

**CHAPTER 149****(HB 258)**

AN ACT relating to mine safety and declaring an emergency.

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

Section 1. KRS 351.101 is amended to read as follows:

The General Assembly hereby finds and declares the following:

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

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

- (1) *The Mine Safety Review Commission is created as an independent governmental entity attached to the Public Protection and Regulation Cabinet 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 to the commission for adjudication;*
  - (c) *Make any recommendations to the department that it believes appropriate upon its review, consideration, and analysis of:*
    1. *All reports of coal mining fatalities provided by the commissioner under subsection (14) of Section 4 of this Act;*
    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 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 Public Protection and Regulation 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 Public Protection and Regulation Cabinet shall employ hearing officers to assist the commission in accordance with KRS Chapter 13B, notwithstanding the provisions of KRS 13B.030(2)(b).*
  - (8) *The commission may conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its duties.*
  - (9) *The department shall provide the Mine Safety Review Commission with all information requested by the commission for the fulfillment of its responsibilities under this chapter and KRS Chapter 352.*

Section 3. KRS 351.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:

- (a) "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;
- (b) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
- (c) "Board" means the Mining Board created in KRS 351.105;
- (d) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
- (e) ***"Commission" means the Mine Safety Review Commission created by Section 2 of this Act;***
- (f) "Commissioner" means commissioner of the Department of Mines and Minerals;
- (g)~~(f)~~ "Department" means the Department of Mines and Minerals;
- (h)~~(g)~~ "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;
- (i)~~(h)~~ "Excavations and workings" means the excavated portions of a mine;
- (j)~~(i)~~ "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;
- (k)~~(j)~~ "Gassy mine" means any mine in which there is a record of methane having been ignited, or having been detected with a permissible flame safety lamp, or where methane in the amount of twenty-five hundredths percent (0.25%) or more has been found not less than twelve (12) inches from the roof, face, or rib, using approved methane testers or detectors or by analysis. However on and after June 19, 1976, all mines shall be classified as gassy or gaseous;
- (l)~~(k)~~ "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, nor more than one-half of one percent (0.5%) of carbon dioxide, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
- (m)~~(l)~~ "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
- (n)~~(m)~~ "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;

- (o)~~{(n)}~~ "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;
- (p)~~{(o)}~~ "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;
- (q)~~{(p)}~~ "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
- (r)~~{(q)}~~ "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;
- (s)~~{(r)}~~ "Preshift examination" means the examination of a mine or any portion thereof where miners are scheduled to work or travel, which shall be conducted not more than three (3) hours before any on-coming shift;
- (t)~~{(s)}~~ "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;
- (u)~~{(t)}~~ "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;
- (v)~~{(u)}~~ "Slope" means an inclined opening used for the same purpose as a shaft;
- (w)~~{(v)}~~ "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines; and
- (x)~~{(w)}~~ "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.

- (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 4. 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.
- (2) He shall appoint a deputy commissioner of the Department of Mines and Minerals, prescribe his powers and duties.
- (3) He 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) He may, whenever he 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 district to another.
- (5) He 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) He shall collect statistics relating to coal mining in the state and make an annual report of the statistics.
- (7) He shall see that maps, plans, projections, and proposed developments of all underground coal mines are made and filed in his office.
- (8) He shall keep a properly indexed, permanent record of all inspections made by himself and the personnel of the department.
- (9) He 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) He 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) He 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 commissioner shall have the power and authority to promulgate, amend, or rescind any administrative regulations he deems necessary and suitable for the proper administration of this chapter. Administrative regulations may be promulgated, amended, or rescinded by the commissioner 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, within sixty (60) days of completion of the investigation, shall report his findings and recommendations to the Governor, the Mine Safety Review Commission, the Mining Board, and the Legislative Research Commission. 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.***

Section 5. KRS 351.105 is amended to read as follows:

- (1) ~~The Board of Miner Training, Education, and Certification is abolished and shall be immediately replaced by the~~ Mining Board *is created*.
- (2) The board shall be made up of eight (8) persons, all of whom shall be citizens of Kentucky and from the coal industry in Kentucky. The board's membership shall reflect a fair representation from eastern Kentucky and western Kentucky, large and small operations,

and union and nonunion coal production. The Governor shall appoint the members of the board to include:

- (a) Three (3) members representing management; the Alliance of Kentucky Coal shall submit three (3) nominees for each management position on the board;
- (b) Three (3) members representing labor; the United Mine Workers of America shall submit three (3) nominees for each labor position on the board;
- (c) ***One (1) citizen member with knowledge of mining who is not a coal operator and is not employed in a supervisory or nonsupervisory position in a mine*** ~~[The commissioner of the Department of Mines and Minerals];~~ and
- (d) The director of the Division of Miner Training, Education, and Certification.

The ~~board~~ ~~[commissioner of the department]~~ shall ***elect one (1) of its members to*** serve as chairman. The director of the Division of Miner Training, Education, and Certification shall be a nonvoting member.

- (3) Excluding the ***citizen member*** ~~[commissioner]~~ and the director of the Division of Miner Training, Education, and Certification, initial appointments to the board shall be made in the following manner and shall reflect equal representation as to number and term regarding both the management and the labor positions: two (2) members for a period of two (2) years; two (2) members for a period of three (3) years; and two (2) members for a period of four (4) years. After the initial appointments, members of the board shall be appointed to four (4) year terms. ***The citizen member shall be appointed for a term of four (4) years.*** Members of the board ~~[, including members of the Board of Miner Training, Education, and Certification abolished by this section,]~~ may be reappointed at the expiration of their previous appointment at the pleasure of the Governor. Members shall continue to serve until a successor is appointed and qualified.
- (4) Two (2) of the persons appointed to the board shall be employed in nonsupervisory positions at mines in this Commonwealth and shall have a minimum of five (5) years' underground experience in the industry and a mine foreman's certificate. Two (2) of the persons shall be employed in supervisory positions by coal companies operating in the Commonwealth and shall have a minimum of five (5) years' experience in the coal mining industry and a mine foreman's certificate. One (1) of each of the members holding supervisory and nonsupervisory mine positions shall have a minimum of five (5) years' practical experience working in a surface or underground coal mine. The director of the Division of Miner Training, Education, and Certification shall have a minimum of five (5) years' practical underground mining experience.
- (5) Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section. The vacancy shall be filled by the Governor within thirty (30) days from the date the vacancy occurs.
- (6) A quorum of the board shall be five (5) voting members; the board may act officially by a majority of those members who are present, except that no action shall be taken without a majority of affirmative votes. ~~[Action concerning revocation, suspension, or probation of a mine's license or a miner's certification shall require two thirds (2/3) of the voting members present. When necessary for the commissioner to be absent or to recuse himself, he is empowered to name an alternate to serve as chairman.]~~

- (7) Each member of the board shall receive one hundred fifty dollars (\$150) each day while actually engaged in the performance of the work of the board, shall receive mileage at the rate provided by the state's travel regulation for each mile actually traveled from the home of the member to the place of the meeting and returning therefrom, and shall receive reimbursement for food and lodging at a reasonable and customary rate, which shall be paid out of the State Treasury upon proper requisition approved by the commissioner.
- (8) The board shall act on all matters *it deems appropriate for board action or* brought before it by the department~~[and, after hearing, issue orders with respect to these matters].~~
- (9) The board shall meet periodically *on the call of the chair or a majority of the members of the board. The Governor shall remove any member who fails to appear at three (3) consecutive meetings of the board, or at one-half (1/2) of the meetings held in a one (1) year period.*~~[at the direction of the commissioner]~~
- (10) *The board shall*~~[to]~~ review this chapter and KRS Chapter 352 and make recommendations regarding the amendment of those chapters.
- (11)~~(10)~~ The board shall review and approve all administrative regulations, *including administrative regulations required by Section 6 of this Act*, proposed by the department that relate to the mining of coal, *penalties*, or the certification of miners before those administrative regulations are promulgated in accordance with KRS Chapter 13A.
- (12)~~(11)~~ No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.
- (13)~~(12)~~ The board 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 programs and standards.

