

SB 179 S

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*REGULAR SESSION, 2002*



**ENROLLED**

*COMMITTEE SUBSTITUTE FOR*

**SENATE BILL NO. 179**

*(By Senator Tomblin, Mr. President, and Sprouse  
By Request of the Executive)*



**PASSED March 9, 2002**

**In Effect from Passage**

FILED

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 179**

(SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE, *original sponsors*)

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[Passed March 9, 2002; in effect from passage.]

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AN ACT to amend and reenact section twenty-one, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to miners' health and safety; providing additional factor for determining amount of civil penalty for violation of rule or statute; promulgation of legislative and emergency rules; providing circumstances under which special assessment civil penalty may be imposed in lieu of civil penalty; providing amount of special assessment civil penalty that may be imposed; establishing special revenue fund for receipt of penalty moneys; and providing purposes for expenditures from fund.

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

That section twenty-one, article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;  
ADMINISTRATION; ENFORCEMENT.**

**§22A-1-21. Penalties.**

1 (a)(1) Any operator of a coal mine in which a violation  
2 occurs of any health or safety rule or who violates any  
3 other provision of this chapter shall be assessed a civil  
4 penalty by the director under subdivision (3) of this  
5 subsection, which shall be not more than three thousand  
6 dollars, for each violation, unless the director determines  
7 that it is appropriate to impose a special assessment for  
8 said violation, pursuant to the provisions of subdivision  
9 (2), subsection (b) of this section. Each violation consti-  
10 tutes a separate offense. In determining the amount of the  
11 penalty, the director shall consider the operator's history  
12 of previous violations, whether the operator was negligent,  
13 the appropriateness of the penalty to the size of the  
14 business of the operator charged, the gravity of the  
15 violation and the demonstrated good faith of the operator  
16 charged in attempting to achieve rapid compliance after  
17 notification of a violation. Not later than the first day of  
18 June, two thousand two, the director shall promulgate as  
19 a rule the procedure for assessing such civil penalties. This  
20 rule will be in effect upon filing, without regard to the  
21 provisions of chapter twenty-nine-a of this code.

22 (2) Any revisions to rules relating to the assessment of  
23 civil penalties shall be proposed for promulgation as  
24 legislative rules in accordance with the provisions of  
25 article three, chapter twenty-nine-a of this code.

26 (3) Any miner who knowingly violates any health or  
27 safety provision of this chapter or health or safety rule

28 promulgated pursuant to this chapter is subject to a civil  
29 penalty assessed by the director under subdivision (4) of  
30 this subsection which shall not be more than two hundred  
31 fifty dollars for each occurrence of the violation.

32 (4) A civil penalty under subdivision one or two, subsec-  
33 tion (a) of this section or subdivision one or two, subsec-  
34 tion (b) of this section shall be assessed by the director  
35 only after the person charged with a violation under this  
36 chapter or rule promulgated pursuant to this chapter has  
37 been given an opportunity for a public hearing and the  
38 director has determined, by a decision incorporating the  
39 director's findings of fact in the decision, that a violation  
40 did occur and the amount of the penalty which is war-  
41 ranted and incorporating, when appropriate, an order in  
42 the decision requiring that the penalty be paid. Any  
43 hearing under this section shall be of record.

44 (5) If the person against whom a civil penalty is assessed  
45 fails to pay the penalty within the time prescribed in the  
46 order, the director may file a petition for enforcement of  
47 the order in any appropriate circuit court. The petition  
48 shall designate the person against whom the order is  
49 sought to be enforced as the respondent. A copy of the  
50 petition shall immediately be sent by certified mail, return  
51 receipt requested, to the respondent and to the representa-  
52 tive of the miners at the affected mine or the operator, as  
53 the case may be. The director shall certify and file in the  
54 court the record upon which the order sought to be  
55 enforced was issued. The court has jurisdiction to enter a  
56 judgment enforcing, modifying and enforcing as modified,  
57 or setting aside, in whole or in part, the order and decision  
58 of the director or it may remand the proceedings to the  
59 director for any further action it may direct. The court  
60 shall consider and determine de novo all relevant issues,  
61 except issues of fact which were or could have been  
62 litigated in review proceedings before a circuit court under  
63 section twenty of this article and, upon the request of the  
64 respondent, those issues of fact which are in dispute shall

65 be submitted to a jury. On the basis of the jury's findings  
66 the court shall determine the amount of the penalty to be  
67 imposed. Subject to the direction and control of the  
68 attorney general, attorneys appointed for the director may  
69 appear for and represent the director in any action to  
70 enforce an order assessing civil penalties under this  
71 subdivision.

