

CHAPTER 94**(HB 207)**

AN ACT relating to mine safety.

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

Section 1. KRS 351.025 is amended to read as follows:

The department shall:

- (1) Promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against certified and noncertified personnel and owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. These criteria shall include but not be limited to the following:
 - (a) In the case of individuals that are certified miners, the Mine Safety Review Commission may revoke or suspend an individual's certification, or probate an individual's certification ~~for up to ten (10) working days~~ for first offenses, and the Mine Safety Review Commission shall establish a maximum penalty for subsequent offenses;
 - (b) In the case of individuals that are owners or part-owners of licensed premises, the Mine Safety Review Commission may impose civil monetary penalties against individuals not to exceed ten thousand dollars (\$10,000); and
 - (c) In the case of noncertified personnel, the Mine Safety Review Commission may impose civil monetary fines equivalent to the value of the wages they receive for up to ten (10) working days for first offenses and the commission shall establish maximum penalties for subsequent offenses;
- (2) Notwithstanding KRS 351.070(15), promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission's imposition of penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. These penalties shall include but not be limited to the revocation or suspension of the mine's license, the probation of a mine's license ~~for a first offense~~, or the imposition of a penalty against the licensee not to exceed the gross value of the production of the licensed premise for up to ten (10) working days;
- (3) Direct that an employer shall not directly or indirectly reimburse a sanctioned miner or mine supervisor for days of work lost as a result of sanctions imposed by the Mine Safety Review Commission;
- (4) Establish procedures by which the department shall communicate with the Federal Mine Safety and Health Administration (MSHA) concerning allegations of mine safety violations against Kentucky coal operators and miners **and for reports made to the Office of Mine Safety and Licensing under KRS 351.193**;
- (5) Jointly with the Mine Safety Review Commission establish a process for referring allegations of mine safety violations to the Mine Safety Review Commission for adjudication and for the hearing of appeals from penalties imposed by the Office of Mine Safety and Licensing, and the underlying violation, authorized under KRS 351.070(15); and
- (6) Establish procedures to distribute quarterly reports to every licensed entity describing mine fatalities, serious mine accidents, and penalties imposed on certified and noncertified personnel and licensed premises and to require the report to be distributed to every certified working miner employed by the licensed entity, posted at work sites, and reviewed at regular mine safety meetings.

Section 2. KRS 351.030 is amended to read as follows:

- (1) All administrative hearings conducted by the department shall be conducted in accordance with KRS Chapter 13B **and this section**. Following the hearing, the department shall decide each matter in controversy. No person shall be discharged or otherwise discriminated against by his or her employer for testifying, or for his failure to testify, at these hearings.
- (2) ***The executor or administrator of a deceased miner's estate, or his or her designee, in the case of a fatality, miners that are injured as a result of an accident, and miners that are significantly affected by the conduct that gave rise to a disciplinary proceeding shall be granted the right of intervention in the penalty phase of that proceeding. The petition for intervention shall be made in accordance with KRS 13B.060(3). All hearings before the Mine Safety Review Commission shall be open proceedings. Any party with pertinent***

information regarding a mine accident may submit that information directly to the Office of Mine Safety and Licensing's chief accident investigator.

Section 3. KRS 351.070 is amended to read as follows:

- (1) The commissioner shall have full authority over the department and shall superintend and direct the activities of the mine inspectors and other personnel of the department. There is created within the Department for Natural Resources an Office of Mine Safety and Licensing.
- (2) The secretary shall appoint an executive director to the Office of Mine Safety and Licensing in accordance with KRS 224.10-020(2) and prescribe his powers and duties.
- (3) The commissioner may, whenever necessary, divide the coal fields of the state into as many inspection districts as necessary, so as to equalize as nearly as practicable the work of each inspector, and may assign to the inspectors their respective districts.
- (4) The commissioner may, whenever he or she deems it necessary in the interest of efficient supervision of the mines, temporarily employ the services of additional mine inspectors or change inspectors from one (1) district to another.
- (5) The commissioner shall superintend and direct the inspection of mines and cause to be investigated the character and quality of air in mines whenever conditions indicate the necessity of doing so.
- (6) The commissioner shall collect statistics relating to coal mining in the state and make an annual report of the statistics.
- (7) The commissioner shall see that maps, plans, projections, and proposed developments of all underground coal mines are made and filed in his office.
- (8) The commissioner shall keep a properly indexed, permanent record of all inspections made by himself and the personnel of the department.
- (9) The commissioner shall exercise general supervision over the training of officials and workmen in safety and first aid and mine rescue methods, and may conduct demonstrations in safety whenever he deems it advisable.
- (10) The commissioner shall exercise general supervision over the dissemination of information among officials and employees concerning mine ventilation, mining methods, and mine accidents and their prevention, and shall assume full charge in the event of mine fire or explosion or other serious accident at any mine in the state.
- (11) The commissioner may assist in the resumption of operations of any mine or gather data for the development of any coal seams that would be of any benefit to the state or create new employment.
- (12) The commissioner may prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines.
- (13) The secretary of the Environmental and Public Protection Cabinet shall have the power and authority to promulgate, amend, or rescind any administrative regulations he or she deems necessary and suitable for the proper administration of this chapter. Administrative regulations may be promulgated, amended, or rescinded by the secretary only after public hearing or an opportunity to be heard thereon of which proper notice by publication pursuant to KRS Chapter 424, has been given. Administrative regulations so promulgated shall carry the full force and effect of law.
- (14) The commissioner shall ascertain the cause or causes of any coal mining fatality *and any accidents involving serious physical injury* and, within sixty (60) days of completion of the investigation, shall report his or her findings and recommendations to the Governor, the Mine Safety Review Commission, the Mining Board, and the Legislative Research Commission. *Accident interviews conducted by the Office of Mine Safety and Licensing shall be closed proceedings.* The recommendations may include without being limited to the need to promulgate or amend administrative regulations to prevent the recurrence of the conditions causing the fatality. *Effective January 1, 2009, the Office of Mine Safety and Licensing shall appoint an existing full-time employee to act as a family liaison. The family liaison shall have the responsibility during an accident investigation to keep the families of miners informed of the progress and findings of the accident investigation. The family liaison shall be trained in mining and in grief counseling.*
- (15) The commissioner shall assess civil monetary penalties against licensed facilities for violations of laws in this chapter and KRS Chapter 352 pertaining to roof control plans, *mine seal construction plans, unsafe working conditions*, and mine ventilation plans that could lead to imminent danger or serious physical injury. The

Environmental and Public Protection Cabinet shall promulgate administrative regulations within ninety (90) days of July 12, 2006, providing for the manner and method of the assessment of the penalties and appeals therefrom. In no event shall the civil penalty assessed pursuant to this subsection for the violation exceed five thousand dollars (\$5,000). Nothing contained in this subsection shall be construed to impair or contravene the authority granted under KRS 351.025(2) for imposing penalties against licensed facilities.

