

CHAPTER 89**(HB 385)**

AN ACT relating to coal mine safety.

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

➔Section 1. 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) "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) "Board" means the Mining Board created in KRS 351.105;
 - (e) "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) "Commission" means the Mine Safety Review Commission created by KRS 351.1041;
 - (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) "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) "Gassy mine." All mines shall be classified as gassy or gaseous;
 - (m) "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) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
 - (p) "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) "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) "Mine manager" means a certified or noncertified person whom the licensee places in charge of a mine or mines and whose duties include but are not limited to operations at the mine or mines and supervision of personnel when qualified to do so;
 - (t) "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;
 - (u) "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
 - (v) "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;
 - (w) "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 oncoming shift;
 - (x) "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;
 - (y) "Serious physical injury" means an injury which has a reasonable potential to cause death;
 - (z) "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;
 - (aa) "Slope" means an inclined opening used for the same purpose as a shaft;
 - (ab) "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
 - (ac) "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;
 - (ad) "Office" means the Office of Mine Safety and Licensing;~~and~~
 - (ae) "Executive director" means the executive director of the Office of Mine Safety and Licensing;
 - (af) ***"Probation" means the status of a certification or license issued by the Office of Mine Safety and Licensing that conditions the validity of the certification or license upon compliance with orders of the Mine Safety Review Commission; and***
 - (ag) ***"Final order of the commission" means an order which has not been appealed to the Franklin Circuit Court within thirty (30) days of entry, or an order affirming the commission's order that has been entered by any court within the Commonwealth and for which all appeals have been exhausted.***
- (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 2. 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 KRS 351.182 and 351.183. 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 KRS 351.182 and 351.183 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 KRS 351.182, 351.183, 351.184, 351.185, and 352.180. ***The commissioner shall by certified mail notify the holder of the certification of his or her suspension and of the following:***~~[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.]~~

(a) ***The right to pursue one (1) of the following options:***

1. *Appeal the suspension to the Mine Safety Review Commission within thirty (30) days of the notification; or*
 2. *Notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing within thirty (30) days of the notification that the holder intends to be evaluated by a medical professional trained in substance treatment, to complete any prescribed treatment, and to submit an acceptable result from a drug and alcohol test as required by Section 4 of this Act.*
- (b) *Failure to file an appeal or failure to notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of the holder's intent to comply with paragraph (a)2. of this subsection within thirty (30) days of the notification shall result in the revocation of all licenses and certifications issued by the Office of Mine Safety and Licensing for a period of not less than three (3) years and the holder shall remain ineligible for any other certification issued by the Office of Mine Safety and Licensing during the revocation period. Certifications and licenses revoked under this paragraph may be reissued by:*
1. *Compliance with all training and testing requirements;*
 2. *Satisfying the requirements of Sections 4 and 5 of this Act; and*
 3. *Compliance with all orders of the Mine Safety Review Commission.*
- (c) *The completion of the evaluation, treatment, and submission of an acceptable drug test pursuant to paragraph (a)2. of this subsection or the revocation described under paragraph (b) of this subsection shall be considered a first offense.*
- (13) *The licenses and certifications of a miner who notifies the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of his or her intent to comply with subsection (12)(a)2. of this section shall remain suspended until the miner has provided proof of the evaluation and successful completion of any prescribed treatment and has submitted a negative drug and alcohol test as required by Section 4 of this Act to the Office of Mine Safety and Licensing. The drug and alcohol test shall be taken no more than thirty (30) days prior to the submission of the proof required by this section. Upon receipt and review of the proof by the Office of Mine Safety and Licensing, the miner's licenses and certifications shall be restored. In the event that the miner fails to successfully complete the evaluation, treatment, and drug test within one hundred twenty (120) days of his or her notification pursuant to subsection (12)(a)2. of this section, the miner's licenses and certifications issued by the Office of Mine Safety and Licensing shall be revoked for a period prescribed under subsection (8) of Section 7 of this Act. The one hundred twenty (120) day time period set out in this section shall be extended upon proof that the miner is complying with the recommendations of the medical professional. ~~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 KRS 351.182 and 351.183 within thirty (30) days prior to reapplication and has fulfilled the terms of final orders entered by the Mine Safety Review Commission.~~*
- (14) *If the suspension described in subsection (12) of this section occurs following the miner's first offense as described in this section or Section 6 of this Act, the notification sent to the miner shall not include the option of notifying the Office of Mine Safety and Licensing of the miner's intent to seek an evaluation and treatment. The miner shall only have the right to appeal the suspension to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the suspension, the penalty shall be assessed according to subsection (8)(b) or (c) of Section 7 of this Act.*

