

1 AN ACT relating to mining permits and making an appropriation therefor.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO  
4 READ AS FOLLOWS:

5 ***The cabinet shall notify the commissioner of the Department of Workplace Standards***  
6 ***of any permittee or applicant for a permit issued by the cabinet under this chapter or***  
7 ***the administrative regulations promulgated hereunder that has been doing business in***  
8 ***the Commonwealth for fewer than five (5) consecutive years to ensure that the***  
9 ***permittee or applicant is or will be compliant with the performance bonding***  
10 ***requirements of Section 5 of this Act.***

11 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO  
12 READ AS FOLLOWS:

13 ***The commissioner shall notify the Energy and Environment Cabinet of any employer***  
14 ***engaged in the severance, preparation, or transportation of minerals that has failed to***  
15 ***comply with the performance bonding requirements of Section 5 of this Act.***

16 ➔Section 3. KRS 350.085 is amended to read as follows:

17 (1) No application for a permit and no operation shall be approved or allowed by the  
18 cabinet if there is found on the basis of the information set forth in the application  
19 that the requirements of ***Section 5 of this Act or*** this chapter or administrative  
20 regulations will not be observed or that there is not probable cause to believe that  
21 the proposed method of operation, backfilling, grading, or reclamation of the  
22 affected area can be carried out consistent with the purpose of this chapter.

23 (2) If the cabinet finds that the overburden on any part of the area of land described in  
24 the application for a permit is such that experience in the Commonwealth with a  
25 similar type of operation upon land with similar overburden shows that substantial  
26 deposition of sediment in stream beds, landslides, or acid water pollution cannot  
27 feasibly be prevented, the cabinet may delete the part of the land described in the

1 application upon which that overburden exists.

2 (3) Subject to valid existing rights, no surface coal mining operations except those  
3 which existed on or before August 4, 1977, shall be permitted within three hundred  
4 (300) feet from any occupied dwelling unless waived by the owner, nor within three  
5 hundred (300) feet of any public building, school, church, community, or  
6 institutional building, public park, or within one hundred (100) feet of a cemetery.  
7 The cabinet shall not issue a permit if it finds that the operation will constitute a  
8 hazard to or do physical damage to a dwelling house, public building, school,  
9 church, cemetery, commercial or institutional building, public road, stream, lake, or  
10 other public property. The cabinet shall delete the areas from the permit application  
11 or operation.

12 (4) Subject to valid existing rights, no surface coal mining operations except those  
13 which existed on or before August 4, 1977, shall be permitted within one hundred  
14 (100) feet of the outside right-of-way line of any public road, except where mine  
15 access roads or haulage roads join the right-of-way line. The cabinet shall permit the  
16 roads to be relocated or the area affected to lie within one hundred (100) feet of the  
17 road if, after public notice and opportunity for public hearing in the locality, a  
18 written finding is made that the interest of the public and the affected land owner  
19 will be protected, and shall not approve the application for a permit where the  
20 surface coal mining operation will adversely affect a wild river established pursuant  
21 to KRS Chapter 146, a state park or place listed on the National Register of Historic  
22 Places unless adequate screening and other measures as approved by the cabinet are  
23 incorporated into the permit application.

24 (5) Subject to valid existing rights, no surface coal mining operations except those  
25 which existed on August 4, 1977, shall be permitted on any privately owned lands  
26 within the boundaries of units of the National Park System, the National Wildlife  
27 Refuge Systems, the National System of Trails, the National Wilderness

1 Preservation System, the Wild and Scenic Rivers System, including study rivers  
2 designated under Section 5(a) of the Wild and Scenic Rivers Act and national  
3 recreation areas designated by Act of Congress.

4 (6) If based on the information provided pursuant to KRS 350.060(3)(h) and other  
5 relevant information, the cabinet finds that any surface coal mining and reclamation  
6 operation owned or controlled by the applicant is currently in violation of this  
7 chapter or other requirements listed pursuant to KRS 350.060(3)(h), the cabinet  
8 shall not issue the permit or permit renewal until the applicant submits proof  
9 satisfactory to the cabinet that the violation has been corrected or is in the process of  
10 being corrected. It shall be grounds to deny a permit or permit renewal if the  
11 cabinet, based on any information available to it and after a hearing, makes a  
12 finding that the applicant, or the operator specified in the application has  
13 demonstrated a pattern of willful violations pursuant to KRS 350.130(3).

