

**CHAPTER 241****(HB 572)**

AN ACT relating to drug testing of miners.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 304 SUBCHAPTER 13 IS CREATED TO READ AS FOLLOWS:

- (1) *Any employer who is also a licensee of a coal mine that has implemented a drug-free workplace program, including an employee assistance program, certified by the Office of Mine Safety and Licensing shall be eligible to obtain a credit on the licensee's premium for workers' compensation insurance.*
- (2) *Each insurer authorized to write workers compensation insurance policies shall provide the credit on the workers' compensation premium to any employer who is also a licensee of a coal mine for which the insurer has written a workers' compensation policy. The credit on the workers' compensation premium shall not:*
  - (a) *Be available to those employers that are also licensees who do not maintain their drug-free workplace program for the entire workers' compensation policy period; or*
  - (b) *Apply to minimum premium policies.*
- (3) *The Office of Insurance shall approve workers' compensation rating plans that give a credit on the premium for a certified drug free workplace so long as the credit is actuarially sound. The credit shall be at least five percent (5%) unless the Office of Insurance determines that five percent (5%) is actuarially unsound.*
- (4) *The credit on the workers' compensation premium may be applied by the insurer at the final audit.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 351 IS CREATED TO READ AS FOLLOWS:

- (1) *All applicants for certification as new miners and all initial applicants for all other certifications provided for in this chapter shall provide proof of drug- and alcohol-free status prior to certification in accordance with the provisions of this section.*
- (2) *Proof of drug- and alcohol-free status shall be provided in one of two methods:*
  - (a) *By participation in a drug and alcohol testing program offered by the Office of Mine Safety and Licensing and paid for by the applicant, in accordance with Sections 2 and 3 of this Act; or*
  - (b) *By the submission of drug and alcohol test results from other sources, as provided in subsection (2) of Section 3 of this Act.*
- (3) *If a newly certified miner gains employment in the coal industry, the initial employer shall reimburse the certified miner for the cost of one drug and alcohol test required by Sections 2, 3, 4, and 5 of this Act.*
- (4) *If the applicant is currently certified in any category other than that for which he is applying by the Office of Mine Safety and Licensing and the applicant is currently employed in the coal industry, the applicant's employer shall reimburse the applicant for the cost of one drug and alcohol test required by Sections 2, 3, 4, and 5 of this Act.*
- (5) *The fee charged to an applicant for the drug and alcohol tests offered by the Office of Mine Safety and Licensing shall not exceed the actual cost of collection, analysis, and medical review officer (MRO) review.*
- (6) *The Office of Mine Safety and Licensing shall provide, at each site of examinations for the certifications provided for in Chapter 351, a breath alcohol testing device and a person certified in the operation of the breath alcohol testing device. The breath alcohol test shall be administered prior to examination to determine the applicant's alcohol-free status. The Office of Mine Safety and Licensing may satisfy the requirement to furnish an alcohol testing device and certified personnel by:*
  - (a) *The use of equipment and appropriately certified personnel of the Office of Mine Safety and Licensing;*

- (b) *A memorandum of agreement with state or local police agencies for the provision of equipment and appropriately trained personnel at the examination site; or*
  - (c) *Inclusion of breath alcohol testing as part of the contract to provide drug testing and collection services set out in subsection (1) of Section 3 of this Act.*
- (7) *A breath alcohol concentration of four tenths of a percent (.04) shall be the maximum acceptable level of concentration for participation in the examination and subsequent certification.*
- (8) *Except for an alternative testing protocol provided for post-accident victims under subsections (5) to (7) of Section 20 of this Act, the minimum testing protocol acceptable for the establishment of drug free status for certification under KRS Chapter 351 shall be an eleven (11) panel urine test that shall include testing for the following substances:*
- (a) *Amphetamines;*
  - (b) *Cannabanoids/THC;*
  - (c) *Cocaine;*
  - (d) *Opiates;*
  - (e) *Phencyclidine (PCP);*
  - (f) *Benzodiazepines;*
  - (g) *Propoxyphene;*
  - (h) *Methaqualone;*
  - (i) *Methadone;*
  - (j) *Barbiturates; and*
  - (k) *Synthetic narcotics.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 351 IS CREATED TO READ AS FOLLOWS:

- (1) *The Office of Mine Safety and Licensing may contract with qualified companies to provide the collection of samples and administer the required drug and alcohol tests. The contract may provide that the collection of samples or testing be subcontracted, except that the contract shall require:*
- (a) *The contractor, and any subcontractors, to follow all standards, procedures, and protocols set forth by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) for the collection and testing required by Section 2 and this section of this Act;*
  - (b) *The contractor's or subcontractor's drug testing protocol shall be an eleven (11) panel test described in subsection (8) of Section 2 of this Act; and*
  - (c) *The contractor or the subcontractor shall provide a Medical Review Officer (MRO) who shall:*
    - 1. *Possess the ability and medical training necessary to verify positive confirmed test results and evaluate those results in relation to an applicant's medical history or other biomedical information; and*
    - 2. *Follow all procedures outlined in the SAMHSA Medical Review Officer Manual.*
- (2) *The executive director of the Office of Mine Safety and Licensing may accept proof of drug and alcohol free status from other sources whose tests conform to the requirements set forth in subsections (7) and (8) of Section 2 of this Act and in accordance with paragraph (b) of subsection (2) of Section 2 of this Act under the following conditions:*
- (a) *An applicant shall submit a request for acceptance of his or her drug and alcohol free status to the executive director accompanied by pass/fail results of a drug and alcohol test taken within thirty (30) days prior to the request; and*

- (b) *The test results shall have been performed by laboratories certified in accordance with the National Laboratory Certification Program (NLCP) by the United States Department of Health and Human Services Administration's SAMHSA and in accordance with subsection (1) of this section.*
- (3) *The Office of Mine Safety and Licensing shall maintain and publish annually a list of certified specimen collection services and testing laboratories from which it will accept data.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 351 IS CREATED TO READ AS FOLLOWS:

- (1) *The results of any testing performed by the Office of Mine Safety and Licensing shall be given to the applicant at the time of his or her notification of the granting or denial of certification.*
- (2) *Certification of an applicant shall be denied if any one (1) or more of the following occur:*
  - (a) *The applicant's positive drug test results for any of the eleven (11) substances listed in subsection (8) of Section 2 of this Act are deemed to fail by a medical review officer;*
  - (b) *The applicant's blood alcohol level is above four tenths of one percent (.04) concentration at the time of testing;*
  - (c) *The applicant's test results demonstrate the submission of an adulterated specimen; or*
  - (d) *The applicant refuses to submit to a drug or alcohol test as required by Section 2 of this Act.*
- (3) *Any applicant who is denied certification due to the results of the drug and alcohol testing required by Section 2 of this Act may be retested again, at his or her expense, within ten (10) days of notification of the results of the initial test.*
- (4) *If an applicant fails a drug and alcohol retest as provided in subsection (3) of this section and the applicant is denied certification, the applicant may reapply for certification only after an evaluation by a medical professional trained in substance abuse treatment and the successful completion of prescribed treatment and an acceptable result from a drug and alcohol test as required by Section 2 of this Act. Proof of the evaluation and the successful completion of the prescribed treatment shall be shown at the time of application.*
- (5) *Any applicant who is denied certification due to the results of the drug and alcohol testing required by Section 2 of this Act, may file an appeal of the denial with the Mine Safety Review Commission within thirty (30) days of the notification of the results of the test.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 351 IS CREATED TO READ AS FOLLOWS:

- (1) *Records of drug or alcohol test results, written or otherwise, received by the Office of Mine Safety and Licensing, its contractors, subcontractors, or other employees are confidential communications and exempt from disclosure under the Kentucky Open Records Act, except as follows:*
  - (a) *Where release of the information is authorized solely pursuant to a written consent form signed voluntarily by the person tested. The consent form shall contain the following:*
    - 1. *The name of the person who is authorized to obtain the information;*
    - 2. *The purpose of the disclosure;*
    - 3. *The precise information to be disclosed;*
    - 4. *The duration of the consent; and*
    - 5. *The signature of the person authorizing the release of the information;*
  - (b) *Where release of the information is compelled by a hearing officer or court of competent jurisdiction pursuant to an appeal taken under Sections 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 of this Act;*
  - (c) *Where release of the information is relevant to a legal claim asserted by the applicant;*
  - (d) *Where the information is used by the entity conducting drug or alcohol testing when consulting with legal counsel in connection with matters brought under or related to Sections 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 of this Act, or in its defense of civil or administrative actions related to the testing or results; or*

- (e) *Where release of the information is deemed appropriate by the Mine Safety Review Commission or a court of competent jurisdiction in disciplinary proceeding brought under the terms of Sections 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, and 22 of this Act.*
- (2) *Information on drug and alcohol test results for tests administered pursuant to Sections 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 of this Act shall not be released or used in any criminal proceeding against the applicant.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 351 IS CREATED TO READ AS FOLLOWS:

- (1) *Any employer who is also a licensee that has implemented a drug-free workplace program certified by the Office of Mine Safety and Licensing shall be eligible to obtain a credit on the licensee's premium for workers' compensation insurance.*
- (2) *Each insurer authorized to write workers compensation insurance policies shall provide the credit on the workers' compensation premium to any employer who is also a licensee for which the insurer has written a workers' compensation policy. The credit on the workers' compensation premium shall not:*
- (a) *Be available to those employers that are also licensees who do not maintain their drug-free workplace program for the entire workers' compensation policy period; or*
- (b) *Apply to minimum premium policies.*
- (3) *The Office of Insurance shall approve workers' compensation rating plans that give a credit on the premium for a certified drug free workplace so long as the credit is actuarially sound. The credit shall be at least five percent (5%) unless the Office of Insurance determines that five percent (5%) is actuarially unsound.*
- (4) *The credit on the workers' compensation premium may be applied by the insurer at the final audit.*

Section 7. KRS 349.010 is amended to read as follows:

As used in this chapter:

- (1) "Abandoned" when used in connection with a well or hole means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of coalbed methane or the injection or disposal of fluid therein;
- (2) "Coal interest holder" means every record coal owner, record coal lessee, mine licensee as defined in KRS 352.010(1)(s)~~{(t)}~~ and mine permittee as defined in KRS 350.010(21) whose coalbed is penetrated, or proposed to be penetrated, by a coalbed methane well;
- (3) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable;
- (4) "Coalbed methane" means gas produced from a reservoir found in a coalbed, a mined-out area, or gob;
- (5) "Coalbed methane well" means any well drilled, deepened, converted, or reopened for the purpose of capturing coalbed methane for sale or use. Any well initially used for a coal mining-related purpose, such as a vent well, but which is subsequently used for the purpose of recovering coalbed methane for sale or use, shall then be deemed to be a coalbed methane well and shall comply with the provisions of this chapter at the time that the well is converted or used for the purpose of recovering coalbed methane for sale or use;
- (6) "Commissioner" means the commissioner of the Department for Natural Resources;
- (7) "Correlative rights" means the reasonable opportunity of each person entitled to recover, without waste, the coalbed methane in and under his or her tract or tracts, or the equivalent thereof;
- (8) "Department" means the Department for Natural Resources;
- (9) "Director" means the director of the Division of Oil and Gas Conservation as established in KRS 353.530;
- (10) "Drilling unit" means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable coalbed methane in the area. Where the department has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, the area shall be a drilling unit;

