

CHAPTER 159**(HB 537)**

AN ACT relating to mines and minerals.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 350.280 is amended to read as follows:

- (1) (a) As used in this section, "he or she" includes "person" as defined in KRS 350.010.
- (b) If a permittee or operator has been issued a notice or order directing abatement of a violation on the basis of an imminent danger to health and safety of the public or significant imminent environmental harm,~~and the violation involves an order of cessation and immediate compliance or an order to abate and alleviate in which the cabinet directs the permittee or operator to begin immediate abatement of the violation,~~ and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator for the limited purpose of abating that violation. The easement of necessity becomes effective, and the permittee or operator is authorized to enter the property to undertake immediate action to abate the violation if he or she concurrently:
 1. Provides to the property owner or legal occupant a copy of the cabinet's order *and a plan of action reasonably calculated to result in abatement of the violation, repair of the damage, and restoration of the property, and provides proof of liability insurance and workers' compensation insurance covering any accidents or injuries occurring on the property during the remedial work;*
 2. Provides to the property owner or legal occupant and cabinet an affidavit that he or she has been denied access to the property; and
 3. Provides to the property owner or legal occupant a statement that he or she, the permittee or operator, *will diligently pursue abatement of the violation, and* will obtain an appraisal completed by a ~~certified~~ real estate appraiser *certified under KRS Chapter 324A*~~or other qualified appraiser~~ of the damages to the property, including loss of use, that *have resulted*~~will result~~ from the violation,~~as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation,~~ that the appraisal will be completed and provided to the property owner or legal occupant within three (3) days of *abatement of the violation by*~~entry of~~ the operator or permittee, and that he or she will pay the property owner or legal occupant the amount of the damages in the permittee or operator's appraisal at that time.
- (c) Following the effective date of the easement of necessity, the following procedure shall be followed with respect to the appraisal of the damages~~that will result from the violation, as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation~~:
 1. The permittee or operator shall have *a certified*~~an~~ appraiser on the site and have his or her appraisal completed and submitted to the property owner or legal

- occupant within three (3) days of *abatement of the violation*~~[entry on the property]~~ by the operator or permittee;
2. The property owner or legal occupant shall accept or reject this appraisal in writing within *seven (7)*~~[three (3)]~~ days of receipt of the completed appraisal;
 3. If the property owner or legal occupant rejects this appraisal, he or she may hire a~~[certified]~~ real estate appraiser *certified under KRS Chapter 324A*~~[or other qualified appraiser]~~ to appraise the damages, including loss of use, that *have resulted*~~[will result]~~ from the violation, *and this such appraisal shall be completed and provided to the permittee or operator within thirty (30) days of receipt of the permittee's or operator's completed appraisal*~~[as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation]~~. Upon receipt of the invoice the permittee or operator shall pay for the property owner or legal occupant's appraisal up to the amount he or she paid for his or her own appraisal; and
 4. If the property owner or legal occupant *accepts the permittee or operator's appraisal, the permittee or operator shall promptly pay the property owner or legal occupant the amount of the damages reflected therein*~~[has the appraisal done, he or she shall have it completed and provided to the permittee or operator within seven (7) days of receipt of the permittee's or operator's completed appraisal]~~.
- (d) If the property owner or legal occupant has an appraisal done, and if, based on his or her appraisal and the permittee's or operator's appraisal, an agreement is not reached on the appraised damages, the permittee or operator shall pay the property owner or legal occupant the amount of the permittee's or operator's appraisal damages, and if the property owner or legal occupant's appraisal damages are for more than the permittee's or operator's, the permittee or operator shall pay the difference to the circuit clerk, in the county in which the majority of the property lies, to be placed in an interest-bearing account in a bank until final resolution of the matter by agreement or court or jury judgment. If the property owner or legal occupant is granted award of some or all of the difference, he or she shall also receive the interest on that portion of the difference.
- (e) If the property owner or legal occupant does not accept or reject the permittee's or operator's appraisal and offer of funds for damages *within the time specified in subparagraph 2. of paragraph (c) of this subsection, the appraisal and offer shall be deemed accepted*~~[, the operator or permittee shall pay the appraised damages to the circuit clerk within three (3) business days of the nonacceptance. These funds shall be placed in an interest-bearing account in a bank until resolution of the matter by agreement or court or jury judgment]~~.
- (f) *The appraiser shall calculate the damages to the property, including loss of use, that have resulted from the violation which the owner or the legal occupant shall be entitled to under this subsection as the difference between the fair market value of the property before the violation and after the abatement of the violation, plus the reasonable rental value of the property during the period of time between the effective date of the easement of necessity and the date of the abatement of the violation.*