➔Section 3. KRS 351.122 is amended to read as follows:

- (I) In lieu of an examination prescribed by law or regulation, the board may enter into a reciprocal agreement with another state regarding the certification of miners. The board may, pursuant to a reciprocal agreement, issue to any person holding a certificate issued by another state a certificate permitting him or her to perform similar tasks in the Commonwealth if:
- (a)~~(1)~~ The board finds that the requirements for certification in the other state are substantially equivalent to those of Kentucky;
 - (b)~~(2)~~ The person passes only the applicable part of the examination with regard to Kentucky law which is uniquely different from the other state;

- (c)~~(3)~~ The person has submitted proof, in accordance with KRS 351.182, that he or she is drug and alcohol free;
- (d)~~(4)~~ The person's retraining is sufficient to meet Kentucky requirements; and
- (e)~~(5)~~ The person's certification in Kentucky or in any other state has not been suspended, revoked, or probated.

(2) *Upon receipt of notice from a reciprocal state of a disciplinary action relating to any of the certifications or licenses issued to a miner who also holds corresponding licenses or certifications issued by the Office of Mine Safety and Licensing, the commissioner shall impose analogous sanctions against the miner's Kentucky licenses or certifications. These sanctions shall terminate upon proof of compliance with the orders from the reciprocal state.*

➔Section 4. KRS 351.182 is amended 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 (1) of two (2) 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 this section and KRS 351.183; or
 - (b) By the submission of drug and alcohol test results from other sources, as provided in KRS 351.183(2).
- (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 (1) drug and alcohol test required by this section and KRS 351.183, 351.184, and 351.185.
- (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 (1) drug and alcohol test required by this section and KRS 351.183, 351.184, and 351.185.
- (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 KRS 351.183(1).
- (7) A breath alcohol concentration of .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 KRS 352.180(5) to (7), the minimum testing protocol acceptable for the establishment of drug-free status for certification under KRS Chapter 351 shall be **at least a ten (10)**~~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) **Buprenorphine**~~[Methaqualone]~~;
- (i) Methadone;
- (j) Barbiturates; and
- (k) ***The remaining panels to be used in the urine test shall be set by order of the Mine Safety Review Commission no later than June 1 of each year***~~[Synthetic narcotics]~~.

➔Section 5. KRS 351.183 is amended 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 KRS 351.182 and this section;
 - (b) The contractor's or subcontractor's drug-testing protocol shall be ***a ten (10)***~~[an eleven (11)]~~ panel test described in KRS 351.182(8) ***and any other test required by order of the Mine Safety Review Commission***; 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 KRS 351.182(7) and (8) and in accordance with KRS 351.182(2)(b) 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 6. KRS 351.184 is amended 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 ***either*** listed in KRS 351.182(8) ***or otherwise required to be tested for by order of the Mine Safety Review Commission*** are deemed to fail by a medical review officer;
 - (b) The applicant's blood alcohol level is above .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 KRS 351.182.
- (3) (a) Any applicant who is denied certification due to the results of the drug and alcohol testing required by KRS 351.182 may: ~~[be retested again, at his or her expense, within ten (10) days of notification of the results of the initial test.]~~