- (11) "Division" means the Division of Mine Permits in the Department for Natural Resources;
- (12) "Field rules" means rules established by orders of the review board relating to the drilling, completion, production of, and specifications for coalbed methane wells in a particular geographic area as defined by an order;
- (13) "Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coalbed;
- (14) "Gob well" means a well drilled or a vent hole converted to a well pursuant to this chapter which produces or is capable of producing coalbed methane for sale or use, from a de-stressed zone associated with any full seam extraction of coal that extends above or below a mined-out coalbed;
- (15) "Horizontally drill" or "horizontal drilling" means the intentional act of drilling a borehole, shaft, or hole, which deviates from vertical for the purpose of penetrating a coal seam to produce coalbed methane;
- (16) "Mine licensee" means the mine licensee as defined in KRS 352.010(1)(s){(+)}
- (17) "Mine permittee" means the permittee as defined in KRS 350.010(21);
- (18) "Nonparticipating working interest owner" means a coalbed methane owner or lessee of a tract included in a drilling unit who elects to share in the operation of the coalbed methane well on a carried basis by agreeing to have his or her proportionate share of the costs allocable to his or her interest charged against his or her share of production from the coalbed methane well;
- (19) "Nonparticipating operator" means a nonparticipating working interest owner who is also the operator of the coalbed methane well;
- (20) "Operator" means any owner of the right to drill, develop, operate, and produce coalbed methane from a pool and to appropriate the coalbed methane produced therefrom, either for himself or herself, or for himself, herself, and others; in the event there is no coalbed methane lease in existence with respect to the tract in question, the owner of the coalbed methane rights therein shall be considered as an "operator" to the extent of seven-eighths (7/8) of the coalbed methane in that portion of the pool underlying the tract owned by that owner, and as a "royalty owner" as to one-eighth (1/8) interest in that coalbed methane;
- (21) "Other interested coalbed methane parties" means all working interest owners other than the operator, all royalty and overriding royalty interest owners or holders, and any other party who owns or holds a right or interest in a drilling unit, coalbed methane well site for which a drilling permit has been issued or is pending, and all associated equipment, facilities, infrastructure, and improvements;
- (22) "Participating working interest owner" means a coalbed methane owner or lessee who elects to bear a share of the risks and costs of drilling, completing, equipping, operating, plugging, and abandoning a coalbed methane well equal to the proportion which the acreage in the drilling unit he or she owns or holds under lease bears to the total acreage of the drilling unit;
- (23) "Participating operator" means a participating working interest owner who is also the operator of the coalbed methane well;
- (24) "Person" means any person, corporation, association, partnership, limited liability company, receiver, governmental agency subject to this chapter, trustee, so-called common law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (25) "Plat" means a map, drawing, or print showing the location of a well;
- (26) "Review board" means the Coalbed Methane Well Review Board;
- (27) "Royalty owner" means any owner of coalbed methane in place, or coalbed methane rights, to the extent that the owner is not an operator as defined in subsection (20) of this section;
- (28) "Stimulate" means any action taken to increase the flow of coalbed methane, or the inherent productivity of a coalbed methane well, including but not limited to fracturing, shooting, acidizing, or waterflooding, but excluding cleaning out, bailing, or workover operations;
- (29) "Surface owner" means the person in whose name the surface of the land is assessed for purposes of taxes imposed according to the property valuation administrator;

- (30) "Unit" means any tract or tracts which the department has determined are underlaid by a pool or pools of coalbed methane and are not drilling units as defined in subsection (10) of this section;
- (31) "Unitization" means the act of combining separately owned tracts or separate interests therein into a unit constituting all or some portion of a coalbed that produces or is capable of producing coalbed methane and the joint operation of that unit;
- (32) "Unit operator" means the party designated in a pooling order to develop a unit by the drilling of one (1) or more coalbed methane wells;
- (33) "Vent hole" means a borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened, which is used for the purpose of releasing or venting coalbed methane to the atmosphere and not for the purpose of capturing or producing coalbed methane for sale or use;
- (34) "Venting" means the act of releasing coalbed methane to the atmosphere;
- (35) "Well" means any borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened for the purpose of capturing or producing coalbed methane for sale or use; and
- (36) "Workable coalbed" means:
  - (a) Any coalbed twenty-four (24) inches or more in thickness;
  - (b) Any coalbed actually being operated commercially;
  - (c) Any coalbed that the department decides can be operated commercially, and the operation of which can reasonably be expected to commence within not more than ten (10) years; or
  - (d) Any coalbed that, from outcrop indication or other definite evidence, proves to the satisfaction of the department to be workable and, when operated, will require protection if wells are drilled through or into it.

Section 8. KRS 351.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
  - (a) ***"Adulterated specimen" means a specimen containing a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration;***
  - (b) "Approved" means that a device, apparatus, equipment, or machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources;
  - ~~(c)(b)~~ "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
  - ~~(d)(e)~~ "Board" means the Mining Board created in KRS 351.105;
  - ~~(e)(d)~~ "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
  - ~~(f)(e)~~ "Commission" means the Mine Safety Review Commission created by KRS 351.1041;
  - ~~(g)(f)~~ "Commissioner" means commissioner of the Department for Natural Resources;
  - ~~(h)(g)~~ "Department" means the Department for Natural Resources;
  - ~~(i)(h)~~ "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
  - ~~(j)(i)~~ "Excavations and workings" means the excavated portions of a mine;
  - ~~(k)(j)~~ "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
  - ~~(l)(k)~~ "Gassy mine." All mines shall be classified as gassy or gaseous;

- (m)~~(t)~~ ***"Illicit substances" includes prescription drugs used illegally or in excess of therapeutic levels as well as illegal drugs;***
- (n) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
- (o)~~(m)~~ "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
- (p)~~(n)~~ ***"Medical Review Officer" or "MRO" means a licensed physician with knowledge of substance abuse disorders, laboratory testing, chain of custody, collection procedures, and the ability to verify positive, confirmed test results. The MRO shall possess the necessary medical training to interpret and evaluate a positive test result in relation to the person's medical history or any other relevant biomedical information;***
- (q) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management, but which are administered as distinct units, shall be considered a separate mine;
- (r)~~(o)~~ "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of the persons employed therein;
- (s)~~(p)~~ "Open-pit mine" shall include open excavations and open-cut workings, including but not limited to auger operations and highwall mining systems for the extraction of coal;
- (t)~~(q)~~ "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
- (u)~~(r)~~ "Permissible" refers to any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration and that meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification by the approving agency;
- (v)~~(s)~~ "Preshift examination" means the examination of a mine or any portion thereof where miners are scheduled to work or travel, which shall be conducted not more than three (3) hours before any on-coming shift;
- (w)~~(t)~~ "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
- (x) ***"Serious physical injury" means an injury which has a reasonable potential to cause death;***
- (y)~~(u)~~ "Shaft" means a vertical opening through the strata that is used in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
- (z)~~(v)~~ "Slope" means an inclined opening used for the same purpose as a shaft;
- (aa)~~(w)~~ "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
- (ab)~~(x)~~ "Supervisory personnel" means a person certified under the provisions of this chapter to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
- (ac)~~(y)~~ "Office" means the Office of Mine Safety and Licensing; and
- (ad)~~(z)~~ "Executive director" means the executive director of the Office of Mine Safety and Licensing.
- (2) Except as the context otherwise requires, this chapter applies only to commercial coal mines.
- (3) The definitions in KRS 352.010 apply also to this chapter, unless the context requires otherwise.