Section 4. KRS 351.090 is amended to read as follows:

- (1) The Governor shall appoint an adequate number of mine inspectors to ensure at least two (2) inspections annually *at all surface mines*, provided the mine is in operation the entire year or the proportionate thereof, of all mines in the Commonwealth and sufficient additional inspectors to enable the commissioner to provide adequate surveillance of coal mines where conditions or management policy dictate that more inspections are needed to ensure the safety of miners; except the commissioner shall inspect all underground coal mines not less than ~~six (6) [three (3)]~~ times annually. ***Two (2) of the six (6) general inspections of underground mines shall be full electrical inspections.*** One (1) or more of the appointees ~~shall [may]~~ be designated as electrical mine inspectors. The Governor shall also appoint an adequate number of mine safety analysts and mine safety instructors. The term of office of each mine inspector, each mine safety analyst, each electrical inspector, and each mine safety instructor shall be during the period of capable, efficient service and good behavior.
- (2) All mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall have a thorough knowledge of first aid and mine rescue and be able to instruct in first aid and mine rescue, and shall possess thoroughly the knowledge required of the commissioner by KRS 351.060, and shall have a thorough and practical knowledge of mining gained by at least five (5) years' experience in coal mines in the Commonwealth. All surface mine safety analysts shall have at least five (5) years' experience in surface mines in the Commonwealth. For the purposes of this subsection, a degree in mining engineering from a recognized institution shall be deemed equivalent to two (2) years of practical experience in coal mines or an associate degree in mining technology from a recognized institution shall be deemed equivalent to one (1) year practical experience in coal mines. A person desiring to use a mining engineering or technology degree for practical experience credit shall file proof of having received a degree prior to examination.
- (3) No person shall be appointed to the office of mine inspector, underground mine safety analyst, electrical inspector, or mine safety instructor unless he holds a current mine foreman's certificate. No person shall be appointed to the office of surface mine safety analyst unless he holds a current surface mine foreman's certificate. A person appointed as mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall pass an examination administered by the board. The commissioner may recommend to the Governor applicants for the positions of mine inspector, mine safety analyst, electrical inspector, or mine safety instructor who have successfully passed the examination and are proved by worth, training, and experience to be the most competent of the applicants.
- (4) Mine inspectors, mine safety analysts, electrical inspectors, and mine safety instructors shall be of good moral character and temperate habits and shall not, while holding office, act in any official capacity in operating any coal mine.
- (5) No reimbursement for traveling expenses shall be made except on an itemized accounting for the expenses submitted by inspectors, analysts, and safety instructors who shall verify upon oath that the expenses were incurred in the discharge of their official duties.
- (6) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate, shall be filed in the office of the Secretary of State.
- (7) Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall give bond with surety approved by the Governor.
- (8) ***Each mine inspector, mine safety analyst, electrical inspector, and mine safety instructor shall provide authorization to the Office of Mine Safety and Licensing to perform a criminal background check by means of a fingerprint check by the State Police. The results of the state criminal background check shall be sent to the executive director of the Office of Mine Safety and Licensing. Any fee charged by the Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.***

Section 5. 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, *allegations of unsafe working conditions*, 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 *and serious physical injuries* 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 *and this chapter*, 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 6. KRS 351.1055 is amended to read as follows:

- (1) There is hereby established a Mine Equipment Review Panel attached to the Department for Natural Resources in the Environmental and Public Protection Cabinet.
- (2) The Mine Equipment Review Panel shall be a permanent panel of recognized experts who shall review and make recommendations *annually* to the executive director of the Office of Mine Safety and Licensing *and the Interim Joint Committee on Agriculture and Natural Resources* regarding best available mine safety technologies, including but not limited to wireless tracking and communications devices for use by miners in underground mines. *Subject to budgetary constraints and approval by the United States Mine Safety and Health Administration (MSHA), if there is no existing law to the contrary, the commissioner may implement the recommendations of the panel.* Based on the recommendations provided by the panel, the executive director shall comprise a list of commercially available mine safety equipment, including wireless tracking and communications devices that may be approved for use by coal miners.
- (3) The panel shall meet at the call of the chair. The chair of the panel shall be the executive director of mine safety and licensing. Members of the panel shall serve without pay, but shall be entitled to reimbursement of travel-related expenses.
- (4) The Mine Equipment Review Panel shall be composed of the following members, who shall be appointed by the commissioner not less than thirty (30) days after July 12, 2006:
 - (a) One (1) member shall represent the National Institute of Occupational Safety and Health;
 - (b) One (1) member shall represent the federal Mine Safety and Health Administration;
 - (c) One (1) member shall represent the coal industry;
 - (d) One (1) member shall be appointed from the membership of the United Mine Workers of America and shall represent mine labor, preferably a member of a Kentucky mine rescue team;
 - (e) One (1) member shall represent the Department of Mining Engineering at the University of Kentucky; and
 - (f) One (1) member shall be the executive director of the Office of Mine Safety and Licensing.
- (5) The Mine Equipment Review Panel shall provide initial recommendations to the executive director of the Office of Mine Safety and Licensing not more than one hundred twenty (120) days after the panel members have been appointed and the panel is duly constituted to conduct business. Periodically, the panel shall review and make recommendations to the executive director on changes to or innovations in mine safety equipment that could be deployed in coal mines.

Section 7. 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. *Effective January 1, 2009, in addition, six (6) hours of annual training on changes in mine safety laws, safe retreat mining practices, disciplinary cases litigated before the Mine Safety Review Commission, changes in mine safety technology, and ways to improve safe working procedures shall be required for all mine foremen. This annual training for mine foremen shall be provided exclusively by the Office of Mine Safety and Licensing.*
- (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) 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) Retraining and reeducation sessions shall be conducted at times and in numbers to reasonably assure each certified miner an opportunity to attend.
- (7) The licensee shall pay all certified miners their regular wages and benefits while they receive training required by the department.
- (8) 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) 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) 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) 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) The secretary 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) The commissioner shall keep and maintain current records on all certified miners, all of which shall be maintained by computer for ready access. ***The commissioner shall not grant certification to any person that, at the time of application, had his or her miner certification, foreman certification, electrician certification, or any other mining specialty certification suspended or revoked by another state. If a person has his or her miner certification, foreman certification, electrician certification, or other mining specialty certification probated in another state, the commissioner or the Mining Board may, at his or its discretion, grant the equivalent certification. However, that certification shall be placed on probation in Kentucky until the probationary period in the other state has expired.***
- (14) 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) 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) All training and education required by this section may be conducted in classrooms, on the job, or in simulated mines.