SECTION 6. A NEW SECTION OF KRS CHAPTER 351 IS CREATED 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 place 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) *Promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission's imposition of penalties against licensed premises if an owner or part-owner intentionally orders mine safety laws to be violated 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;*
- (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*
- (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 7. A NEW SECTION OF KRS CHAPTER 351 IS CREATED TO READ AS FOLLOWS:

*The members of the Mine Safety Review Commission and the Mining Board shall complete a forty (40) hour new miner training course if they have not completed the course within the previous two (2) years. In addition, they shall participate in a site visit of an underground mine and a surface coal mine and thereafter make a site visit of an underground mine at least every three (3) years.*

Section 8. KRS 351.102 is amended to read as follows:

- (1) No person shall be assigned duties by a licensee as a laborer or supervisor working for the purpose of mining coal unless the person holds a valid certificate of competency and qualification or a valid permit as trainee issued in accordance with this section.
- (2) A permit as trainee miner shall be issued by the commissioner to any person who has completed a program of education of a minimum of forty (40) hours for underground mining or sixteen (16) hours for surface mining or who has completed a certified mine technology program and has passed an examination approved by the commissioner. An additional eight (8) hours of mine-specific training shall be administered to the trainee miner by the licensee, which training shall be documented on a form approved by the commissioner. This education and training program shall be determined and established by the board, as provided in KRS 351.106.
- (3) Trainee miners shall work within the sight and sound of a certified miner.
- (4) Any miner holding a certificate of competency and qualification may have one (1) person working with him and under his direction as a trainee miner. Any person certified as a mine foreman or assistant mine foreman shall have no more than five (5) persons working under

his supervision or direction as trainee miners for the purpose of learning and being instructed in the duties of underground coal mining.

- (5) A certificate of competency and qualification as a miner shall be issued by the commissioner to any person who has a minimum of forty-five (45) working days' experience within a thirty-six (36) month period as a trainee miner and demonstrated competence as a miner.
- (6) All examinations for the certification of a miner shall be of a practical nature and shall determine the competency and qualification of the applicant to engage in the mining of coal with reasonable safety to himself and his fellow employees. The examination shall be given orally if the miner is unable to read or comprehend a written examination.
- (7) Examinations shall be held in any district office during regular business hours.
- (8) If the commissioner or his authorized representative finds that an applicant is not qualified and competent, he shall notify the applicant not more than ten (10) days after the date of examination.
- (9) Any applicant aggrieved by an action of the commissioner or his authorized representative in failing or refusing to issue a certificate of qualification and competency shall, within ten (10) days of notice of the action complained of, appeal to the commissioner who shall either affirm the action or issue the certificate to the applicant.
- (10) If the applicant is aggrieved by the action of the commissioner, he may appeal to the **commission**~~board~~ which shall hold a hearing on the matter in accordance with KRS Chapter 13B.
- (11) The applicant may appeal from the final order of the **commission**~~board~~ by filing in the **Franklin** Circuit Court ~~in the judicial circuit in which he resides~~ a petition for appeal in accordance with KRS Chapter 13B.

Section 9. 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 eight (8) hours of annual retraining and reeducation for all certified persons.
- (2) 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 eight (8) hours of retraining and reeducation.
- (3) Newly-hired experienced miner training shall satisfy the miner's annual retraining requirement if a time lapse occurs between the miner's last training anniversary date and the next scheduled training anniversary date for the mine where he is newly employed, if the miner has complied with the annual retraining requirements within the last twelve (12) months from the date of his newly hired experienced miner training.
- (4) Retraining and reeducation sessions shall be conducted at times and in numbers to reasonably assure each certified miner an opportunity to attend.