Section 9. KRS 351.101 is amended to read as follows:

The General Assembly hereby finds and declares the following:

- (1) The highest priority and concern of the Commonwealth must be the health and safety of the coal industry's most valuable resource, the miner.
- (2) The continued prosperity of the coal industry is of primary importance to the state.
- (3) A high priority must be given to increasing the productivity and competitiveness of the mines in this state.
- (4) An inordinate number of miners are killed or injured during the first few months of their experience in a mine and upon acquiring new work assignments in a mine.
- (5) These injuries result in the loss of life and serious injury to miners and are an impediment to the future growth of the state's coal industry.
- (6) Mining is a technical occupation with various specialties requiring individualized training and education.
- (7) Injuries can be reduced through proper miner training, education, and certification.
- (8) Mine safety can be improved by the imposition and enforcement of sanctions against licensed premises and certified and noncertified personnel whose willful and repeated violations of mine safety laws place miners in imminent danger of serious injury or death.
- (9) ***Abuse of illicit substances and alcohol in the mining industry represents a serious threat to the health and safety of all miners. Substance and alcohol abuse adversely affect the health and safety of miners. Mine safety can be significantly improved by establishing as a condition of certification that miners remain drug and alcohol free.***

Section 10. KRS 351.102 is amended to read as follows:

- (1) No person shall be assigned mining duties by a licensee as a laborer or supervisor unless the person holds a valid certificate of competency and qualification or a valid permit as trainee issued in accordance with this section.
- (2) ***The Office of Mine Safety and Licensing shall require that all applicants for certified miner and initial applicants for other mining certifications pursuant to this chapter shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with Sections 2 and 3 of this Act.***
- (3) A permit as trainee miner shall be issued by the commissioner to any person who has ***submitted proof that he or she is drug and alcohol free in accordance with Sections 2 and 3 of this Act, and has*** completed a program of education of a minimum of forty (40) hours for underground mining or twenty-four (24) hours for surface mining comprised of sixteen (16) hours of classroom training and eight (8) hours of mine specifics or who has completed a certified mine technology program and has passed an examination approved by the commissioner. An additional eight (8) hours of mine-specific training shall be administered to the trainee miner by the licensee, which training shall be documented on a form approved by the commissioner. This education and training program shall be determined and established by the board, as provided in KRS 351.106. ***A requirement for a permit as a trainee miner shall be one (1) hour of classroom training dedicated to alcohol and substance abuse education.***
- ~~(4)~~~~(3)~~ Trainee miners shall work within the sight and sound of a certified miner.
- ~~(5)~~~~(4)~~ Any miner holding a certificate of competency and qualification may have one (1) person working with him and under his direction as a trainee miner. Any person certified as a mine foreman or assistant mine foreman shall have no more than five (5) persons working under his supervision or direction as trainee miners for the purpose of learning and being instructed in the duties of underground coal mining.
- ~~(6)~~~~(5)~~ A certificate of competency and qualification as a miner shall be issued by the commissioner to any person who has a minimum of forty-five (45) working days' experience within a thirty-six (36) month period as a trainee miner and demonstrated competence as a miner. ***Any trainee miner who exceeds six (6) months in obtaining the forty-five (45) working days of experience required in this section, shall submit proof of alcohol and drug free status in accordance with the provisions of Sections 2 and 3 of this Act.***
- ~~(7)~~~~(6)~~ All examinations for the certification of a miner shall be of a practical nature and shall determine the competency and qualification of the applicant to engage in the mining of coal with reasonable safety to



himself and his fellow employees. The examination may be given orally, upon approval by the commissioner, if the miner is unable to read or comprehend a written examination.

- ~~(8)~~~~(7)~~ Examinations shall be held in any district office during regular business hours.
- ~~(9)~~~~(8)~~ If the commissioner or his authorized representative finds that an applicant is not qualified and competent, he shall notify the applicant *as soon as possible, but in no case* ~~not~~ more than *thirty (30)*~~ten (10)~~ days after the date of examination.
- ~~(10)~~~~(9)~~ Any applicant aggrieved by an action of the commissioner or his authorized representative in failing or refusing to issue a certificate of qualification and competency shall, within ten (10) days of notice of the action complained of, appeal to the commissioner who shall either affirm the action or issue the certificate to the applicant.
- ~~(11)~~~~(10)~~ If the applicant is aggrieved by the action of the commissioner, he may appeal to the commission which shall hold a hearing on the matter in accordance with KRS Chapter 13B.
- ~~(12)~~~~(11)~~ The applicant may appeal from the final order of the commission by filing in the Franklin Circuit Court a petition for appeal in accordance with KRS Chapter 13B.

Section 11. KRS 351.103 is amended to read as follows:

- (1) All persons possessing valid certificates as mine inspectors, electrical inspectors, mine safety instructors, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or certified miner shall be eligible to work at any time as miners, provided they fulfill the annual requirements for retraining and reeducation as provided in KRS ~~351.106~~~~351.105~~.
- (2) Supervisory, clerical, and technically-trained employees of the mine operator whose work contributes only indirectly to mine operations shall not be required to possess a miner's certificate of competency and qualification.