Section 8. KRS 351.127 is amended to read as follows:

- (1) ~~[A]~~ Certified emergency medical *technicians*~~[technician]~~ or mine emergency *technicians*~~[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 KRS 351.182 and 351.183;
 - (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 KRS 351.182 and 351.183; 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 KRS 351.184.
- (2) These emergency medical technicians or mine emergency technicians shall be employed in the following manner:
- (a) ***At least two (2)***~~[One (1)]~~ emergency medical~~[technician]~~ or mine emergency *technicians*~~[technician]~~ shall be employed on every shift ***engaged in the production of coal, and at least one (1) emergency medical or mine emergency technician shall be employed on every nonproduction shift***~~[with a workforce of up to fifty (50) employees]~~;
 - (b) ***For underground mines, at least one (1) of the two (2) emergency or mine emergency technicians shall be underground at all times while miners are working in the mines.*** 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 9. KRS 351.140 is amended to read as follows:

Each mine inspector shall give his entire time and attention to the duties of his office, which shall consist of the following:

- (1) Inspecting mines and aiding, under the direction of the commissioner, in carrying out and enforcing the provisions of the law relating to the inspection of mines;
- (2) Training officials and workmen in and about the mines in first aid and mine rescue methods;
- (3) Advising officials and workmen in methods pertaining to safety in all its phases and in methods pertaining to the prevention of mine fires and explosions;
- (4) Taking charge of mine rescue and recovery work whenever a mine fire, mine explosion or other serious accident occurs within his district, and the commissioner is not present, and assisting in such work in other districts when so directed by the commissioner;
- (5) Reopening mines or portions of mines that have been sealed on account of fire or any other cause, when directed by the commissioner to do so;
- (6) Inspecting each underground coal mine in his district at least ***six (6)***~~[three (3)]~~ times a year and all other mines once every six (6) months. ***For underground coal mines, two (2) of the six (6) general inspections conducted annually shall be full electrical inspections.*** The commissioner may cause inspections more often if practicable and if funds permit, and whenever any danger to the workmen may exist; making a personal

examination of the interior of each mine with respect to ventilation, drainage, roof control, blasting, electricity, escapeways, and general security, and also a personal examination of the outside facilities of the mine; and in gassy mines below the water table, inspections shall be more frequent, and as often as practical whenever any danger to workmen is indicated by a previous inspection. Such inspections shall involve at least two (2) inspectors. The inspectors shall locate themselves in different sections of the mine in order to determine the effectiveness and reliability of the ventilation system. Each section of the mine shall be so inspected;

- (7) It shall be permissible for a mine inspector to inspect any coal preparation plant or surface facility of any mining operation of coal including any overland coal belts; and
- (8) A mine inspector shall have the express authority to enter upon the premises of and inspect any coal mine, including any overland coal belts, at any reasonable time.

Section 10. KRS 351.175 is amended to read as follows:

- (1) The operation of a coal mine in Kentucky is a privilege granted by the Commonwealth of Kentucky to a licensee who satisfies the requirements of this section and demonstrates that the mine is or will be operated in a safe manner and in accordance with the laws of this Commonwealth.
- (2) Within forty-five (45) days after January 1, 1953, and of each year thereafter, the owner, operator, lessee, or licensee of each mine shall procure from the department a license to operate the mine, and the license shall not be transferable. Any owner, operator, lessee, or licensee who assumes control of a mine, opens a new mine, or reopens an abandoned mine during any calendar year shall procure a license before mining operations are begun.
- (3) The license shall be in printed form as the commissioner may prescribe and when issued shall be kept posted at a conspicuous place near the main entrance of the mine.
- (4) Requests for a license shall be made to the department and shall be accompanied by a United States postal money order or cashier's check drawn in favor of the State Treasurer in an amount established by administrative regulations of a minimum of one hundred dollars (\$100) and a maximum of fifteen hundred dollars (\$1,500). The license shall be issued when the following are properly submitted to the commissioner:
 - (a) The annual report of the licensee and the annual mine map required in KRS 351.170 and 352.450;
 - (b) A certification from the executive director of the Office of Workers' Claims that the licensee has provided positive proof of compliance with the provisions of KRS Chapter 342;
 - (c) A certification from the commissioner of the Department of Revenue that the licensee is not a "delinquent taxpayer" as defined in KRS Chapter 131;
 - (d) ***Mine seal construction plan filed with the state and approved by MSHA;***
 - (e) ***Roof control plan filed with the state and approved by MSHA;***
 - (f) The ventilation plan required in KRS 352.020; and
 - (g)~~(e)~~ An approved emergency action plan required by KRS 352.640.
- (5) The department shall immediately revoke any license if the department receives:
 - (a) Withdrawal of the certification of compliance with KRS Chapter 342 issued by the executive director of the Office of Workers' Claims; or
 - (b) Notice from the commissioner of the Department of Revenue that the licensee is a "delinquent taxpayer" as defined in KRS Chapter 131.
- (6) The commissioner, the executive director of the Office of Mine Safety and Licensing, or the mine inspector shall have the authority to stop production or close any mine whose operator fails to procure a license or fails to furnish a certification of workers' compensation coverage as required under this section.
- (7) The department shall be authorized to seek injunctive relief for any violation of this section. Revocation of a license by the department shall be an administrative function of the department. Appeals from revocation by the department shall be brought in Franklin Circuit Court.
- (8) A license which has been revoked under the "delinquent taxpayer" provision shall not be reissued until a written tax clearance has been received from the commissioner of revenue.

- (9) No mine underlying a cemetery shall be licensed by the commissioner unless two-thirds (2/3) of the governing body of that cemetery vote in approval of the operation. The application for a license shall contain an affidavit setting forth the approval of the cemetery's governing body. This subsection applies only to those cemeteries with governing bodies.

