

HB 4021

FILED

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OFFICE OF THE  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2008



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4021**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]



Passed March 8, 2008

In Effect April 1, 2008

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## **H. B. 4021**

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed March 8, 2008; in effect April 1, 2008.]

AN ACT to amend and reenact §22A-2-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §22A-2-55 of said code; and to amend and reenact §61-3-12 and §61-3-29 of said code, all relating generally to coal mine health and safety; clarifying currency of rules and policies relating to transportation of miners and supplies; directing the West Virginia Mine Safety Task Force study possible improvements in transportation of miners and supplies in underground coal mines; eliminating requirement that strobe lights be affixed to caches of self-contained self-rescue devices; expanding criminal penalties for theft of certain coal mine equipment; establishing criminal penalties for illegal entry into underground coal mines; creating a criminal penalty for damage or destruction of coal mine equipment and property; and creating a criminal penalty for damage or destruction of coal mine equipment and property when a serious bodily injury results.

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

That §22A-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; §22A-2-55 of said code be amended and reenacted; and that §61-3-12 and §61-3-29 of said code be amended and reenacted, all to read as follows:

**CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.**

**ARTICLE 2. UNDERGROUND MINES.**

**§22A-2-6. Movement of mining equipment.**

1 (a) Mining equipment being transported or trammed  
2 underground, other than ordinary sectional movements, shall  
3 be transported or trammed by qualified personnel under the  
4 supervision of a certified foreman. When equipment is being  
5 transported or trammed, no person shall be permitted to be  
6 inby the equipment in the ventilating split that is passing over  
7 such equipment. To avoid accidental contact with power  
8 lines, face equipment shall be insulated and assemblies  
9 removed, if necessary, so as to provide clearance.

10 (b) The task force shall, upon the effective date of the  
11 amendments to this section made during the two-thousand  
12 eight Regular Session of the West Virginia Legislature,  
13 undertake a study of methods and technologies available  
14 related to transporting miners, mining equipment and  
15 supplies in underground mines.

16 (c) Upon completion of the study directed by the  
17 provisions of subsection (b) of this section, the task force  
18 may present recommendations to the West Virginia Board of  
19 Coal Mine Health and Safety designed to improve the safety  
20 and efficiency of underground mines transportation systems.

21 The board may upon the consideration of any such task force  
22 recommendations, promulgate rules governing the movement  
23 of mining equipment within coal mines in the State of West  
24 Virginia.

25 (d) The current legislative rule 36CSR4, effective the  
26 nineteenth day of July, one thousand nine hundred seventy-  
27 nine, relating to “Rules and Regulations Governing the  
28 Movement of Mining Equipment within Coal Mines in the  
29 State of West Virginia”, is hereby limited and qualified as to  
30 its force and effect and shall only be read to be effective to  
31 the extent provided as follows:

32 To the extent that the rule permits the movement of major  
33 pieces of heavy mining equipment with men inby the  
34 equipment in the ventilating split that is passing over such  
35 equipment, to-wit, Section 4: applying the prohibition only to  
36 “transporting” and only “where energized D.C. powered  
37 trolley or feeder wires are present”; Sections 5.1, 9.1, 10.1,  
38 12.1 and 13.1 to the extent that they involve transporting or  
39 tramming such equipment with men inby; Sections 6.1 and  
40 6.2 only to the extent that such equipment is not designed by  
41 the manufacturer to operate on track; Section 7.1 only to the  
42 extent that such equipment exceeds the length or width of the  
43 mine car; and Section 11.1 only to the extent that such  
44 equipment in said Section exceeds the length, width or cargo  
45 carrying capacity of the unit being used to transport such  
46 equipment. Construction work and rehabilitation work are  
47 not prohibited except to the extent that such would involve  
48 the movement of major pieces of heavy mining equipment  
49 into the precise area where such work is to be performed,  
50 with men inby.

51 (e) The provisions of subsection (d) of this section, as  
52 enforced upon the first day of February, two thousand eight,  
53 shall remain in full force and effect until modified by any  
54 rules promulgated pursuant to subsection (c) of this section.

**§22A-2-55. Protective equipment and clothing.**

1 (a) Welders and helpers shall use proper shields or  
2 goggles to protect their eyes. All employees shall have  
3 approved goggles or shields and use the same where there is  
4 a hazard from flying particles or other eye hazards.

5 (b) Employees engaged in haulage operations and all  
6 other persons employed around moving equipment on the  
7 surface and underground shall wear snug-fitting clothing.