Section 12. KRS 351.1041 is amended to read as follows:

- (1) The Mine Safety Review Commission is created as an independent governmental entity attached to the Environmental and Public Protection Cabinet, Office of the Secretary, for administrative purposes. The commission shall:
  - (a) Conduct hearings and issue orders regarding a licensee, coal operation, or other person involved in the mining of coal in accordance with KRS 351.194;
  - (b) Jointly with the department establish a process for the department's referral of allegations of mine safety violations, *violation of a miner's drug and alcohol free condition of certification, or supervisory personnel's failure to immediately report a fatal accident or an accident involving serious physical injury* to the commission for adjudication;
  - (c) Make any recommendations to the department that it believes appropriate upon its review, consideration, and analysis of:
    1. All reports of coal mining fatalities provided by the commissioner under KRS 351.070(14);
    2. Any case in which a miner or a mine owner or operator, in the professional opinion of the department has a history of significant and substantial safety violations even though there has been no serious *physical* injury or death resulting from the violations;
    3. Any case in which a miner or a mine owner or operator has been convicted of a criminal charge for a violation of a federal mine safety standard or standards; and
    4. Any case in which the Federal Mine Safety and Health Administration has made a recommendation relating to certification of an individual certified under this chapter.
- (2) The Mine Safety Review Commission shall consist of three (3) members appointed by the Governor subject to the consent of the Senate and the House of Representatives in accordance with KRS 11.160. Of the members of the Mine Safety Review Commission first appointed under this section, one (1) shall be appointed for a term of one (1) year; one (1) shall be appointed for a term of two (2) years; and one (1) shall be appointed for a term of three (3) years. After the initial appointments, members of the board shall be appointed for terms of

four (4) years. A member may be reappointed at the expiration of his or her previous term. Members shall continue to serve until a successor is appointed and qualified.

- (3) The members of the Mine Safety Review Commission shall have the qualifications required of Judges of the Court of Appeals, except for residence in a district, and shall be subject to the same standards of conduct made applicable to a part-time judge by the Rules of the Kentucky Supreme Court. The members shall receive the per diem equivalent of the salary of a Judge of the Court of Appeals for each day spent in conducting the business of the commission.
- (4) The Governor shall designate a member of the Mine Safety Review Commission to serve as chair and shall fill any vacancy in the office of chair.
- (5) The Governor may remove any member for good cause including violation of the Code of Judicial Conduct and repeated failure to perform satisfactorily the specific duties assigned in this chapter or KRS Chapter 352. The Governor may remove the member only after furnishing him or her with a written copy of the charges against that member and holding a public hearing if requested by the member.
- (6) The commission shall meet on the call of the chair or a majority of the members of the commission.
- (7) The Environmental and Public Protection Cabinet shall provide administrative services to the Mine Safety Review Commission. If the commission deems it necessary to employ hearing officers to assist it, the Environmental and Public Protection Cabinet shall employ hearing officers to assist the commission in accordance with KRS Chapter 13B, notwithstanding the provisions of KRS 13B.030(2)(b).
- (8) The commission may conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its duties.
- (9) The department shall provide the Mine Safety Review Commission with all information requested by the commission for the fulfillment of its responsibilities under this chapter and KRS Chapter 352.
- (10) The secretary of the Environmental and Public Protection Cabinet shall effectuate the hiring of any staff deemed necessary and affordable for the efficient operations of the Mine Safety Review Commission. This may include an executive director, general counsel, or other administrative support positions, to be appointed in accordance with KRS 12.010 and 12.050.

Section 13. KRS 351.106 is amended to read as follows:

- (1) The Mining Board shall establish criteria and standards for a program of education and training to be required of prospective miners, miners, and all certified persons. This education and training shall be provided in a manner determined by the commissioner to be adequate to meet the standards established by the board, which shall include as a minimum the requirements of KRS 351.102 and the requirements of the federal government for the training of miners for new work assignments, and at least sixteen (16) hours of annual retraining and reeducation for all certified persons *of which thirty (30) minutes annually shall be dedicated to alcohol and substance abuse education.*
- (2) *One (1) hour of initial substance abuse training and education shall be required as part of the certified miner's first annual retraining conducted in a classroom that occurs after August 1, 2006. This requirement shall not apply to certified persons who received the one (1) hour initial substance abuse training and education as part of their forty (40) hour or twenty-four (24) hour new miner training.*
- (3) *In addition to the thirty (30) minutes of annual alcohol and substance abuse education required for certified miners, supervisory personnel shall be required to receive an additional thirty (30) minutes of alcohol and substance abuse awareness training annually.*
- (4) Beginning with the first full calendar year after the effective date established by the board and during each calendar year thereafter, each certified miner shall receive at least sixteen (16) hours of retraining and reeducation.
- (5)~~(3)~~ Newly-hired experienced miner training shall satisfy the miner's annual retraining requirement if a time lapse occurs between the miner's last training anniversary date and the next scheduled training anniversary date for the mine where he is newly employed, if the miner has complied with the annual retraining requirements within the last twelve (12) months from the date of his newly hired experienced miner training.

- (6)~~(4)~~ Retraining and reeducation sessions shall be conducted at times and in numbers to reasonably assure each certified miner an opportunity to attend.
- (7)~~(5)~~ The licensee shall pay all certified miners their regular wages and benefits while they receive training required by the department.
- (8)~~(6)~~ Willful failure of a working miner to complete annual retraining and reeducation requirements shall constitute grounds for revocation, suspension, or probation of his certificate.
- (9)~~(7)~~ If the department discovers a miner working without proper training or the licensee cannot provide proof of training, the miner shall be withdrawn immediately from the mine and the licensee shall pay the miner his regular wages until the training is administered and properly documented.
- (10)~~(8)~~ When employment is terminated, the licensee shall provide the employee a copy of his training records, upon request. If the employee does not request his training records immediately, the licensee shall, within fifteen (15) days, provide the employee with those training records.
- (11)~~(9)~~ The board may, upon its own motion or whenever requested to do so by the commissioner, deem applicable certificates issued by other states to be proof of training and education equal to the requirements of KRS 351.102 or deem training provided by appropriate federal agencies to be adequate to meet training and education requirements established by the board, if the training and education meet the minimum requirements of this chapter.
- (12)~~(10)~~ The ~~secretary~~~~commissioner~~ may promulgate administrative regulations necessary to establish a program to implement the provisions of this chapter according to the criteria and standards established by the board. This program shall include but not be limited to implementation of a program of instruction and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction.
- (13)~~(11)~~ The commissioner shall keep and maintain current records on all certified miners, all of which shall be maintained by computer for ready access.
- (14)~~(12)~~ The commissioner is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education, and other qualified persons available to him in implementing the program of instruction and examination.
- (15)~~(13)~~ The commissioner may make recommendations to the board as he may deem appropriate. The commissioner shall provide information to the board at the board's request. The commissioner is authorized and directed to utilize state and federal moneys and personnel that may be available to the department for educational and training purposes in the implementation of the provisions of this chapter.
- (16)~~(14)~~ All training and education required by this section may be conducted in classrooms, on the job, or in simulated mines.

