

**Senate Bill No. 554**

(By Senators Fitzsimmons and Yost)

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[Introduced February 12, 2014; referred to the Committee on  
Labor; and then to the Committee on the Judiciary.]

**FISCAL  
NOTE**

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §21-16-1, §21-16-2,  
12 §21-16-3, §21-16-4, §21-16-5, §21-16-6 and §21-16-7, all  
13 relating to protecting the health and safety of employees  
14 against the effects of silicosis and other respiratory  
15 diseases which may result from the dry cutting of masonry  
16 units; prohibiting dry cutting of masonry units under certain  
17 circumstances; providing the Commissioner of Labor enforcement  
18 authority; and allowing imposition of civil penalties on  
19 violators, including procedures for imposition, appeal and  
20 collection.

21 *Be it enacted by the Legislature of West Virginia:*

22 That the Code of West Virginia, 1931, as amended, be amended  
23 by adding thereto a new article, designated §21-16-1, §21-16-2,  
24 §21-16-3, §21-16-4, §21-16-5, §21-16-6 and §21-16-7, all to read as

1 follows:

2 **ARTICLE 16. DRY CUTTING AND GRINDING OF MASONRY.**

3 **§21-16-1. Purpose.**

4       The purpose of this article is to protect the health and  
5 safety of employees against the effects of silicosis and other  
6 respiratory diseases which may result from the dry cutting of  
7 masonry units by means of hand-held, gas-powered or electrical,  
8 portable chop saws or skill saws and the dry grinding of masonry  
9 materials.

10 **§21-16-2. Definitions.**

11       For purposes of this article:

12       "Commissioner" means the Commissioner of the West Virginia  
13 Division of Labor or his or her designee;

14       "Division" means the West Virginia Division of Labor.

15       "Employee" or "worker" means any person suffered or permitted  
16 to work by an employer, having a specific regard to any activity  
17 related to the erection, construction, alteration, demolition,  
18 repair or maintenance of buildings, structures, bridges, highways,  
19 roadways, dams, tunnels, sewers, underground buildings or  
20 structures, pipelines or ducts and all other construction projects  
21 or facilities.

22       "Employer" means any corporation, partnership, individual  
23 proprietorship, joint venture, firm, company or other similar legal  
24 entity engaged in any activity related to the erection,

1 construction, alteration, demolition, repair or maintenance of  
2 buildings, structures, bridges, highways, roadways, dams, tunnels,  
3 sewers, underground buildings or structures, pipelines or ducts and  
4 all other construction projects or facilities.

5 "Establishment" means a single physical location where  
6 business is conducted or where services or operations are  
7 performed, such as a regional office, area office, installation or  
8 facility.

9 "Field site" means a physical location where an employer  
10 performs services or operations, but does not maintain an office or  
11 facility.

12 "First aid" means any one-time treatment and any follow-up  
13 visit for the purpose of observation of minor wounds, scratches,  
14 cuts, burns or splinters, which do not ordinarily require medical  
15 treatment. A onetime treatment and follow-up visit for the purpose  
16 of observation is considered first aid even though provided by a  
17 physician or registered professional personnel.

18 "Full face respirator" means a negative pressure respirator or  
19 a powered air-purifying respirator with a tight fitting full  
20 facepiece.

21 "High efficiency particulate air filter" means a filter that  
22 is at least ninety-nine and ninety seven hundredths percent  
23 efficient in removing monodisperse particles of three tenths  
24 micrometers in diameter. The equivalent National Institute for

1 Occupational Safety and Health 42 C.F.R. §84 particulate filters  
2 are the N100, R100, and P100 filters.

3 "Inspection" means any on-site visit of an employer's  
4 establishment or field site to ensure that employers are in  
5 compliance with this chapter.

6 "Medical treatment" includes treatment administered by a  
7 physician or by registered professional personnel under the  
8 standing orders of a physician. Medical treatment does not include  
9 first aid treatment even though provided by a physician or  
10 registered professional person.

11 "Negative pressure respirator" means a respirator in which the  
12 air pressure inside the facepiece is negative during inhalation  
13 with respect to the ambient air pressure outside the respirator.

14 "Other than serious" means a hazard, violation or condition  
15 which cannot reasonably be predicted to cause death or serious  
16 physical harm to exposed employees but does have a direct and  
17 immediate impact on an employee's safety or health.

18 "Powered air-purifying respirator" means an air-purifying  
19 respirator that uses a blower to force the ambient air through  
20 air-purifying elements to the inlet covering.

21 "Serious injury" or "serious physical harm" means any  
22 occupational injury or illness which requires treatment beyond  
23 first aid.

24 "Tight-fitting" means a respiratory inlet covering that forms

1 a complete seal with the face.

2 **§21-16-3. Cutting and grinding of masonry.**

3 (a) Employers may not engage in the dry cutting of masonry  
4 units by means of hand-held, gas-powered or electrical, portable  
5 chop saws or skill saws or the dry grinding of masonry materials,  
6 unless the employer has first determined in a manner consistent  
7 with 29 U.S.C. §651 et seq. (the Federal Occupational Safety and  
8 Health Act of 1970), that the use of water in the cutting or  
9 grinding is not feasible.