8 (c) Protective gloves shall be worn when material which  
9 may injure hands is handled, but gloves with gauntleted cuffs  
10 shall not be worn around moving equipment.

11 (d) Safety hats and safety-toed shoes shall be worn by all  
12 persons while in or around a mine: *Provided*, That  
13 metatarsal guards are not required to be worn by persons  
14 when working in those areas of underground mine workings  
15 which average less than forty-eight inches in height as  
16 measured from the floor to the roof of the underground mine  
17 workings.

18 (e) Approved eye protection shall be worn by all persons  
19 while being transported in open-type man trips.

20 (f)(1) A self-contained self-rescue device approved by the  
21 director shall be worn by each person underground or kept  
22 within his immediate reach and the device shall be provided  
23 by the operator. The self-contained self-rescue device shall  
24 be adequate to protect a miner for one hour or longer. Each  
25 operator shall train each miner in the use of such device and  
26 refresher training courses for all underground employees  
27 shall be held during each calendar year.

28 (2) In addition to the requirements of subdivision (1) of  
29 this subsection, the operator shall also provide caches of  
30 additional self-contained self-rescue devices throughout the  
31 mine in accordance with a plan approved by the director.  
32 Each additional self-contained self-rescue device shall be  
33 adequate to protect a miner for one hour or longer. The total  
34 number of additional self-contained self-rescue devices, the  
35 total number of storage caches and the placement of each  
36 cache throughout the mine shall be established by rule  
37 pursuant to subsection (i) of this section. A luminescent sign  
38 with the words "SELF-CONTAINED SELF-RESCUER" or  
39 "SELF-CONTAINED SELF-RESCUERS" shall be  
40 conspicuously posted at each cache and luminescent direction  
41 signs shall be posted leading to each cache. Lifeline cords or  
42 other similar device, with reflective material at twenty-five  
43 foot intervals, shall be attached to each cache from the last  
44 open crosscut to the surface. The operator shall conduct  
45 weekly inspections of each cache and each lifeline cord or  
46 other similar device to ensure operability.

47 (3) Any person that, without the authorization of the  
48 operator or the director, knowingly removes or attempts to  
49 remove any self-contained self-rescue device or lifeline cord  
50 from the mine or mine site with the intent to permanently  
51 deprive the operator of the device or lifeline cord or  
52 knowingly tampers with or attempts to tamper with such  
53 device or lifeline cord shall be guilty of a felony and, upon  
54 conviction thereof, shall be imprisoned in a state correctional  
55 facility for not less than one year nor more than ten years or  
56 fined not less than ten thousand dollars nor more than one  
57 hundred thousand dollars, or both.

58 (g)(1) A wireless emergency communication device  
59 approved by the director and provided by the operator shall  
60 be worn by each person underground. The wireless  
61 emergency communication device shall, at a minimum, be

62 capable of receiving emergency communications from the  
63 surface at any location throughout the mine. Each operator  
64 shall train each miner in the use of the device and provide  
65 refresher training courses for all underground employees  
66 during each calendar year. The operator shall install in or  
67 around the mine any and all equipment necessary to transmit  
68 emergency communications from the surface to each wireless  
69 emergency communication device at any location throughout  
70 the mine.

71 (2) Any person that, without the authorization of the  
72 operator or the director, knowingly removes or attempts to  
73 remove any wireless emergency communication device or  
74 related equipment, from the mine or mine site with the intent  
75 to permanently deprive the operator of the device or  
76 equipment or knowingly tampers with or attempts to tamper  
77 with the device or equipment shall be guilty of a felony and,  
78 upon conviction thereof, shall be imprisoned in a state  
79 correctional facility for not less than one year nor more than  
80 ten years or fined not less than ten thousand dollars nor more  
81 than one hundred thousand dollars, or both.

82 (h)(1) A wireless tracking device approved by the  
83 director and provided by the operator shall be worn by each  
84 person underground. In the event of an accident or other  
85 emergency, the tracking device shall, at a minimum, be  
86 capable of providing real-time monitoring of the physical  
87 location of each person underground: *Provided*, That no  
88 person shall discharge or discriminate against any miner  
89 based on information gathered by a wireless tracking device  
90 during nonemergency monitoring. Each operator shall train  
91 each miner in the use of the device and provide refresher  
92 training courses for all underground employees during each  
93 calendar year. The operator shall install in or around the  
94 mine all equipment necessary to provide real-time emergency  
95 monitoring of the physical location of each person  
96 underground.