- (5) The licensee shall pay all certified miners their regular wages and benefits while they receive training required by the department.
- (6) Willful failure of a working miner to complete annual retraining and reeducation requirements shall constitute grounds for revocation, suspension, or probation of his certificate.
- (7) If the department discovers a miner working without proper training or the licensee cannot provide proof of training, the miner shall be withdrawn from the mine and the licensee shall pay the miner his regular wages until the training is administered and properly documented.
- (8) When employment is terminated, the licensee shall provide the employee a copy of his training records, upon request. If the employee does not request his training records immediately, the licensee shall, within fifteen (15) days, provide the employee with those training records.
- (9) The board may, upon its own motion or whenever requested to do so by the commissioner, deem applicable certificates issued by other states to be proof of training and education equal to the requirements of KRS 351.102 or deem training provided by appropriate federal agencies to be adequate to meet training and education requirements established by the board, if the training and education meet the minimum requirements of this chapter.
- (10) The commissioner may promulgate reasonable 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.
- (11) The commissioner shall keep and maintain records of board meetings, activities of the board, and current records on all certified miners, all of which shall be maintained by computer for ready access.
- (12) The commissioner is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education, and other qualified persons available to him in implementing the program of instruction and examination.
- (13) The commissioner may make recommendations~~[or supply information]~~ 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.
- (14) All training and education required by this chapter may be conducted in classrooms, on the job, or in simulated mines.

Section 10. KRS 351.160 is amended to read as follows:

- (1) The commissioner of the department shall annually make a report to the Governor ***and the Legislative Research Commission*** of his proceedings during the preceding calendar year. The annual report shall be prepared and printed as soon as possible after the close of the calendar year. The annual report shall cover the complete operation of the mines in this Commonwealth during the preceding calendar year, enumerating all accidents occurring in or about any such mines during that year, and giving such other information as the

commissioner deems useful, and making such suggestions as he deems important as to further legislation on the subject of mining.

- (2) The commissioner shall keep and index a permanent record of all inspections made by himself and of all reports relating to inspection of mines furnished to him by mine inspectors. All such records of the department shall be public records and shall, at all times, be open to the inspection of the public, and shall be laid before the Governor *or the Legislative Research Commission* upon ~~their~~<sup>his</sup> request at any time.
- (3) The department shall furnish certified copies of any such records, when requested to do so, upon payment of such fee as is generally charged by courts of record for certified copies. Such fee shall be paid into the Treasury of the state.

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 subsection (1) or (2) of Section 6 of this Act 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.*
- (2) The ~~chair~~<sup>commissioner</sup> or A majority of the *Mine Safety Review Commission*~~board~~ may convene a meeting of the *commission*~~board~~ 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)~~(2)~~ If the *commission*~~board~~ 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*~~board~~ 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*~~board~~ 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)~~(3)~~ The *commission*~~board~~ 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)~~(4)~~ Within ninety (90) days after hearing, the *commission*~~board~~ 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*~~board~~, 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 Section 6 of this Act, 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)~~(5)~~ An appeal of an order of the *commission*~~[board]~~ shall be filed in the *Franklin* Circuit Court~~[of the county in which the mining operation is located]~~ within thirty (30) days of entry of the order.

Section 12. KRS 352.390 is amended to read as follows:

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

Section 13. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.

- (a) Treasurer.
- 6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
- 7. Superintendent of Public Instruction.
- 8. Auditor of Public Accounts.
- II. Program cabinets headed by appointed officers:
  - 1. Justice Cabinet:
    - (a) Department of State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Offices of the Deputy Secretaries.
    - (g) Office of General Counsel.
    - (h) Division of Kentucky State Medical Examiners Office.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Commission on Correction and Community Service.
  - 2. Education, Arts, and Humanities Cabinet:
    - (a) Department of Education.
      - (1) Kentucky Board of Education.
      - (2) Education Professional Standards Board.
    - (b) Department for Libraries and Archives.
    - (c) Kentucky Arts Council.
    - (d) Kentucky Educational Television.
    - (e) Kentucky Historical Society.
    - (f) Kentucky Teachers' Retirement System Board of Trustees.
    - (g) Kentucky Center for the Arts.
    - (h) Kentucky Craft Marketing Program.
    - (i) Kentucky Commission on the Deaf and Hard of Hearing.
    - (j) Governor's Scholars Program.
    - (k) Governor's School for the Arts.
    - (l) Operations and Development Office.