Section 11. KRS 351.194 is amended to read as follows:

- (1) The Mine Safety Review Commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish administrative hearings procedures to be followed in determining if violations of mine safety laws, including, but not limited to, violations that meet the criteria established in KRS 351.025(1) or (2), have occurred and to establish a process to review recommended orders from any hearing officers acting on behalf of the commission. The procedures shall follow the requirements of KRS Chapter 13B *and this chapter*.
- (2) The chair or a majority of the Mine Safety Review Commission may convene a meeting of the commission at which it shall consider whether to schedule a hearing regarding any licensee, coal operation, or other person involved in the mining of coal.
- (3) If the commission determines that there is probable cause to believe that the licensee, coal operation, or other person against whom the department has made allegations of unsafe work practices or other violation of applicable law is guilty of an alleged violation, the commission shall schedule a hearing at which the department shall offer evidence in support of the allegations made by it. The licensee, coal operation, or other person against whom the allegations are made shall be given not less than twenty (20) days' written notice of the charges against him, together with the date, time, and place at which the charges shall be heard, and of his opportunity to be represented by counsel, produce evidence and witnesses on his behalf, and examine the evidence and documents that may be produced against him. The commission may also be represented by counsel and shall not be bound by the technical rules of evidence, but its order shall be based upon competent evidence. Any licensee or other person summoned to appear at a hearing in the manner established in this subsection may, in writing, waive the notice required to be given to him.
- (4) The commission may proceed with its hearing of charges made by the department against any licensee, coal operation, or other person who, after being duly notified in accordance with the requirements of this section, fails to appear at or participate in the hearing and who fails to assert any legitimate basis for the failure.
- (5) Within ninety (90) days after hearing, the commission shall issue an order in which it sets out its determinations concerning each matter coming before it. Copies of the order shall be provided to all parties to the hearing. The department shall carry out or enforce, as appropriate, the order of the commission, which may include, though not be limited to, the imposition of civil penalties, revocation, suspension, or probation of the mine license or the miner's certification.
- (6) The commission may modify a civil penalty or fine established under this chapter, under criteria established by the commission by administrative regulations.
- (7) In assessing monetary penalties within the limits provided in KRS 351.025, the commission shall consider the operator's history of previous violations, the appropriateness of the penalty to the size of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation, and whether a penalty has been imposed by the Federal Mine Safety and Health Act for a violation that arose out of the same set of facts or circumstances.
- (8) An appeal of an order of the commission shall be filed in the Franklin Circuit Court within thirty (30) days of entry of the order.

Section 12. KRS 352.020 is amended to read as follows:

- (1) A mine ventilation plan and any revision of an existing mine ventilation plan shall be suitable to the ventilation conditions and mining system of each mine. The mine ventilation plan and any revisions to the mine ventilation plan approved by the United States Mine Safety and Health Administration shall be submitted to the executive director or his or her authorized representative and incorporated into the license. All mine ventilation plans shall be set forth in printed form. The mine ventilation plan shall require the air quality throughout the mine to contain at least nineteen and one-half percent (19.5%) oxygen and not more than one-half of one percent (0.5%) of carbon dioxide, and the volume and velocity of the air current shall be sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases and dust, smoke, and fumes. A

copy of the mine ventilation plan and any revisions to that plan shall be available to the miners and their representatives.

- (2) The ventilation of all underground coal mines shall be produced by means of mechanically operated fans located outside the mine in fireproof housing and offset at least fifteen (15) feet to one (1) side or above the opening, protected by explosion doors or weak walls and arranged so that ventilating current may be reversed if necessary. The fan shall be installed so as to prevent recirculation of mine air. The main fan shall be operated from a power circuit independent from the mine circuit. If inside auxiliary fans are required to ventilate working places the commissioner must first approve the installation.
- (3) The licensee, superintendent, or foreman of every coal mine worked by shaft, slope, or drift shall provide and maintain for every mine two (2) separate and distinct escapeways, one (1) of which is vented by the intake air. However, if a mine was originally licensed prior to January 1, 1990, the commissioner may approve an alternate ventilation plan. Each active working section shall be ventilated by a separate split of intake air. In all mines the quantity of air passing through the last open crosscut between the intake and return in any pair or sets of entries shall be not less than nine thousand (9,000) cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces from which coal is being cut, mined, or loaded in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of three thousand (3,000) cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than nine thousand (9,000) cubic feet of air per minute if at least nine thousand (9,000) cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases.
- (4) All mines shall maintain at least nine thousand (9,000) cubic feet of air per minute at the points mentioned in subsection (3) of this section. The commissioner shall have the authority to require additional air in any mine when he deems it necessary for the safety of the employees.
- (5) When the air from a split has passed through and has ventilated all the working places in an air split of a mine it shall then be designated as return air. Return-air courses shall not be designated as primary escapeways.
- (6) As working places advance, breakthroughs for air shall be made not more than ninety (90) feet apart, except that where longwall or modern systems of mining are used the commissioner or his authorized representative may approve a greater distance between breakthroughs or the method of ventilating such longwall or modern systems of mining. If any breakthroughs between intake and return airways are not required for the passage of air or the travel of equipment, they shall be closed with stoppings. All permanent stoppings shall be substantially built with suitable incombustible or fire resistant material subject to the approval of the mine inspector so as to keep the working places well ventilated. All brattice cloth and ventilation tubing shall be flame resistant. Doors on the main haulways shall be avoided where practicable, and overcasts, built of concrete or other suitable material and of ample strength, shall be adopted. Where doors are used they shall be built in a substantial manner, and shall be hung so as to close automatically when unobstructed.
- (7) In a mine where methane can be found to an extent of one percent (1%) or more on the return of any one (1) split, the inspector, with the approval of the commissioner may require the mine to be ventilated by the exhaust system, requiring the haulage roads and all feed wires to be located on the intake air and the electrical system to be so arranged that no wires carrying electrical current shall be on return air. A period of not more than ninety (90) days from date of notification shall be allowed to make the changes required.
- (8) The ventilation plan shall require all fans utilized in the ventilation plan to be in *continuous* operation *unless the fan must be turned off for repairs or maintenance, during which time all persons must be withdrawn from the mine. After the mine fan is restarted following the completion of repairs or maintenance, it must be in operation for a sufficient period to ensure air quality and the equalization of the mine atmosphere*~~for a sufficient period to ensure air quality and equalization of the mine atmosphere prior to the entry of workers into underground areas~~. *Within fifteen (15) minutes after a fan has been unintentionally stopped, all miners must begin withdrawing from the mine. If the fan is restarted before the miners reach the surface, the miners shall remain at the point of their retreat and the area inby shall be preshifted prior to the miners returning to the section.*