Section 14. KRS 351.110 is amended to read as follows:

- (1) The board shall not admit any applicant for certification as a mine inspector, mine safety analyst, electrical inspector, mine safety instructor, mine foreman, or assistant mine foreman to take an examination given by it unless the applicant has the experience required by this chapter, **and has submitted proof that he or she is drug and alcohol free in accordance with Sections 2 and 3 of this Act** and ~~until the applicant~~ has presented to the examiner at the time of registration for the examination a United States postal money order or certified check in the amount of fifty dollars (\$50). All money orders or certified checks required herein shall be made payable to the State Treasurer, Frankfort, Kentucky.
- (2) All money paid to the State Treasurer for licenses and fees required by this chapter shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department.
- (3) The board may refuse to examine any applicant who cannot readily understand the written English language or cannot express himself intelligently in English, or who is obviously intoxicated.

Section 15. KRS 351.120 is amended to read as follows:

- (1) The commissioner shall issue a certificate to each person who possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the

board, or miner who has passed the examination given by direction of the board for that position, **and who has met the requirements for drug- and alcohol-free status.**

- (2) The certificate shall be in such form as the commissioner prescribes, shall be signed by the commissioner, and shall show that the holder has passed the required examination and possesses the qualifications required by law for mine inspector, electrical inspector, surface or underground mine safety instructor, surface mine safety analyst, assistant mine foreman, mine foreman, shotfirer, and other mining specialties as established by the board, or miner and is authorized to act as such.
- (3) Certificates issued to mine foremen and assistant mine foremen shall be classified as follows:
  - (a) Mine foreman certificates, authorizing the holder to act as foreman for all classes of coal mines; and
  - (b) Assistant mine foreman certificates, authorizing the holder to act as assistant foreman.
- (4) Any mine foreman or assistant mine foreman may act as a fire boss or mine examiner. This shall not apply to persons holding a second class mine foreman certificate issued before June 16, 1972.
- (5) The class of mine foreman's certificate awarded shall be determined by the board according to the experience of the applicant.
- (6) No certificate shall be granted to any person who does not present to the board satisfactory evidence, in the form of affidavits, that the applicant has had the required practical experience in underground or surface coal mines. A data sheet shall be filed by each applicant showing places of employment, beginning month and year and ending month and year employed by each company and list jobs performed, showing at least the number of required years. Affidavit and data sheet forms shall be furnished by the department. **The applicant also shall submit proof that he or she is drug and alcohol free. The proof shall be submitted in accordance with Sections 2 and 3 of this Act.** For the purpose of this section, persons holding a four (4) year degree in mining engineering from a recognized institution shall be credited with the equivalent of two (2) years of practical experience in coal mines when applying for any mine foreman or assistant mine foreman certificate. Persons holding an associate degree in mining from a recognized institution shall be credited with the equivalent of two (2) years' experience when applying for a mine foreman certificate and one (1) year when applying for an assistant mine foreman certificate. Persons desiring to use their mining engineering or mining technology degree as credit for practical experience toward a mine foreman or assistant mine foreman certificate shall file proof of having received their degree prior to the examination.
- (7) Applicants for an underground mine foreman certificate shall have five (5) years' practical underground coal mining experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine. Applicants for an underground assistant mine foreman certificate shall have three (3) years' practical underground experience acquired after achieving the age of eighteen (18), with at least one (1) year of this experience acquired on an active working section of an underground mine.
- (8) Applicants for surface mine foremen certification shall have three (3) years' practical surface mine experience acquired after achieving the age of eighteen (18); for surface mine foreman certification with a specialty in coal extraction, at least one (1) year of the required practical experience shall have been acquired from direct involvement in the mining or extraction of coal at a surface mine. For a surface mine foreman certification with a specialty in postmining activities, at least one (1) year of the required experience shall have been acquired from direct involvement in the performance of such activities at a surface or underground mine, coal preparation plant, or other coal-handling facility. Notwithstanding any requirement in this subsection to the contrary, a person having three (3) years' of underground or surface mining experience shall qualify for a surface mine foreman certification with a specialty in postmining activities if the person has documented experience of at least one (1) year in the performance of these activities. Persons holding a surface mine foreman certificate prior to July 15, 1998, are not affected by this section.
- (9) Persons possessing certificates of qualifications to act as mine inspector, mine foreman, assistant mine foreman, or fire boss prior to July 15, 1982, are not affected by this section.
- (10) When approved by the commissioner, a person who has successfully completed any mine foreman or assistant mine foreman examination **and submitted proof that he or she is drug and alcohol free, in accordance with Sections 2 and 3 of this Act,** may be granted a temporary certification that is valid only until the board acts upon his or her certification at its next regularly scheduled meeting.

- (11) A member of the supervisory personnel shall be present at the working section except in cases of emergencies at all times employees under his supervision are at the working section on coal-producing shifts.
- (12) *The commissioner immediately shall suspend any certification for violation of drug- and alcohol-free status or for failure or refusal to submit to a drug and alcohol test authorized by Sections 2, 3, 4, 5, and 20 of this Act. No certification may be revoked until the certified person has been granted adequate opportunity for a hearing before the Mine Safety Review Commission conducted in accordance with KRS Chapter 13B. The hearing may be initiated by the filing of a petition by the person whose certification has been suspended by the commissioner or by the Office of Mine Safety and Licensing under process and administrative regulations developed by the Mine Safety Review Commission in accordance with KRS 351.1041.*
- (13) *A miner whose certification has been suspended or revoked for violating the drug- and alcohol-free condition of certification may reapply for certification with the Mining Board, provided that he or she has successfully passed a drug and alcohol test meeting the requirements in Sections 2 and 3 of this Act within thirty (30) days prior to reapplication and has fulfilled the terms of final orders entered by the Mine Safety Review Commission.*