- (m) Kentucky Heritage Council.
  - (n) Kentucky African-American Heritage Commission.
  - (o) Board of Directors for the Center for School Safety.
3. Natural Resources and Environmental Protection Cabinet:
- (a) Environmental Quality Commission.
  - (b) Kentucky Nature Preserves Commission.
  - (c) Department for Environmental Protection.
  - (d) Department for Natural Resources.
  - (e) Department for Surface Mining Reclamation and Enforcement.
  - (f) Office of Legal Services.
  - (g) Office of Information Services.
  - (h) Office of Inspector General.
4. Transportation Cabinet:
- (a) Department of Highways.
    - 1. Office of Program Planning and Management.
    - 2. Office of Project Development.
    - 3. Office of Construction and Operations.
    - 4. Office of Intermodal Programs.
    - 5. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Fiscal Management.
  - (e) Department of Rural and Municipal Aid.
  - (f) Department of Human Resources Management.
  - (g) Office of the Secretary.
  - (h) Office of General Counsel and Legislative Affairs.
  - (i) Office of Public Affairs.
  - (j) Office of Transportation Delivery.
  - (k) Office of Minority Affairs.
  - (l) Office of Policy and Budget.
5. Cabinet for Economic Development:
- (a) Department of Administration and Support.
  - (b) Department for Business Development.
  - (c) Department of Financial Incentives.

- (d) Department of Community Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
6. Public Protection and Regulation Cabinet:
- (a) Public Service Commission.
  - (b) Department of Insurance.
  - (c) Department of Housing, Buildings and Construction.
  - (d) Department of Financial Institutions.
  - (e) Department of Mines and Minerals.
  - (f) Department of Public Advocacy.
  - (g) Department of Alcoholic Beverage Control.
  - (h) Kentucky Racing Commission.
  - (i) Board of Claims.
  - (j) Crime Victims Compensation Board.
  - (k) Kentucky Board of Tax Appeals.
  - (l) Backside Improvement Commission.
  - (m) Office of Petroleum Storage Tank Environmental Assurance Fund.
  - (n) Department of Charitable Gaming.
  - (o) ***Mine Safety Review Commission.***
7. Cabinet for Families and Children:
- (a) Department for Community Based Services.
  - (b) Department for Disability Determination Services.
  - (c) Public Assistance Appeals Board.
  - (d) Office of the Secretary.
    - (1) Kentucky Commission on Community Volunteerism and Service.
  - (e) Office of the General Counsel.
  - (f) Office of Program Support.
  - (g) Office of Family Resource and Youth Services Centers.
  - (h) Office of Technology Services.
  - (i) Office of the Ombudsman.
  - (j) Office of Performance Enhancement.
8. Cabinet for Health Services.
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.

- (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission on Children with Special Health Care Needs.
  - (e) Office of Certificate of Need.
  - (f) Office of the Secretary.
  - (g) Office of the General Counsel.
  - (h) Office of Program Support.
  - (i) Office of the Inspector General.
  - (j) Office of Aging Services.
9. Finance and Administration Cabinet:
- (a) Office of Legal and Legislative Services.
  - (b) Office of Management and Budget.
  - (c) Office of Financial Management.
  - (d) Office of the Controller.
  - (e) Department for Administration.
  - (f) Department of Facilities Management.
  - (g) State Property and Buildings Commission.
  - (h) Kentucky Pollution Abatement Authority.
  - (i) Kentucky Savings Bond Authority.
  - (j) Deferred Compensation Systems.
  - (k) Office of Equal Employment Opportunity Contract Compliance.
  - (l) Office of Capital Plaza Operations.
  - (m) County Officials Compensation Board.
  - (n) Kentucky Employees Retirement Systems.
  - (o) Commonwealth Credit Union.
  - (p) State Investment Commission.
  - (q) Kentucky Housing Corporation.
  - (r) Governmental Services Center.
  - (s) Kentucky Local Correctional Facilities Construction Authority.
  - (t) Kentucky Turnpike Authority.
  - (u) Historic Properties Advisory Commission.
  - (v) Kentucky Kare Health Insurance Authority.
  - (w) Kentucky Tobacco Settlement Trust Corporation.
10. Labor Cabinet:
- (a) Department of Workplace Standards.