Section 13. KRS 352.090 is amended to read as follows:

- (1) All unused workings and abandoned parts of mines shall be protected by safeguards that will prevent the accumulation or overflow of gas, and all avenues leading thereto shall be so arranged and conducted as to give warning to all persons of the danger of entering, and notice shall be posted warning all unauthorized persons not to enter these parts of the mine. If the area cannot be adequately ventilated, and examined, or evaluated it shall be sealed in a timely manner.
- (2) No person, except persons authorized to make examination thereof, shall enter any unused or abandoned part of a mine after the warning has been posted.
- (3) Where the practice is to seal abandoned workings, the sealing shall be done *in accordance with a mine seal construction plan approved by MSHA and submitted to the Office of Mine Safety and Licensing. Seal construction shall be done* immediately in an effective manner with noncombustible material. In every sealed area, one (1) or more of the seals shall be fitted with a pipe and cap or valve to permit the gases behind the seals to be sampled and also to provide a means of determining any existing hydrostatic pressure. When required by the mine inspector and commissioner, drill holes shall be extended from the surface to the sealed area, or vent pipes shall be extended from the sealed area to a return air course. Sufficient ventilation shall be provided at each seal to prevent dangerous gases from accumulating.

Section 14. KRS 352.133 is amended to read as follows:

- (1) All underground miners shall be provided with an approved self-contained self-rescuer device and shall have that device within twenty-five (25) feet of them at all times. The self-contained self-rescuer shall be provided to the miners by the licensee at no cost to the miners.
- (2) In addition to the requirements for self-contained self-rescuers set forth in this section, all licensed premises shall maintain caches of self-contained self-rescuer devices which shall be stored in locations readily accessible to the primary and secondary escapeways or provide proof of an order for self-contained self-rescuers through the submission of a valid purchase order that clearly names the vendor, contact information for the vendor, the number of devices purchased, and the date of the order, which shall not be later than thirty (30) days after July 12, 2006. In all cases, the self-contained self-rescuers shall be in place by July 1, 2007, or shall be extended by the commissioner upon substantiated proof of unavailability.
 - (a) The caches shall be maintained in sufficient numbers and locations determined in accordance with the most recent rules, standards, and regulations issued by the United States Mine Safety and Health Administration *and this section*.
 - (b) The caches shall be maintained in storage units capable of protecting the self-contained self-rescuers from water, dust, and any other condition which will cause deterioration of the self-contained self-rescuers.
 - (c) The storage unit locations shall have reflective signs that read "SELF-RESCUERS" conspicuously posted as to be visible from the primary and secondary escapeways. ~~Intrinsically safe strobe light devices also shall be attached to the storage unit. The strobe light devices may operate continuously or shall be capable of activation in the event of a mine emergency.~~
 - (d) In addition to the requirements set forth in this section for self-contained self-rescuers, the mine operator shall provide for each person who is underground at least one (1) additional self-contained self-rescuer device which provides protection for a period of one (1) hour or longer, to cover all persons in the mine.
 - (e) If a mantrip or mobile equipment is used to enter or exit the mine, additional self-contained self-rescuer devices, each of which provides protection for a period of one (1) hour or longer, shall be available for all persons who use the transportation from portal to portal.
- (3) It shall be a Class D felony for any person to remove a self-rescuer from the cache for purposes other than use during an emergency, or for repair, maintenance, or replacement or as authorized by the licensee.

Section 15. KRS 352.135 is amended to read as follows:

In all designated escapeways, each operator shall provide lifeline cords, with attached reflective material at not to exceed twenty-five (25) foot intervals and devices indicating the direction to the surface at not to exceed one hundred (100) foot intervals, from outby the loading point; provided, that in case of a shaft mine, such lifeline cords shall extend from outby to the loading point to the bottom of the designated escape shaft. Such lifeline cord shall be of *flame resistant material* ~~[durable construction]~~ sufficient to allow miners to see and to use effectively to guide

themselves out of the mine in the event of an emergency. ***All lifeline cords shall be made of flame resistant material within one hundred eighty (180) days of the effective date of this section.***

Section 16. KRS 352.145 is amended to read as follows:

- (1) No employee of a surface coal mining operation shall be assigned, allowed, or required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.
- (2) At stockpiles with underground feeders or draw-off tunnels, the licensee shall install and maintain a visible warning device that shall be activated when the feeders are in operation.
- (3) The operator's cab of all equipment being operated on or in the immediate area of a stockpile with underground feeders or draw-off tunnels shall be enclosed by a compartment and shall be furnished with a self-contained self-rescuer that is capable of providing oxygen for a period of not less than one (1) hour.
- (4) On all haulage roadways, berms, guardrails, concrete barriers, or other suitable devices shall be installed in such a manner that they extend to at least the mid-wheel height of the highest vehicle or equipment that regularly travels that type of roadway.
- (5) ***A surface preshift examination shall be conducted within three (3) hours prior to men working. A certified foreman shall check the areas where men are required to work or travel during the shift. Roadways, pit areas, highwalls, and dumping points shall be checked. If any hazardous conditions are found, they shall be corrected prior to men working in the area. A suitable record book shall be kept in the control of the mine foreman. Immediately after the examination of the mine or portion thereof, the mine foreman shall enter and sign a record of the examination in the book with ink. The record shall clearly show any danger discovered at the mine, and the action taken to correct the dangerous conditions. The record book shall, at all times during the working hours, be accessible to the mine inspector or analyst and the miner or his representative.***
- (6) ***All equipment operators shall conduct a preoperational check of their equipment. All preoperational checks shall be recorded by the equipment operator and kept with the equipment and, if a hazard is found to exist on any piece of equipment that would render it unsafe to operate, the hazardous condition shall be reported to the mine foreman or mine superintendent. All appropriate repairs shall be made before the equipment is put back into operation, except for moving the equipment to a safe place for repairs. The record book of all hazardous conditions and repairs made shall be kept in the control of the mine foreman or mine superintendent at all times.***

Section 17. KRS 352.150 is amended to read as follows:

- (1) After June 16, 1972, on single-track haulage roads in mines, which the persons employed in the mine must use while performing their work or while traveling on foot to and from their work, there shall be places of refuge on one (1) side not less than five (5) feet in depth from the side of the mine car, and five (5) feet wide, and not more than ninety (90) feet apart. Refuge holes of the same dimensions shall also be provided at switch throws.
- (2) Special places of refuge are not required on haulage roads on which room necks or breakthroughs occur at regular intervals not exceeding ninety (90) feet, and thus furnish places of refuge, or on haulage roads in which the track is so laid as to give a minimum clearance on one (1) side of not less than thirty (30) inches from the side of any haulage engine or any mine car, the clearance to be on the side of the road opposite that upon which electric wires are strung, if electric wires are strung in the road.
- (3) No unauthorized person shall travel on foot to or from work upon any haulage road or slope where transportation is by track, when other roads in proper condition for travel are available.
- (4) On all main haulage roads where hauling is done by machinery the mine foreman shall provide a proper system of signals, and a conspicuous light or marker approved by the commissioner on the front and rear of every trip or train of cars when in motion in the mine.
- (5) Mantrips shall be operated at safe speeds consistent with the condition of roads and type of equipment used and shall be so controlled that they can be stopped within the limits of visibility, in no event at a speed in excess of twelve (12) miles per hour.
- (6) Each mantrip consisting of more than one (1) mine car or men shall be under the charge of a certified official, and it shall be operated independently of any loaded trip of coal or other material.

- (7) Cars on the mantrip shall not be overloaded, and sufficient cars in good mechanical condition shall be provided.
- (8) No material or tools except small hand tools shall be transported in the same car with men on any mantrip unless in a separate, enclosed compartment of the car, and all persons shall ride inside of mantrip cars, except the motorman and brakeman or trip rider.
- (9) Men shall not load or unload before the cars in which they are to ride or are riding come to a full stop, and men shall proceed in an orderly manner to and from mantrips.
- (10) A waiting station shall be provided where men are required to wait for mantrips or man-cages. It shall have sufficient room, ample clearance from moving equipment, and adequate seating facilities.
- (11) Power wires shall be guarded effectively at mantrip stations where there is a possibility of any person coming in contact with energized electric wiring while loading or unloading from the mantrip.
- (12) Cars used for transporting men on slopes shall be equipped with a safety device capable of stopping the trip in event of failure of the rope or couplings. The device shall be approved by the commissioner.
- (13) Where belts are used for transporting men, unless the commissioner finds that a safety hazard exists which cannot be corrected, the belt transport will be allowed, and a minimum clearance of eighteen (18) inches shall be maintained between the belt and the roof or cross bars, projecting equipment, cap pieces, overhead cables, wiring, and other objects; but where the height of the coal bed permits, the clearance shall not be less than twenty-four (24) inches.
- (14) Unless a greater speed is allowed by special permission from the commissioner, in which event the conditions, limitations, and rules imposed in connection with the grant of permission shall be observed, the belt speed shall not exceed two hundred fifty (250) feet per minute where the minimum overhead clearance is eighteen (18) inches, or three hundred (300) feet per minute when the minimum overhead clearance is twenty-four (24) inches, while men are loading, unloading, or being transported.
- (15) The space between men riding on a belt line shall not be less than six (6) feet.
- (16) Loading and unloading stations shall be illuminated properly.
- (17) A certified official or some other supervisory personnel appointed by the mine foreman shall supervise all mantrips.
- (18) At all mines utilizing track haulage or transportation, there shall be developed a safe and uniform system of traveling through all switch points to prevent collisions. This system shall be designed in a manner which ensures that all persons can determine who has the right of way in all circumstances. Information concerning this system shall be included in annual retraining.
- (19) Efficient equipment, either mobile or self-propelled, equipped with sufficient first-aid equipment and supplies, shall be available on all underground sections where men are present to transport *all* injured workers to the surface.
- (20) At those mines that do not have a contract or other arrangement for providing ambulance service, a 4-wheel-drive vehicle or other vehicle suitable to the terrain equipped with sufficient first-aid equipment and supplies shall be available to the mines or preparation facilities for the transportation of injured workers. At those mines that have a contract or other arrangement for providing ambulance service, the access road to the mine or preparation facility shall be kept in a condition which is passable by the ambulance vehicle or other emergency rescue equipment.
- (21) The commissioner shall be empowered to draft additional administrative regulations providing for transportation of men when necessary.

Section 18. KRS 352.170 is amended to read as follows:

- (1) All underground mines shall be worked exclusively by the use of approved electric lamps for personal lighting.
- (2) *A mine operator shall provide an MSHA-approved, handheld, multi-gas detector that can measure methane, oxygen, and carbon monoxide to each group of two (2) or more miners working in close proximity of each other underground, the foreman, fireboss, and to each person who works alone, such as pumpers, examiners, and outby miners. The mine operator shall make available one (1) multi-gas detector at the working face for use by any miner working on the section. Miners shall be trained in the proper use*

and calibration of the multi-gas detectors and shall document that the training has been provided. Signs shall be prominently posted at places miners gather with instructions on the proper use of multi-gas detectors. ~~[All mine foremen and fire bosses employed in mines shall carry approved gas detection devices for the purpose of detecting the presence of explosive and dangerous gases and deficiencies of oxygen].~~

- (3) No person shall at any time carry into any mine any intoxicants. No person shall at any time enter any underground mine with matches, pipes, cigars, cigarettes, or any device for making lights or fire not authorized or approved, and the licensee shall at frequent intervals search, or cause to be searched, any person entering or about to enter the mine or inside the mine, to prevent the person from taking, carrying, or using the articles therein.

Section 19. KRS 352.180 is amended to read as follows:

- (1) Whenever a serious physical injury or loss of life occurs in a mine or in the machinery connected therewith or whenever a fire, explosion, entrapment of an individual for more than thirty (30) minutes, inundation of a mine by water 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 the communication system as required under KRS 352.630(3) give notice to the department and to the representative of the miner, stating the particulars of the accident. No person shall alter the scene of a mining accident in a manner that will interfere with the department's investigation of the accident, except to the extent necessary to rescue an individual or to eliminate an imminent danger.
- (2) Upon receipt of notification of an occurrence set forth in subsection (1) of this section, 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 investigations shall be preserved with the other records of the commissioner's 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 set forth in 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 not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000).
- (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) of this section shall:
- (a) Meet all guidelines set forth in KRS 351.182, 351.183, 351.184, and 351.185;
 - (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 20. KRS 352.180 is amended to read as follows:

- (1) Whenever a serious physical injury or loss of life occurs in a mine or in the machinery connected therewith or whenever a fire, explosion, entrapment of an individual for more than thirty (30) minutes, inundation of a mine by water 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 the communication system as required under KRS 352.630(3) give notice to the department and to the representative of the miner, stating the particulars of the accident. No person shall alter the scene of a mining accident in a manner that will interfere with the department's investigation of the accident, except to the extent necessary to rescue an individual or to eliminate an imminent danger.