14 (7) The prohibition of subsection (6) of this section shall not apply to a permit applicant  
15 with a violation resulting from an unanticipated event or condition at a surface coal  
16 mining operation on lands eligible for and under a permit for remining held by the  
17 applicant. As used in this subsection, the term "violation" has the same meaning as  
18 the term has under subsection (6). After September 30, 2004, the period of authority  
19 of this subsection shall be coincident with the period of authority of sec. 510(e) of  
20 Pub. L. No. 95-87, the "Surface Mining Control and Reclamation Act of 1977," as  
21 amended, 30 U.S.C. sec. 1260(e).

22 ➔Section 4. KRS 350.130 is amended to read as follows:

23 (1) When any of the requirements of Section 5 of this Act or this chapter or  
24 administrative regulations adopted pursuant thereto or the orders of the cabinet have  
25 not been complied with, the cabinet shall forthwith cause a notice of noncompliance  
26 to be issued upon the permittee, person, or operator. The cabinet shall set forth in its  
27 notice a reasonable time period but not more than ninety (90) days for the abatement

1 of the violation. If any permittee, person, or operator has not abated the violation  
2 within the time prescribed in the notice of noncompliance, the secretary or other  
3 authorized personnel of the cabinet shall issue to the permittee, operator, or person  
4 an order for immediate compliance and cessation of any mining activities or  
5 operations which are contributing to the violation. The order shall require the  
6 permittee, person, or operator to abate the violation in the most expeditious manner  
7 possible. The secretary is authorized to promulgate reasonable administrative  
8 regulations for the implementation of this section. The notice or order shall be  
9 handed to the person in charge of the operation and the operator or person engaged  
10 in coal exploration operations or sent by certified mail, return receipt requested,  
11 addressed to the permanent address shown on the application for a permit; or by  
12 electronic mail to the address shown on the permit application or otherwise  
13 voluntarily provided to the cabinet by the permittee on a form prepared by the  
14 cabinet; or, if no address is shown on the application, then by certified or electronic  
15 mail to the address known to the cabinet. The notice of noncompliance or order for  
16 immediate compliance and cessation shall specify in what respects the permittee,  
17 person, or operator has failed to comply with Section 5 of this Act or this chapter or  
18 the regulations or orders of the cabinet and the remedial action required, the period  
19 of time established for abatement, and a reasonable description of the portion of the  
20 surface coal mining and reclamation operation to which the notice or order applies.  
21 If the permittee, person, or operator has not reached an agreement with the cabinet  
22 or has not complied with the requirements set forth in the notice of noncompliance  
23 or order for immediate compliance and cessation within time limits set therein, the  
24 permit may be revoked or the operation terminated, after an opportunity for a  
25 hearing, by order of the cabinet, and the performance bond, if any, shall then be  
26 forfeited to the cabinet, provided that failure to attend a hearing shall be excused for  
27 good cause shown. Any bonding company or financial institution providing bond to

1 the cabinet shall have the right to perform those measures necessary to secure bond  
2 releases if the bonding company or financial institution can demonstrate that it has  
3 the ability to perform the measures and will undertake to do so within a reasonable  
4 time frame. The bonding company, or financial institution providing the bond, may,  
5 at any stage of the reclamation process, pay the remaining encumbered balance of  
6 the bond and thereby discharge its obligation under the bond. Neither the surety  
7 company nor the financial institution may employ anyone to perform the measures  
8 who has been barred from mining pursuant to the provisions of this chapter.

9 (2) When a bond is forfeited consistent with the provisions of this chapter, the cabinet  
10 shall forfeit the entire amount of the bond for the permit area or increment.

