 known that may be necessary to assess the extent of the
105 emergency or to provide appropriate public assistance.

106 (d) *Authorized access to public officials.* – As soon as
107 practicable after the occurrence of an emergency event,
108 the industrial facility shall, upon request, provide appro-
109 priate state and local officials with timely authorized
110 access to the person or persons charged with managing the
111 event on behalf of the facility and the area(s) where the
112 emergency event is being managed or the industrial
113 facility's response to the emergency event is being coordi-

114 nated. The industrial facility shall also provide appropri-
115 ate state and local officials with timely authorized access
116 to any areas affected by the emergency event: *Provided,*
117 That the industrial facility has determined those areas to
118 be reasonably safe: *Provided, however,* That within thirty
119 minutes of obtaining information that affects the public
120 health, safety and welfare, state and local officials shall
121 notify the public of any hazardous materials or events
122 which may affect the area.

123 (e) *Civil penalties.* —

124 (1) The director shall impose a civil penalty of up to
125 \$100,000 on the industrial facility if he or she determines
126 that the industrial facility failed to comply with the
127 reporting requirement of subsection (b) of this section. No
128 penalty shall be imposed upon an industrial facility giving
129 notice pursuant to this section for unintentionally provid-
130 ing inaccurate or incomplete preliminary information to
131 the Mine and Industrial Accident Emergency Operations
132 Center or local emergency telephone system: *Provided,*
133 That the industrial facility implemented reasonable efforts
134 to provide the most accurate and complete preliminary
135 information possible: *Provided, however,* That the indus-
136 trial facility implemented reasonable efforts to correct
137 inaccurate or incomplete preliminary information re-
138 ported to the Mine and Industrial Accident Emergency
139 Operations Center or local emergency telephone system
140 once such information was determined by the industrial
141 facility to be inaccurate or incomplete.

142 (2) The director shall impose a civil penalty on the
143 operator or operators of an industrial facility if he or she
144 determines that the industrial facility failed to comply
145 with the communication or access requirements of subsec-
146 tions (c) and (d) of this section. Application of this subdivi-
147 sion and amounts levied as civil penalties by the director
148 shall be determined in accordance with legislative rules

149 promulgated pursuant to article three, chapter twenty-
150 nine-a of this code.

151 (3) The director may waive the imposition of a civil
152 penalty imposed under this section: *Provided*, That he or
153 she finds that the failure to comply with the requirements
154 of this section was caused by circumstances outside the
155 control of the industrial facility.

156 (4) All moneys collected pursuant to this section shall
157 be deposited in the Hazardous Waste Emergency Response
158 Fund, as established pursuant to section three, article
159 nineteen, chapter twenty-two of this code.

160 (f) Nothing in this section may be construed to:

161 (1) Relieve an industrial facility from any other report-
162 ing or notification requirement imposed under state or
163 federal law;

164 (2) Limit in any way the jurisdiction of state and local
165 emergency responders;

166 (3) Limit the police power authority of the Governor; or

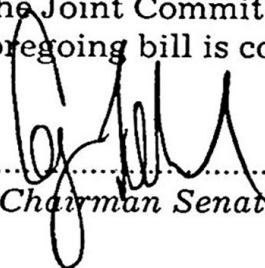
167 (4) Limit the authority of the State Fire Marshal.

168 (g) The director, working in cooperation with the
169 Department of Environmental Protection, the State Fire
170 Marshal and the State Emergency Response Commission,
171 shall promulgate legislative rules identifying a list of
172 industrial facilities that are subject to the requirements of
173 this section.

174 (h) The Division of Homeland Security and Emergency
175 Management is authorized to promulgate rules, including
176 emergency rules, pursuant to the provisions of article
177 three, chapter twenty-nine-a of this code to implement the
178 provisions of this section.

Enr. Com. Sub. for Com. Sub. for S. B. No. 279] 8

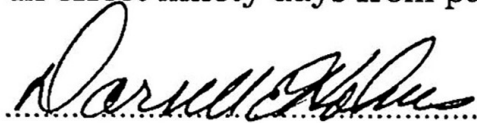
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

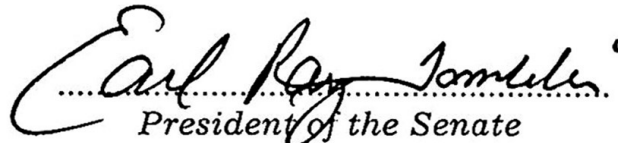

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 12th
Day of January, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 7 2009

Time 11:30am