- (2) Upon receipt of notification of an occurrence set forth in subsection (1) of this section, 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 investigations shall be preserved with the other records of the commissioner's 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 set forth in 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 not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000).
- (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) of this section shall:
 - (a) Meet all guidelines set forth in KRS 351.182, 351.183, 351.184, and 351.185;
 - (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.
- (8) ***The commissioner or his or her authorized representative may compel the attendance of witnesses and administer oaths to investigate allegations of unsafe mining conditions or violations of mining laws even if no accident or injury has occurred.***

Section 21. KRS 352.201 is amended to read as follows:

- (1) The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revision thereof suitable to the roof conditions and mining system of each mine and approved by the commissioner or his authorized representative shall be adopted and set out in printed form within six (6) months after June 16, 1972, and shall be kept on file in the district office of the district where the mine is located. The plan shall show the type of support and spacing approved by the commissioner. No person shall proceed beyond the last permanent support unless adequate temporary support is provided. A copy of the plan shall be furnished the commissioner or his authorized representative and shall be available to the miners and their representatives.
- (2) The method of mining followed in any mine shall not expose the miner to unusual dangers from roof falls caused by excessive widths of rooms and entries or faulty pillar recovery methods.
- (3) The licensee, in accordance with the approved plan, shall provide at or near each working face and at other locations in the mine as the commissioner or his authorized representative may prescribe an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken

down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, and in other circumstances that may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. Except in the case of recovery work, supports knocked out shall be replaced promptly.

- (4) Roof bolt recovery for reuse shall not be permitted.
- (5) Where workmen are exposed to danger from falls of roof, face, and ribs they shall examine and test the roof, face, and ribs before any other work is performed or machinery is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately.
- (6) ***Within forty-eight (48) hours before the commencement of any retreat mining or pillaring operations, the mine operator shall notify the Office of Mine Safety and Licensing of its intention of beginning or resuming retreat mining or pillaring. The Office of Mine Safety and Licensing shall document such notification in writing. Upon such notification within the forty-eight (48) hour period from a mine operator, and before retreat mining or pillaring operations can begin, the office shall ensure that every person who will be participating in the retreat mining operations is trained in the operator's pillar removal plan.***

Section 22. KRS 352.220 is amended to read as follows:

For purposes of this section, "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 of Mines and Minerals or accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration; "suitable" means a design, material, or installation that meets the requirements of its intended use or that is accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration.

- (1) The following shall apply to underground installations:
 - (a) Nonconductive or insulated materials shall be used when trailing cables or high voltage feeder cables are suspended;
 - (b) Suitable circuit-interrupting devices shall be provided for all power circuits and equipment at the mine;
 - (c) All power wires and cables shall be properly insulated and protected by proper installation or guarding;
 - (d) Ground wires for circuits shall have a total cross-sectional area of not less than one-half (1/2) the power conductor;
 - (e) Extra length or long trailing cables shall be spread out in long open loops or in a figure-eight configuration on a clean, well rock-dusted floor where the cable can be protected against mechanical injury, but cables suspended in long open loops shall be acceptable;
 - (f) One (1) temporary splice may be made in any trailing cable. No temporary splice shall be made in a trailing cable within twenty-five (25) feet of the machine except cable reel equipment. Splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Splices made in cables shall provide continuity of all components;
 - (g) Three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit;
 - (h) The frames of hand-held electrically driven tools shall be properly grounded or double-insulated by design. The frames of all pumps shall be properly grounded. Hand-held tools and all pumps shall be properly protected by suitable fuses, circuit breakers, or other no less effective devices to provide the minimum overload and shortcircuit protection required by the department;
 - (i) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work under or pass under them unless they are six and one-half (6-1/2) feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with other circuits. Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one (1) or more ground conductors having a total cross-sectional area of not less than

one-half (1/2) the power conductor, and with an insulated internal conductor not smaller than No. 10 (AWG) or an insulated external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit. All cables shall be suitable for the current and voltage and shall be properly maintained;

- (j) Power circuits shall have suitable disconnecting devices and short-circuit protective devices at or near the supply end of the circuit. Suitable disconnecting devices shall be provided at the beginning of all branch circuits;
- (k) Underground transformer stations, battery charging stations, substations, rectifiers, and water pumps shall be housed in noncombustible structures or areas or be equipped with a suitable fire suppression system.
 - 1. When a noncombustible structure or area is used, these installations shall be:
 - a. Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or
 - b. Ventilated with intake air that is monitored for carbon monoxide or smoke by an atmospheric monitoring system (AMS) installed and operated in a suitable manner. Monitoring of intake air ventilating battery charging stations shall be done with sensors not affected by hydrogen; or
 - c. Ventilated with intake air and equipped with sensors to monitor for heat, carbon monoxide, or smoke.
 - 2. The sensors used for monitoring shall de-energize power to the installation, activate a visual and audible alarm located outside of and on the intake side of the enclosure, and activate doors that will automatically close when any of the following occurs:
 - a. The temperature in noncombustible structure reaches one hundred sixty-five (165) degrees Fahrenheit;
 - b. The carbon monoxide concentration reaches ten (10) parts per million above the ambient level for the area; or
 - c. The optical density of smoke reaches 0.022 per meter.
 - 3. At least every thirty (30) days, sensors installed to monitor for carbon monoxide shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate the closing door, or each smoke sensor shall be tested to determine that it functions correctly.
 - 4. When a fire suppression system is used, the installation shall be:
 - a. Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or
 - b. Ventilated with intake air that is monitored for carbon monoxide or smoke by an atmospheric monitoring system installed and operated in a suitable manner.
 - 5. All monitoring systems used to monitor intake air ventilating battery charging stations under subparagraphs 1. and 4. of this paragraph shall be done with sensors not affected by hydrogen.
 - 6. This paragraph shall not apply to:
 - a. Rectifiers and power centers with transformers that either are dry-type or contain nonflammable liquid, if they are located at or near the section and are moved as the working section advances or retreats;
 - b. Submersible pumps;
 - c. Permissible pumps, and associated permissible switchgear;
 - d. Pumps located on or near the section that are moved as the working section advances or retreats; or
 - e. Small portable pumps. Underground stations containing transformers or circuit breakers filled with flammable oil shall be provided with door sills or their equivalent, which will confine the oil if leakage or rupture occurs, and shall be of fireproof construction.