Section 16. KRS 351.127 is amended to read as follows:

- (1) A certified emergency medical technician or mine emergency technician shall be employed at every licensed coal mine whose employees are actively engaged in the extraction, production, or preparation of coal. Persons employed as mine emergency technicians shall be trained in a manner established in an administrative regulation promulgated by the department. *Persons seeking certification as a mine emergency medical technician or mine emergency technician shall be subject to the following additional requirements:*
  - (a) *All persons seeking certification as a mine emergency technician shall demonstrate drug- and alcohol-free status in accordance with Sections 2 and 3 of this Act;*
  - (b) *The drug and alcohol testing for those seeking certification as mine emergency technicians shall be administered prior to the examination for the certification, in accordance with Sections 2 and 3 of this Act; and*
  - (c) *Certification as a mine emergency technician shall not be issued until the results of the drug and alcohol testing have been obtained. Notification shall be given to the person in accordance with Section 4 of this Act.*
- (2) These emergency medical technicians or mine emergency technicians shall be employed in the following manner:
  - (a) One (1) emergency medical technician or mine emergency technician shall be employed on every shift with a workforce of up to fifty (50) employees;
  - (b) An additional emergency medical technician or mine emergency technician shall be employed for every additional fifty (50), or any portion thereof, employees per shift who are actively engaged in the extraction, production, or preparation of coal.
- (3) If these emergency medical technicians or mine emergency technicians are also employed in other capacities at the coal mine, they shall be available for quick response to emergencies and shall have available to them at all times the equipment necessary to respond to emergencies, as prescribed by the commissioner.
- (4) If the licensee selects existing employees to be trained as emergency medical technicians or mine emergency technicians, the employees selected shall be paid their regular wages during training.
- (5) Certified emergency medical technicians and mine emergency technicians shall receive annual retraining in the manner established in an administrative regulation promulgated by the department, during which they shall receive their regular wages.

Section 17. KRS 351.1291 is amended to read as follows:

- (1) All inexperienced surface coal miners shall complete a twenty-four (24) hour course of instruction composed of sixteen (16) hours of classroom training and eight (8) hours of mine specifics that is devised or approved by the department in subjects including but not limited to: accident prevention, cutting and welding, equipment operation, fire protection, first-aid methods, ground control and transportation, handling and use of explosives, mine communications, mine electrical safety standards, mining law, including the statutory rights of miners,

safety around bins and hoppers, ***alcohol and substance abuse education and training***, and any other subjects deemed appropriate by the department. For purposes of this section, "inexperienced coal miners" means all persons who have not previously worked at least forty-five (45) days at a surface coal mine in this Commonwealth.

- (2) All surface coal miners shall complete an eight (8) hour course of annual retraining devised or approved by the department in the subjects identified in subsection (1) of this section, ***thirty (30) minutes of which shall be dedicated to alcohol and substance abuse education.***
- (3) ***One (1) hour of initial substance abuse training and education shall be provided as part of the certified miner's first annual retraining conducted in a classroom that occurs after August 1, 2006. This requirement does not apply to a certified person who received the one (1) hour initial substance abuse training and education as part of his or her forty (40) hour or twenty-four (24) hour new miner training.***
- (4) ***In addition to the thirty (30) minutes of annual alcohol and substance abuse education required for certified miners, supervisory personnel shall be required to undergo an additional thirty (30) minutes of alcohol and substance abuse awareness training annually.***
- (5) ***Each applicant for a certified surface miner, in addition to meeting the educational requirements of this chapter, shall pass a drug and alcohol test in accordance with Section 2 and 3 of this Act.***
- (6) The commissioner shall certify all surface coal miners who complete the courses of instruction ***and show proof of drug and alcohol free condition of certification*** required in ~~subsections (1) and (2) of~~ this section.

Section 18. KRS 351.170 is amended to read as follows:

- (1) ***All reports of any facility licensed pursuant to this chapter shall be made to the executive director.*** The licensee of each commercial coal mine shall give at the end of each calendar year accurate information, on blank forms furnished by the commissioner, as to the number of accidents that have occurred, the number of persons employed, the tons of coal mined, and any other related information that the commissioner requests.
- (2) ***The operator or superintendent of each licensed facility shall report by the close of the next business day, any certified persons who:***
  - (a) ***Have been discharged for violation of a company's substance or alcohol abuse policies;***
  - (b) ***Refused to submit to a test required by the company's substance or alcohol abuse policies or Sections 2, 3, 4, 5, and 20 of this Act; or***
  - (c) ***Tested positive and failed to complete an employee assistance program.***

Section 19. KRS 352.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
  - (a) "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly;
  - (b) "Active workings" means all places in a mine that are ventilated and inspected regularly;
  - (c) "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources;
  - (d) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
  - (e) "Board" means the Mining Board created in KRS 351.105;
  - (f) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
  - (g) "Commissioner" means commissioner of the Department for Natural Resources;
  - (h) "Department" means the Department for Natural Resources;

- (i) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom, or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
- (j) "Excavations and workings" means the excavated portions of a mine;
- (k) ***"Executive Director" means the executive director of the Office of Mine Safety and Licensing;***
- (l) "Face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open crosscut in any entry or room;
- (m)~~(l)~~ "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
- (n)~~(m)~~ "Gassy mine." All underground mines shall be classified as gassy or gaseous;
- (o)~~(n)~~ "High voltage" means any voltage of one thousand (1,000) volts or more;
- (p)~~(o)~~ "Imminent danger" means the existence of any condition or practice which could reasonably be expected to cause death or serious physical ~~injury~~~~harm~~ before the condition or practice can be abated;
- (q)~~(p)~~ "Inactive workings" shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned;
- (r)~~(q)~~ "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) of oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
- (s)~~(r)~~ "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
- (t)~~(s)~~ "Low voltage" means up to and including six hundred sixty (660) volts;
- (u)~~(t)~~ "Medium voltage" means voltages greater than six hundred sixty (660) and up to nine hundred ninety-nine (999) volts;
- (v)~~(u)~~ "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management and which are administered as distinct units shall be considered separate mines;
- (w)~~(v)~~ "Mine foreman" means a certified person whom the licensee or superintendent places in charge of the workings of the mine and of persons employed therein;
- (x)~~(w)~~ "Open-pit mine" shall include open excavations and open-cut workings including auger operations and highwall mining systems for the extraction of coal;
- (y)~~(x)~~ "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
- (z)~~(y)~~ "Permissible" means that any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification;
- (aa)~~(z)~~ "Preshift examination" refers to the examination of an underground mine or part of a mine where miners are scheduled to work or travel, and shall be conducted not more than three (3) hours before any on-coming shift;
- (ab)~~(aa)~~ "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
- (ac) ***"Serious physical injury" means an injury which has a reasonable potential to cause death;***