11 (3) A permittee, operator, or person whose mining permit or operation has been  
12 revoked, suspended, or terminated or is at the time of the application in violation of  
13 this chapter or other applicable requirements as set forth in KRS 350.085 **or Section**  
14 **5 of this Act** shall not be eligible to receive another permit or begin another  
15 operation or to have suspended permits or operations reinstated until he shall have  
16 complied with all the requirements of this chapter or submitted proof satisfactory to  
17 the cabinet under KRS 350.085 that the violation has been corrected or is in the  
18 process of being corrected in respect to all permits issued him, provided, further,  
19 that no permittee, operator, or person shall be eligible to receive another permit or  
20 begin another operation who has forfeited any bond unless the land for which the  
21 bond was forfeited has been reclaimed without cost to the state or the permittee,  
22 operator, or person has paid such sum as the cabinet finds is adequate to reclaim the  
23 lands. The cabinet shall not issue any permits to or allow future operations by any  
24 permittee, operator, or person who has demonstrated a pattern of willful violations  
25 of this chapter of such nature and duration with such resulting irreparable damage to  
26 the environment as to indicate an intent not to comply with the provisions of this  
27 chapter, provided that no permit shall be denied on this basis without an opportunity

1 for a hearing. The secretary shall promulgate regulations which implement this  
2 section. For the purposes of this section, if a corporate permittee has demonstrated a  
3 pattern of willful violations, then any subsequent application for a permit by that  
4 corporation, or any person who controls or has controlled that corporation, shall be  
5 denied.

6 (4) In the exercise of the secretary's enforcement powers and authority under this  
7 chapter, the secretary, or an authorized representative of the cabinet, after  
8 inspection, shall immediately order the cessation of the condition or operation when  
9 he determines that the condition or operation creates an imminent danger to the  
10 health or safety of the public or that the condition or operation is causing or can  
11 reasonably be expected to cause significant imminent environmental harm in  
12 violation of this chapter or the regulations pursuant to this chapter, or any permit  
13 condition. For purposes of this subsection, "imminent danger to the health and  
14 safety of the public" means the existence of any condition or practice, or any  
15 violation of a permit or other requirement of this chapter in a surface coal mining  
16 and reclamation operation, which condition, practice, or violation could reasonably  
17 be expected to cause substantial physical harm to persons outside the permit area  
18 before the condition, practice, or violation can be abated. A reasonable expectation  
19 of death or serious injury before abatement exists if a rational person, subjected to  
20 the same conditions or practices giving rise to the peril, would not expose himself  
21 or herself to the danger during the time necessary for abatement.

22 (5) Each provision of this section shall be interpreted and applied consistently with due  
23 process of law.

24 (6) The secretary, or authorized representatives of the cabinet, shall have the power to  
25 vacate, amend, modify, or terminate notices of noncompliance and cessation orders,  
26 pursuant to administrative regulations promulgated by the cabinet.

27 (7) Service of any notice or order by electronic mail shall be effective upon delivery of

1 the notice or the order to the recipient's inbox by electronic mail as electronically  
2 communicated to the cabinet by an electronic registered receipt.

3 ➔Section 5. KRS 337.200 is amended to read as follows:

4 Except for employers who have been doing business in the state for five (5) consecutive  
5 years, every employer engaged in construction work, or the severance, preparation, or  
6 transportation of minerals, shall furnish on a form prescribed by the commissioner a  
7 performance bond to ensure~~assure~~ the payment of all wages due from the employer.  
8 Surety for the bond shall be an amount of money equal to the employer's gross payroll  
9 operating at full capacity for four (4) weeks. Any employee whose wages are secured by a  
10 bond may obtain payment of those wages, liquidated damages, and attorney's fees ~~as~~  
11 ~~provided by law~~ on presentation to the commissioner of a final judgment entered by a  
12 court of competent jurisdiction. The bond may be terminated, with the approval of the  
13 commissioner, on submission of the employer's statement, lawfully administered under  
14 oath, that the employer has ceased doing business in the state and that all due wages have  
15 been paid.

16 ➔Section 6. KRS 337.994 is amended to read as follows:

17 (1) Any employer who violates KRS 337.200 shall be fined not less than one hundred  
18 dollars (\$100) nor more than five hundred dollars (\$500). Each day that the  
19 employer violates KRS 337.200 shall constitute a separate offense and penalty. If  
20 the employer is a corporation, the officers of the corporation shall be personally  
21 liable for the penalty imposed herein.

22 (2) All penalties collected under this section shall be distributed to the employees  
23 injured by the employer's failure to provide the performance bond required under  
24 Section 5 of this Act and shall be obtained in the same manner as provided for in  
25 Section 5 of this Act. If the penalty collected is less than the total amount of  
26 wages owed, the money shall be disbursed proportionally among the employees  
27 based on the amount each is owed.