- (2) If a permittee or operator has been issued a notice or order directing abatement of a violation other than one described in subsection (1) of this section, and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator, for the limited purpose of allowing a ~~certified~~ **certified under KRS Chapter 324** ~~or other qualified appraiser~~, chosen by the permittee or operator, to enter upon the property to which the owner or legal occupant has refused access in order for the appraiser to appraise the damages, including loss of use, that *likely* will result from the violation, ~~as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation~~.
- (3) (a) The easement for the limited purpose of allowing the appraisal *under subsection (2) of this section* shall be recognized and take effect when the operator or permittee:
1. Provides to the property owner or legal occupant a copy of the cabinet's order;
 2. Provides to the property owner or legal occupant and cabinet a plan of remedial measures to abate the violation;
 3. Provides to the property owner or legal occupant and cabinet an affidavit that he or she has been denied access to the property; and
 4. Provides to the property owner or legal occupant a statement that he or she, the permittee or operator, will within seven (7) days of entry of the appraiser obtain an appraisal ~~by a certified real estate appraiser or other qualified appraiser~~ of the damages to the property including loss of use, that *likely* will result from the violation, ~~as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation~~, and that upon completion of the appraisal he or she will provide the appraisal to the property owner or legal occupant and pay the property owner or legal occupant *an entry fee. The entry fee shall be calculated as one-half (1/2) of the amount of the appraisal or the sum of five hundred dollars (\$500), whichever is greater, for the privilege to enter the property and conduct* ~~the amount of~~ the appraisal.
- (b) *Upon payment of the entry fee by the permittee or operator, an easement of necessity shall be recognized on behalf of the permittee or operator for the limited purposes of abating the violation and the operator or permittee shall be authorized to enter the property to undertake immediate action to abate the violation, provided that the landowner has been provided a plan of action reasonably calculated to result in abatement of the violation, repair of the damage, and restoration of the property, and the permittee or operator provides proof of liability insurance and workers' compensation insurance covering any accidents or injuries occurring on the property during the remedial work.*
- (c) *Following the effective date of the easement of necessity to abate the violation, the procedures set forth in subsection (1)(c) through (f) of this section shall apply. The entry fee shall be deducted from any subsequent payment deemed due the property owner or legal occupant as a result of the post-abatement appraisal or appraisals. If the entry fee exceeds the amount of all appraisals, the property owner or legal occupant shall be entitled to retain the entry fee in its entirety* ~~When the easement takes effect, the property owner or legal occupant shall allow access for the permittee's~~

~~or operator's certified real estate appraiser or other qualified appraiser to conduct the appraisal].~~

- (4) *Nothing contained in this section shall affect any person's right to bring a civil action for damages, including punitive and compensatory damages, or other appropriate relief*~~[Following the effective date of the easement of necessity, the following procedure shall be followed with respect to the appraisal of the damages to the property that will result from the violation, as abated, and those that are likely to occur, under this subsection:~~
- ~~(a) The permittee or operator shall have an appraiser on the site and have his or her appraisal completed and submitted to the property owner or legal occupant within seven (7) days of the entry of the appraiser on the property;~~
 - ~~(b) The property owner or legal occupant shall accept or reject this appraisal within three (3) days of receipt of the completed appraisal;~~
 - ~~(c) If the property owner or legal occupant rejects this appraisal, he or she may hire a certified real estate appraiser or other qualified appraiser to appraise the damages to the property, including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation. Upon receipt of the invoice, the permittee or operator shall pay for the property owner's or legal occupant's appraisal up to the amount he or she paid for his or her own appraisal; and~~
 - ~~(d) If the property owner or legal occupant has the appraisal done, he or she shall have it completed and provided to the permittee or operator within seven (7) days of receipt of the permittee's or operator's appraisal.~~
- (5) ~~(a) If the property owner or legal occupant has an appraisal done, and if, based on his or her appraisal and the permittee's or operator's appraisal, an agreement is not reached on the appraised damages, the permittee or operator shall pay the property owner or legal occupant the amount of the permittee's or operator's appraisal damages.~~
- ~~(b) If the property owner's or legal occupant's appraisal damages are for more than the permittee's or operator's, the permittee or operator shall pay the difference to the circuit clerk.~~
 - ~~(c) The difference shall be placed in an interest-bearing account in a bank until final resolution of the matter by agreement or court or jury judgment.~~
 - ~~(d) If the property owner or legal occupant is granted award of some or all of the difference, he or she shall also receive the interest on that portion of the difference.~~
- (6) ~~If the property owner or legal occupant does not accept or reject the permittee's or operator's appraisal and offer of funds for damages, the operator or permittee shall pay the appraised damages to the circuit clerk within three (3) business days. These funds shall be placed in an interest-bearing account in a bank until resolution of the matter by agreement or court or jury judgment.~~
- (7) ~~In cases under subsection (2) of this section, when the procedures in subsections (4) and (5)(a) and (b) of this section, or subsections (4)(a) and (b) and (6) of this section, have been satisfied, the permittee or operator may enter the property to abate the violation.~~
- (8) ~~Nothing in this section shall affect any person's right for damages or injunctive relief].~~

Approved April 22, 2004