- (ad)~~(ab)~~ "Shaft" means a vertical opening through the strata that is or may be used, in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
- (ae)~~(ac)~~ "Slope" means an inclined opening used for the same purpose as a shaft;
- (af)~~(ad)~~ "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
- (ag)~~(ae)~~ "Supervisory personnel" shall mean a person or persons certified under the provisions of KRS Chapter 351 to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
- (ah)~~(af)~~ "Tipple or dumping point" means the structure where coal is dumped or unloaded from the mine car into railroad cars, trucks, wagons, or other means of conveyance;
- (ai)~~(ag)~~ "Working face" means any place in a coal mine at which the extraction of coal from its natural deposit in the earth is performed during the mining cycle;
- (aj)~~(ah)~~ "Working place" means the area of a coal mine in by the last open crosscut;
- (ak)~~(ai)~~ "Working section" means all areas of a coal mine from the loading point to and including the working faces; and
- (al)~~(aj)~~ "Workmanlike manner" means consistent with established practices and methods utilized in the coal industry.

- (2) The definitions in KRS 351.010 apply also to this chapter, unless the context requires otherwise.
- (3) Except as the context otherwise requires, this chapter applies only to commercial mines as defined in KRS 351.010 and shall not apply to electrical facilities owned, operated, or otherwise controlled by a retail electric supplier or generation and transmission cooperative as defined in KRS 278.010 or organized under KRS Chapter 279 for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established easement rights on private property and that are covered by the National Electric Safety Code (NESC) or other applicable safety codes, or other authorities having jurisdiction and shall not apply to installations under the exclusive control of utilities for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established rights on private property.

Section 20. KRS 352.180 is amended to read as follows:

- (1) Whenever **a** serious **physical**~~personal~~ injury or loss of life occurs in a mine or in the machinery connected therewith or whenever a fire, explosion, **entrapment of an individual, inundation of a mine by waters or gases**, or other serious accident occurs, the superintendent of the mine, or, if he is absent, **the mine manager, or if he is absent, the mine foreman in charge of the mine or his designee**, shall **within fifteen (15) minutes of having actual knowledge of the occurrence and access to communications**~~immediately~~ give notice to the **department**~~mine inspector~~ and to the representative of the miner, stating the particulars of the accident~~, and if anyone is killed thereby to the commissioner~~.
- (2) **Upon receipt of notification of the occurrence**, the mine inspector shall immediately go to the scene of the accident and make an investigation and suggestions and render the assistance as he deems necessary for the future safety of the employees, investigate the cause of the fire, explosion, or accident, make a record thereof, and forward it to the commissioner.
- (3) The record **of the investigation** shall be preserved with the other records of **the commissioner's**~~his~~ office. To aid in making the investigations, the commissioner or the mine inspector may compel the attendance of witnesses and administer oaths.
- (4) **Failure to comply with the reporting requirements of this section shall create a rebuttable presumption of an intentional order to violate mine safety laws that places miners in imminent danger of serious physical injury or death and shall be subject to revocation, suspension, or probation of the mine license and a civil monetary penalty of one hundred thousand (\$100,000) dollars.**



- (5) *The Office of Mine Safety and Licensing may require testing of certified persons to determine whether the presence of intoxicants or controlled or illicit substances are a contributing factor in any mine accident in which serious physical injury or loss of life occurs or which was reported under this section. The executive director or his designee may order the testing of certified persons who:*
- (a) *Were working in the immediate area of the accident; or*
  - (b) *In the judgment of the executive director or his designee, may reasonably have contributed to or witnessed the accident or fatality.*
- (6) *The post-accident testing permitted by subsection (5) shall:*
- (a) *Meet all guidelines set forth in Sections 2, 3, 4, and 5 of this Act;*
  - (b) *Be paid for by the Office of Mine Safety and Licensing; and*
  - (c) *Be performed on samples obtained within eight (8) hours of the accident.*
- (7) *Toxicology screens and eleven-panel drug testing shall be performed on victims when death occurs on mine property. The testing pursuant to this subsection may be performed on specimens of either blood, saliva, or other appropriate bodily fluids.*

Section 21. KRS 352.210 is amended to read as follows:

- (1) No person shall knowingly injure any shaft, lamp, instrument, air course or brattice, obstruct or throw open airways, disturb any part of the machinery or appliances, open a door used for directing ventilation without closing it afterwards, enter any part of a mine against caution, disobey any order given in carrying out any of the provisions of KRS Chapter 351 or 352, do any act endangering the life or health of any person employed in the mine or endangering the security of the mine.
- (2) No person shall enter or be on any *licensed facility*~~[mine property]~~ while intoxicated or under the influence of alcohol or a controlled substance *or be in possession of any*~~[No]~~ alcoholic beverage or controlled substance *at any licensed facility*~~[shall be permitted in or about any mine]~~; provided, however, this shall not apply to private vehicles driven to and from the mine.
- (3) *The licensee shall notify the executive director by the close of the next business day of any certified persons who have been discharged for violation of the company's substance abuse or alcohol abuse policies or who tested positive and failed to complete an employee assistance program.*

Section 22. KRS 352.390 is amended to read as follows:

The Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the commission that the holder has become unworthy to hold the certificate by reason of violation of law, intemperate habits, *failure to maintain drug and alcohol free condition of certification*, incapacity, abuse of authority, failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause. The same procedure provided in subsections (11)~~(10)~~ and (12)~~(11)~~ of KRS 351.102 shall apply to the certificate holder.

**Approved April 22, 2006.**