97 (2) Any person that, without the authorization of the  
98 operator or the director, knowingly removes or attempts to  
99 remove any wireless tracking device or related equipment,  
100 approved by the director, from a mine or mine site with the  
101 intent to permanently deprive the operator of the device or  
102 equipment or knowingly tampers with or attempts to tamper  
103 with the device or equipment shall be guilty of a felony and,  
104 upon conviction thereof, shall be imprisoned in a state  
105 correctional facility for not less than one year nor more than  
106 ten years or fined not less than ten thousand dollars nor more  
107 than one hundred thousand dollars, or both.

108 (i) The director may promulgate emergency and  
109 legislative rules to implement and enforce this section  
110 pursuant to the provisions of article three, chapter twenty-  
111 nine-a of this code.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 3. CRIMES AGAINST PROPERTY.**

#### **§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.**

1 If any person shall, at any time, break and enter, or shall  
2 enter without breaking, any office, shop, underground coal  
3 mine, storehouse, warehouse, banking house, or any house or  
4 building, other than a dwelling house or outhouse adjoining  
5 thereto or occupied therewith, or any railroad or traction car,  
6 propelled by steam, electricity or otherwise, or any steamboat  
7 or other boat or vessel, within the jurisdiction of any county  
8 in this state, with intent to commit a felony or any larceny, he  
9 or she shall be deemed guilty of a felony, and, upon  
10 conviction, shall be confined in a state correctional facility  
11 not less than one nor more than ten years. And if any person



12 shall, at any time, break and enter, or shall enter without  
13 breaking, any automobile, motorcar or bus, with like intent,  
14 within the jurisdiction of any county in this state, he shall be  
15 guilty of a misdemeanor, and, upon conviction, shall be  
16 confined in jail not less than two nor more than twelve  
17 months and be fined not exceeding one hundred dollars.

18 An indictment for burglary may contain one or more  
19 counts for breaking and entering, or for entering without  
20 breaking, the house or building mentioned in the count for  
21 burglary under the provisions of this and the preceding  
22 section.

**§61-3-29. Damage or destruction of railroad or public utility  
company property, or real or personal property  
used for producing, generating, transmitting,  
distributing, treating or collecting electricity,  
natural gas, coal, water, wastewater, stormwater,  
telecommunications or cable service; penalties;  
restitution.**

1 (a) Any person who knowingly and willfully damages or  
2 destroys any real or personal property owned by a railroad  
3 company, or public utility company, or any real or personal  
4 property used for producing, generating, transmitting,  
5 distributing, treating or collecting electricity, natural gas,  
6 coal, water, wastewater, stormwater, telecommunications or  
7 cable service, is guilty of a misdemeanor and, upon  
8 conviction thereof, shall be fined not more than two thousand  
9 dollars, or confined in jail not more than one year, or both.

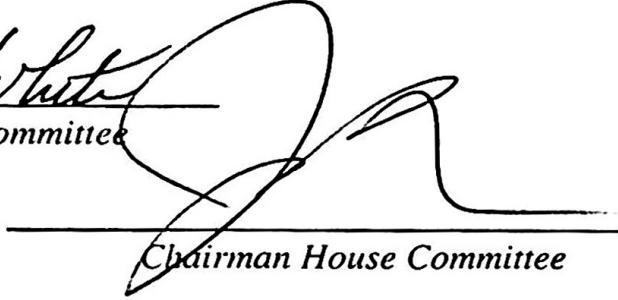
10 (b) Any person who knowingly and willfully: (1)  
11 damages or destroys any real or personal property owned by  
12 a railroad company, or public utility company, or any real or  
13 personal property used for producing, generating,  
14 transmitting, distributing, treating or collecting electricity,

15 natural gas, coal, water, wastewater, stormwater,  
16 telecommunications or cable service; and, (2) causes serious  
17 bodily injury to another is guilty of a felony and, upon  
18 conviction thereof, shall be fined not less than five thousand  
19 dollars nor more than fifty thousand dollars, or confined in a  
20 state correctional facility not less than one nor more than five  
21 years, or both.

22 (c) Nothing in this section may be construed to limit or  
23 restrict the ability of an entity referred to in subsection (a) or  
24 (b) of this section or a property owner or other person who  
25 has been damaged or injured as a result of a violation of this  
26 section from seeking recovery for damages arising from  
27 violation of this section.


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

  
Chairman Senate Committee


  
Chairman House Committee

Originating in the House.

In effect April 1, 2008.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 27<sup>th</sup>  
day of March, 2008.

  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2008

Time 2:10 pm