- (b) Department of Workers' Claims.
  - (c) Kentucky Labor-Management Advisory Council.
  - (d) Occupational Safety and Health Standards Board.
  - (e) Prevailing Wage Review Board.
  - (f) Workers' Compensation Board.
  - (g) Kentucky Employees Insurance Association.
  - (h) Apprenticeship and Training Council.
  - (i) State Labor Relations Board.
  - (j) Kentucky Occupational Safety and Health Review Commission.
  - (k) Office of Administrative Services.
  - (l) Office of Labor-Management Relations and Mediation.
  - (m) Office of General Counsel.
  - (n) Workers' Compensation Funding Commission.
  - (o) Employers Mutual Insurance Authority.
11. Revenue Cabinet:
- (a) Department of Property Valuation.
  - (b) Department of Tax Administration.
  - (c) Office of Financial and Administrative Services.
  - (d) Department of Law.
  - (e) Department of Information Technology.
  - (f) Office of Taxpayer Ombudsman.
12. Tourism Development Cabinet:
- (a) Department of Travel.
  - (b) Department of Parks.
  - (c) Department of Fish and Wildlife Resources.
  - (d) Kentucky Horse Park Commission.
  - (e) State Fair Board.
  - (f) Office of Administrative Services.
  - (g) Office of General Counsel.
13. Cabinet for Workforce Development:
- (a) Department for Adult Education and Literacy.
  - (b) Department for Technical Education.
  - (c) Department of Vocational Rehabilitation.
  - (d) Department for the Blind.

- (e) Department for Employment Services.
  - (f) State Board for Adult and Technical Education.
  - (g) The State Board for Proprietary Education.
  - (h) The Foundation for Adult Education.
  - (i) Office of Training and Reemployment.
  - (j) Office of General Counsel.
  - (k) Office of Communication Services.
  - (l) Office of Development and Industry Relations.
  - (m) Office of Workforce Analysis and Research.
  - (n) Office for Administrative Services.
  - (o) Office for Policy and Budget.
  - (p) Office of Personnel Services.
  - (q) Unemployment Insurance Commission.
14. Personnel Cabinet:
- (a) Office of Administrative and Legal Services.
  - (b) Department for Personnel Administration.
  - (c) Department for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Kentucky Kare.
  - (f) Division of Performance Management.
  - (g) Division of Employee Records.
  - (h) Division of Staffing Services.
  - (i) Division of Classification and Compensation.
  - (j) Division of Employee Benefits.
  - (k) Division of Communications and Recognition.
- III. Other departments headed by appointed officers:
- 1. Department of Military Affairs.
  - 2. Council on Postsecondary Education.
  - 3. Department for Local Government.
  - 4. Kentucky Commission on Human Rights.
  - 5. Kentucky Commission on Women.
  - 6. Department of Veterans' Affairs.
  - 7. Kentucky Commission on Military Affairs.
  - 8. The Governor's Office for Technology.

9. Commission on Small Business Advocacy.

Section 14. Sections 1 to 13 of this Act shall supersede Executive Order 2001-83, dated January 19, 2001.

Section 15. Whereas problems associated with imposition of sanctions for violations of mine safety laws must be addressed expeditiously in order to further protect the life and safety of miners in Kentucky, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Approved March 20, 2001**