10 (b) Where the employer has determined under subsection (a) of  
11 this section that the use of water in the cutting or grinding is  
12 not feasible, the employer may engage in the dry cutting of masonry  
13 units by means of hand-held, gas-powered or electrical, portable  
14 chop saws or skill saws or the dry grinding of masonry materials,  
15 only where the employer:

16 (1) Uses engineering and work practice controls to control the  
17 dust, such as a vacuum with a high efficiency particulate air  
18 filter, or other dust control systems; and

19 (2) Provides workers with full face respirators as part of a  
20 complete respiratory program, which is implemented by the employer  
21 consistent with the requirements of 29 C.F.R. §1910.134, and  
22 include, but is not limited to, training, the proper selection of  
23 respiratory cartridges and fit-testing in order to ensure that the  
24 workers are able to wear the respirators.

1 **§21-16-4. Right to enter and inspect.**

2 (a) The commissioner shall enter without delay and at  
3 reasonable times any establishment or field site of any employer  
4 where work is performed by an employee if there is reason to  
5 believe that a violation of this article has occurred or is  
6 occurring and to conduct investigations the commissioner considers  
7 to be necessary.

8 (b) Employers shall permit the commissioner to inspect within  
9 the establishment or field site all pertinent conditions,  
10 structures, machines, apparatus, devices, equipment and materials.

11 (c) Employers shall permit the commissioner to question  
12 privately any employee or managerial executive and review all  
13 records relating to the requirements in this article.

14 **§21-16-5. Orders to cease.**

15 (a) If, upon inspection of an establishment or field site, the  
16 commissioner discovers a condition which exists in violation of the  
17 provisions of this article, he or she is authorized to order the  
18 violation to cease.

19 (b) Orders to cease shall:

20 (1) State with specificity the nature of the cited violation  
21 or violations of this article; and

22 (2) Provide a reasonable, specified time within which the  
23 required remedial action must be taken by the person responsible,  
24 if applicable.

1 (c) If the commissioner's order is not obeyed, the  
2 commissioner may apply for an injunction in the Circuit Court of  
3 Kanawha County to compel compliance.

4 (d) This article does not prevent the commissioner from  
5 prosecuting any violation of the article, notwithstanding that the  
6 violation is corrected in accordance with the order.

7 **§21-16-6. Penalties.**

8 (a) Any violations of any of the provisions of this article  
9 are subject to a civil penalty of up to \$500.

10 (b) If a violation is of a continuing nature, each day during  
11 which the violation continues is an additional and distinct  
12 offense.

13 (c) Penalties imposed under this section may be recovered with  
14 costs in a civil action commenced by the commissioner.

15 (d) The commissioner may compromise and settle any claim for  
16 penalties under this section in an amount the commissioner  
17 considers appropriate and equitable under all of the circumstances,  
18 including, but not limited to:

19 (1) The past record of compliance with the provisions of the  
20 article by the person cited;

21 (2) The degree of cooperation afforded to the commissioner's  
22 representatives by the person cited in securing compliance with the  
23 provisions of the article;

24 (3) Whether the violation was willful in nature; and

1 (4) Whether the violation resulted in injury or bodily harm.

2 **§21-16-7. Hearings.**

3 (a) No penalty may be imposed under this article unless the  
4 alleged violator is provided with:

5 (1) Notification of the violation;

6 (2) Notification of the amount of the penalty to be imposed;

7 and

8 (3) An opportunity to request a formal hearing.

9 (b) A request for a formal hearing must be made in writing and  
10 received by the commissioner within twenty-one calendar days  
11 following the employer's receipt of the notice of violation.

12 (c) All hearings shall be conducted in compliance with article  
13 five, chapter twenty-nine-a of this code.

14 (d) If a hearing is not requested within the twenty-one-day  
15 time limit, the notice of violation becomes a final order of the  
16 commissioner.

17 (e) The alleged violator may request the initiation of a  
18 settlement conference at the time that the request for a formal  
19 hearing is made. If a settlement conference is requested, or the  
20 division determines that a settlement conference would be useful,  
21 the settlement conference shall be scheduled and conducted by the  
22 division within thirty days of the date upon which the division  
23 receives the request for a formal hearing.

24 (f) If a settlement is not agreed upon, or no settlement



1 conference is scheduled, a request for a formal hearing shall be  
2 transmitted to the commissioner.

3 (g) Payment of the penalty is due when a final agency  
4 determination is issued or when a notification of violation becomes  
5 a final decision as the result of no appeal having been filed by  
6 the violator.

7 (h) All payments shall be made payable to the division in the  
8 form of a certified check or money order or other form the  
9 commissioner considers suitable.

NOTE: The purpose of this bill is to provide protection for the health and safety of employees against the effects of silicosis and other respiratory diseases which may result from the dry cutting of masonry units. It would prohibit dry cutting of masonry units under certain circumstances, provide the Commissioner of Labor enforcement authority, allow the imposition of civil penalties on violators and includes procedures for imposition, appeal and collection.

This article is new; therefore, strike-throughs and underscoring have been omitted.