Underground transformers purchased after June 16, 1972, shall be air cooled or cooled with nonflammable liquid or inert gas. Portable power centers, portable transformers, and distribution centers which are essentially fireproof are not required to be placed on separate splits of air but shall be stationed in well ventilated places outby the last open crosscuts;

- (l) Electrically powered locomotives shall be provided with suitable electrical protective devices;
 - (m) Suitable firefighting equipment shall be located at strategic points along the belt conveyor, and proper fire extinguishers shall be provided at the transfer points. The commissioner may prescribe any other safety measures for the prevention and combating of mine fires as they pertain to conveyor belts. Only approved flame resistant belting shall be taken into and used inside any mine, and all underground belt conveyors shall be provided with slippage and sequence switches and with start and stop controls at intervals not to exceed one thousand (1000) feet. The controls shall be properly installed and positioned so as to be readily accessible;
 - (n) Communication wires and cables shall be adequately insulated and protected by proper installation or guarding;
 - (o) Telephone wires shall be provided with lightning arresters where the wires enter the mine and at the buildings on the surface;
 - (p) Insulating mats shall be placed in front of disconnecting devices and all electrical installations where required;
 - (q) Ground wires in trailing cables shall be tested weekly for open circuit and high resistance;
 - (r) Power circuits in tipples, buildings, cleaning plants, etc., and all underground electrical circuits shall be deenergized when not in use over a long period;
 - (s) All underground power circuits and electrical equipment shall be de-energized before work is done on the circuits and equipment except when necessary for troubleshooting or testing. When electrical work or major mechanical work is performed, a suitable disconnect providing visible evidence that the power is disconnected shall be locked open and a tag shall be posted by the individuals performing the work. Locks and tags shall be removed only by the persons who installed them, or if those persons are unavailable, by a person authorized by the operator. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustment;
 - (t) Where electric circuits cross over or pass under belt conveyors the wiring shall be suitably protected; and
 - (u) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of significant accumulations of combustible dust.
- (2) The following shall apply to trolley wires and trolley feeder wires:
- (a) On all haulage roads, landings, and partings where persons are required to regularly work or pass under bare power wires placed less than six and one-half (6-1/2) feet above the top of the rail, suitable protection shall be provided. This protection shall consist of channeling the roof, placing boards along the wires and extending below them, or the use of some other approved device that affords protection;
 - (b) All machine feed conductors shall be placed on suitable insulators which shall be so placed as to prevent the conductors coming in contact with combustible or conductive materials;
 - (c) When the machine or feed wires are carried in the same entry as the trolley wire, they shall be placed on the same side as the trolley wire, between the trolley wire and rib, and shall be protected from contact therewith. Positive feed wires crossing places where persons are required to travel shall be safely guarded or protected against persons coming in contact therewith, as required by paragraph (a) of this subsection;
 - (d) All trolley and positive feed wires shall be placed on opposite sides of track from refuge holes or necks of rooms when so ordered by the department, but wires, when protected as required by paragraph (a) of this subsection, may be placed across the necks of rooms. Switches or circuit breakers shall be provided to control the current at the mine and all important sections in the mine;

- (e) Where track is used for the return circuit, at least one (1) side shall be bonded to the full length of the trolley wire installation. Cross-bonds shall be installed not to exceed two hundred (200) foot intervals along the track; and
 - (f) All mine locomotives shall be fused or otherwise protected at the switch or at the nip.
- (3) The following shall apply to surface installations:
- (a) High-voltage lines shall be at least twenty (20) feet above the ground where there is a possibility of contact by traffic passing underneath;
 - (b) Electrical circuits, wires, and cables shall be supported on insulators except when cables, which are of a design that can be safely used without insulators, are used;
 - (c) Lightning arresters shall be installed on all ungrounded, exposed power conductors and telephone wires entering a mine, regardless of voltage. Overload protection and disconnect switches of suitable sizes and ratings approved by the department shall also be provided, except that they shall not be required of telephone wires;
 - (d) Every metallic building in which electricity is used or connected with any circuit shall be effectively grounded;
 - (e) All transformer tanks shall be effectively grounded;
 - (f) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of significant accumulations of combustible dust that create a fire hazard;
 - (g) Surface transformer stations shall be housed or fenced in when lower than fifteen (15) feet above the earth, and the fences shall be a minimum of six (6) feet in height; and
 - (h) All surface power circuits and electrical equipment shall be de-energized before work is done on the circuits and equipment except when necessary for troubleshooting or testing. When electrical work or major mechanical work is performed, a suitable disconnect providing visible evidence that the power is disconnected shall be locked open and a tag shall be posted by the individuals performing the work. Locks and tags shall be removed only by persons who installed them or, if those persons are unavailable, by a person authorized by the operator. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. When disconnects for stationary low and medium voltage equipment that do not provide visual evidence that the power is disconnected are used, an adequately rated voltage detector shall be used to test each phase conductor or circuit part to verify they are de-energized before any work is performed. When practical, confirmation that the voltage detector is operating satisfactorily shall be made before each test.
- (4) (a) Notwithstanding any provisions of subsections (1), (2), or (3) of this section, the department may authorize the construction, maintenance, operation, or conducting of any activity regulated by this section, to be constructed, maintained, operated, or conducted in a different manner than specified in any provision of subsections (1), (2), or (3) of this section, when scientific or engineering information is made available to the department substantially indicating that the different manner would afford equal or greater protection and safety than the manner required in subsections (1), (2), or (3) of this section; and
- (b) The department may prescribe administrative regulations with respect to the aboveground or underground installations in connection with any mine operation when information is made available indicating that regulation is reasonably necessary to prevent injury to, or loss of, life and property.
- (5) ***All electrical work shall be performed by a certified electrician at all underground mines and surface mines operating draglines or highwall miners.***

Section 23. The secretary of the Environmental and Public Protection Cabinet shall employ not more than 15 mine analysts paid from existing cabinet funds, if available. If funds are not available, then the secretary shall employ new mine analysts as funds become available.

Section 24. The commissioner for natural resources is hereby directed to study the efficacy of utilizing risk-based assessment of underground and surface coal mines for determining the frequency of mine inspections.

Section 25. Sections 4 and 9 of this Act take effect January 1, 2009.

Section 26. Section 18 of this Act takes effect January 1, 2008.

Approved March 23, 2007.