1. *Appeal to the Mine Safety Review Commission within thirty (30) days of receiving the notification required under subsection (12) of Section 2 of this Act; or*
 2. *Notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing within thirty (30) of receiving the notification required under subsection (12) of Section 2 of this Act that the applicant intends to be evaluated by a medical professional trained in substance abuse treatment, to complete any prescribed treatment, and to submit an acceptable result from a drug and alcohol test as required by Section 4 of this Act.*
- (b) *Failure to file an appeal or failure to notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of his or her intent to comply with paragraph (a)2. of this subsection within thirty (30) days of the notification shall result in the revocation of all licenses and certifications issued by the Office of Mine Safety and Licensing for a period of not less than three (3) years and the holder shall remain ineligible for any other certification issued by the Office of Mine Safety and Licensing during the revocation period. Certifications and licenses revoked under this paragraph may be reissued by:*
1. *Compliance with all training and testing requirements;*
 2. *Satisfying the requirements of Sections 4 and 5 of this Act; and*
 3. *Compliance with all orders of the Mine Safety Review Commission.*
- (c) *For the purposes of this subsection, the completion of evaluation, treatment, and submission of an acceptable drug test pursuant to paragraph (a)2. of this subsection or the revocation described under paragraph (b) of this subsection shall be considered a first offense.*
- (4) *The licenses and certifications of a miner who notifies the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of his or her intent to comply with subsection (3)(a)2. of this section shall remain suspended until the miner has provided proof of the evaluation and successful completion of any prescribed treatment and has submitted a negative drug and alcohol test as required by Section 4 of this Act to the Office of Mine Safety and Licensing. The drug and alcohol test shall be taken no more than thirty (30) days prior to the submission of the proof required by this section. Upon receipt and review of the proof by the Office of Mine Safety and Licensing, the miner's licenses and certifications shall be restored. In the event that the miner fails to successfully complete the evaluation, treatment, and drug test within one hundred twenty (120) days of the notification required under subsection (12) of Section 2 of this Act, the miner's licenses and certifications issued by the Office of Mine Safety and Licensing shall be revoked for a period prescribed under subsection (8) of Section 7 of this Act. The one hundred twenty (120) day time period set out in this section shall be extended upon proof that the miner is complying with the recommendations of the medical professional~~[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 KRS 351.182. Proof of the evaluation and the successful completion of the prescribed treatment shall be shown at the time of application].~~*
- (5) *If the denial described in subsection (3) of this section occurs following the miner's first offense as described in this section or Section 2 of this Act, the miner shall not have the option of notifying the Office of Mine Safety and Licensing of his or her intent to comply with subsection (3)(a)2. of this section. The miner shall only have the right to appeal the denial to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the denial, the penalty shall be assessed according to subsection (8)(b) or (c) of Section 7 of this Act~~[Any applicant who is denied certification due to the results of the drug and alcohol testing required by KRS 351.182 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 7. KRS 351.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 351.315 to 351.375 or any administrative regulation, determination, or order promulgated in accordance with KRS 351.315 to 351.375 shall be subject to a civil fine not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000) for each violation.

- (2) Any person who willfully violates any of the provisions of KRS 351.315 to 351.375 or any administrative regulation, determination, or order promulgated in accordance with KRS 351.315 to 351.375 which has become final shall be guilty of a Class A misdemeanor.
- (3) Any person who violates any of the provisions of KRS 351.330(16) shall be guilty of a Class B misdemeanor.
- (4) Any person who violates any of the provisions of KRS 351.345(2) shall be guilty of a Class D felony.
- (5) Any operator who fails to obtain his license as required by KRS 351.175 shall be guilty of a Class A misdemeanor as defined in KRS 532.090. Each day the mine is operated without a license constitutes a separate offense. Venue for the offenses shall lie in the county in which the offense occurred.
- (6) Any operator operating a mine with knowledge that the mine has been placed under a valid closure order pursuant to KRS 351.175 shall be guilty of a Class D felony. Jurisdiction shall lie in the Circuit Court of the county in which the offense occurred.
- (7) Any blasting operation that results in the death or serious physical injury of a person may be subject to a civil fine not more than twenty thousand dollars (\$20,000). For the purposes of this subsection, "serious physical injury" means an injury which has a reasonable potential to cause death.
- (8) ***Any person who fails a drug or alcohol test required by KRS 351.182, 351.183, 351.184, 351.185, or 352.180 shall be subject to the following penalties if an appeal to the Mine Safety Review Commission is chosen and the appeal is not successful:***
 - (a) ***A first offense shall result in probation, suspension, or combination of both as well as other conditions and time constraints as ordered by the Mine Safety Review Commission. During this time, the person shall be ineligible for any license or certification issued by the Office of Mine Safety and Licensing. All licenses and certifications shall be restored upon compliance with the orders of the Mine Safety Review Commission. The failure to pursue an appeal will result in revocation of all licenses or certifications issued by the Office of Mine Safety and Licensing for three (3) years.***
 - (b) ***A second offense shall result in the revocation of all certifications and licenses issued by the Office of Mine Safety and Licensing for a period of five (5) years. During this time, the person shall be ineligible for any license or certification issued by the Office of Mine Safety and Licensing. Certifications and licenses revoked under this provision may be reissued by:***
 1. ***Compliance with all training and testing requirements;***
 2. ***Satisfying the requirements of Section 4 and 5 of this Act; and***
 3. ***Compliance with all orders of the Mine Safety Review Commission.***
 - (c) ***A third offense shall result in the permanent revocation of all licenses and certifications issued by the Office of Mine Safety and Licensing. The person shall be permanently ineligible for licenses and certifications issued by the Office of Mine Safety and Licensing.***
 - (d) ***The Mine Safety Review Commission shall not have the authority to reconsider any order permanently revoking a miner's license or certifications issued by the Office of Mine Safety and Licensing if the commission's order is final unless, at the time of the entry of the order, the miner was incarcerated or hospitalized, or the miner did not receive actual notice of the motion or other filing seeking permanent revocation, or did not actually receive notification by the commissioner of the Department for Natural Resources pursuant to Section 2 of this Act.***

Signed by Governor April 11, 2012.