72 (b) (1) Any operator who knowingly violates a health or  
73 safety provision of this chapter or health or safety rule  
74 promulgated pursuant to this chapter, or knowingly  
75 violates or fails or refuses to comply with any order issued  
76 under section fifteen of this article, or any order incorpo-  
77 rated in a final decision issued under this article, except an  
78 order incorporated in a decision under subsection (a) of  
79 this section or subsection (b), section twenty-two of this  
80 article, shall be assessed a civil penalty by the director  
81 under subdivision (5), subsection (a) of this section of not  
82 more than five thousand dollars and for a second or  
83 subsequent violation assessed a civil penalty of not more  
84 than ten thousand dollars, unless the director determines  
85 that it is appropriate to impose a special assessment for  
86 said violation, pursuant to the provisions of subdivision (2)  
87 of this subsection.

88 (2) In lieu of imposing a civil penalty pursuant to the  
89 provisions of subsection (a) of this section or subdivision  
90 (1) of this subsection, the director may impose a special  
91 assessment if an operator violates a health or safety  
92 provision of this chapter or health or safety rule promul-  
93 gated pursuant to this chapter and the violation is of  
94 serious nature and involves one or more of the following by  
95 the operator:

- 96 (A) Violations involving fatalities and serious injuries;
- 97 (B) Failure or refusal to comply with any order issued  
98 under section fifteen of this article;
- 99 (C) Operation of a mine in the face of a closure order;

100 (D) Violations involving an imminent danger;

101 (E) Violations involving an extraordinarily high degree  
102 of negligence or gravity or other unique aggravating  
103 circumstances; or

104 (F) A discrimination violation under section twenty-two  
105 of this chapter.

106 In situations in which the director determines that there  
107 are factors present which would make it appropriate to  
108 impose a special assessment, the director shall assess a  
109 civil penalty of at least five thousand dollars and of not  
110 more than ten thousand dollars.

111 (c) Whenever a corporate operator knowingly violates a  
112 health or safety provision of this chapter or health or  
113 safety rules promulgated pursuant to this chapter, or  
114 knowingly violates or fails or refuses to comply with any  
115 order issued under this law or any order incorporated in a  
116 final decision issued under this law, except an order  
117 incorporated in a decision issued under subsection (a) of  
118 this section or subsection (b), section twenty-two of this  
119 article, any director, officer or agent of the corporation  
120 who knowingly authorized, ordered or carried out the  
121 violation, failure or refusal is subject to the same civil  
122 penalties that may be imposed upon a person under  
123 subsections (a) and (b) of this section.

124 (d) Whoever knowingly makes any false statement,  
125 representation or certification in any application, record,  
126 report, plan or other document filed or required to be  
127 maintained pursuant to this law or any order or decision  
128 issued under this law is guilty of a misdemeanor and, upon  
129 conviction thereof, shall be fined not more than five  
130 thousand dollars or imprisoned in the county jail not more  
131 than six months, or both fined and imprisoned. The  
132 conviction of any person under this subsection shall result  
133 in the revocation of any certifications held by the person  
134 under this chapter which certified or authorized the person

135 to direct other persons in coal mining by operation of law  
136 and bars that person from being issued any license under  
137 this chapter, except a miner's certification, for a period of  
138 not less than one year or for a longer period as may be  
139 determined by the director.

140 (e) Whoever willfully distributes, sells, offers for sale,  
141 introduces or delivers in commerce any equipment for use  
142 in a coal mine, including, but not limited to, components  
143 and accessories of the equipment, who willfully misrepres-  
144 sents the equipment as complying with the provisions of  
145 this law, or with any specification or rule of the director  
146 applicable to the equipment and which does not comply  
147 with the law, specification or rule is guilty of a misde-  
148 meanor and, upon conviction thereof, is subject to the  
149 same fine and imprisonment that may be imposed upon a  
150 person under subsection (d) of this section.

151 (f) There is created in the treasury of the state of West  
152 Virginia a special health, safety and training fund. All  
153 civil penalty assessments collected under this section shall  
154 be collected by the director and deposited with the trea-  
155 surer of the state of West Virginia to the credit of the  
156 special health, safety and training fund. The fund shall be  
157 used by the director who is authorized to expend the  
158 moneys in the fund for the administration of this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *26th*  
Day of *March*, 2002.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/19/02

Time 8:05a