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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1848

Session of  
1987

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INTRODUCED BY DALEY, KASUNIC, CORRIGAN, PETRARCA, BLAUM,  
WOZNIAK, DeLUCA, JAROLIN, STEIGHNER, F. TAYLOR, SALOOM,  
DeWEESE, STUBAN, BALDWIN, SHOWERS, LUCYK, McCALL AND STABACK,  
OCTOBER 19, 1987

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REFERRED TO COMMITTEE ON MINES AND ENERGY MANAGEMENT,  
OCTOBER 19, 1987

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AN ACT

1 Amending the act of July 17, 1961 (P.L.659, No.339), entitled  
2 "An act relating to bituminous coal mines; amending,  
3 revising, consolidating and changing the laws relating  
4 thereto; providing for the health and safety of persons  
5 employed in and about the bituminous coal mines of  
6 Pennsylvania and for the protection and preservation of  
7 property connected therewith; prescribing powers and duties  
8 in connection therewith; prescribing penalties; and repealing  
9 existing laws," further providing for violations, for civil  
10 and criminal penalties and for judicial review; and  
11 establishing a board of appeals.

12 The General Assembly finds that the primary concern of the  
13 coal mining industry must be the health and safety of its most  
14 precious resource, the miner; and that coal mining is highly  
15 specialized, technical and complex and requires frequent review,  
16 additions, refinement and improvement of safety standards in  
17 order to protect the health and safety of miners.

18 The General Assembly of the Commonwealth of Pennsylvania  
19 hereby enacts as follows:

20 Section 1. Section 119 of the act of July 17, 1961 (P.L.659,  
21 No.339), known as the Pennsylvania Bituminous Coal Mine Act, is

1 amended to read:

2 [Section 119. Inspections; Reports of Inspections.--(a) At  
3 the conclusion of the examination of a mine, the mine inspector  
4 shall discuss with representatives of management, and the  
5 employes, his findings and recommendations. Where it is not  
6 feasible to hold a joint conference, separate conferences shall  
7 be held. After the conferences have been held, the mine  
8 inspector shall, as soon as possible, prepare and forward the  
9 original report to the operator, or his representative. The  
10 manner and form of the report shall be as prescribed by the  
11 secretary. Such operator or his representative shall post said  
12 report in the office of the mine or in some other conspicuous  
13 place where it shall remain for one year, open to examination by  
14 any person employed in or about the said mine. The report shall  
15 show the date of the inspection, the number of cubic feet of air  
16 in circulation, where the measurement of the air was made, and  
17 the quantity of air as measured at the last cut-through in each  
18 split, together with the number of persons employed in each  
19 split, and also at any other place requested by the secretary.  
20 The report shall contain such other information as the secretary  
21 may deem necessary.

22 (b) It shall be the duty of the electrical inspector after  
23 completing his examination of a mine to prepare a report  
24 describing his findings in said mine in a manner and form  
25 designated by the secretary. The original report shall be  
26 forwarded to the operator or his representative whose duty it  
27 shall be to post it in some conspicuous place where it shall  
28 remain for one year, open to examination by any person employed  
29 in or about the mine. The report shall show the date of  
30 inspection, a list of equipment, and any other information that

1 the secretary may deem necessary.]

2 Section 2. The act is amended by adding a section to read:

3 Section 119.1. Penalties and Conferences.--(a) At the  
4 conclusion of the inspection of a mine, the mine inspector shall  
5 discuss with representatives of management and representatives  
6 of the miners his findings, notices and orders. Where it is not  
7 feasible to hold a joint conference, separate conferences shall  
8 be held.

9 (b) (1) Any operator of a coal mine in which a violation of  
10 any health and safety rule or regulation occurs or who violates  
11 any other provision of this law shall be assessed a civil  
12 penalty by the department, which penalty shall be not more than  
13 ten thousand dollars (\$10,000) nor less than three hundred  
14 dollars (\$300), for each such violation. Each such violation  
15 shall constitute a separate offense. In determining the amount  
16 of the penalty, the department shall consider the operator's  
17 history of previous violations, the appropriateness of such  
18 penalty to the size of the business of the operator charged, the  
19 gravity of the violation and the demonstrated good faith of the  
20 operator charged in attempting to achieve rapid compliance after  
21 notification of a violation.

22 (2) Any operator who knowingly violates a health or safety  
23 rule or regulation or a provision of law, or knowingly violates  
24 or fails or refuses to comply with any order issued under this  
25 article, or any order incorporated in a final decision issued  
26 under this article, except an order incorporated in a decision  
27 under subsection (a) of this section, shall be assessed a civil  
28 penalty by the department under clause (1) of this subsection of  
29 not more than twenty thousand dollars (\$20,000) nor less than  
30 one thousand dollars (\$1,000), and for a second or subsequent

violation shall be assessed a civil penalty of not more than  
forty thousand dollars (\$40,000) nor less than two thousand  
dollars (\$2,000).

(3) Any operator who violates any posting requirement under  
this act shall be liable for a civil penalty not exceeding five  
thousand dollars (\$5,000) for each violation.

(4) Any miner who willfully violates the provisions of this  
act regarding smoking or the carrying of smoking materials,  
matches or lighters or the use or possession of intoxicants or  
drugs shall be liable to a civil penalty not exceeding two  
hundred fifty dollars (\$250) for each violation.

(5) In addition to any other remedies available at law or in  
equity, a civil penalty may be assessed for a continuing  
violation of any provision of this act, or rules or regulations  
adopted pursuant to it, or any order. Consideration shall be  
given to the gravity of the violation, the history of the  
previous violations, the degree to which the violation placed  
any person in imminent danger and the appropriateness of the  
penalty with respect to the size of the business of the operator  
being charged.

(c) (1) A civil penalty shall be assessed by the department  
only after the person charged with a violation under this  
article, or rule or regulation promulgated pursuant to this  
article, has been given an opportunity for a public hearing and  
the department has determined, by a decision incorporating its  
findings of fact therein, that a violation did occur and the  
amount of the penalty which is warranted, and incorporating,  
when appropriate, an order therein requiring that the penalty be  
paid.

(2) If the person against whom a civil penalty is assessed

fails to pay the penalty within the time prescribed in such order, the department shall institute appropriate civil proceedings for collection thereof.

(3) No proposed penalty which has been contested shall be compromised, mitigated or settled except with the approval of the department. No penalty assessment which has become a final order of the department shall be compromised, mitigated or settled except with the approval of the court.

(d) (1) The penalties provided for in this subsection shall be in addition to other criminal penalties provided for in this act.

(2) Whoever knowingly makes any false statement, representation or certification to any inspector or in any application, record, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not more than twenty-five thousand dollars (\$25,000) or to imprisonment for a period of not more than six months, or both. The conviction of any person under this subsection shall result in the revocation of any certification held by him which certifies him or authorizes him to direct other persons in coal mining by operation of law and shall bar him from being issued any license under this article, except a miner's certification, for a period of not less than one year or for such longer period as may be determined by the department.

(3) Whoever knowingly distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of such equipment, and who willfully misrepresents

1 such equipment as complying with the provisions of this act, or  
2 with any specification or regulation of the department  
3 applicable to such equipment, when it does not so comply, shall  
4 be guilty of a misdemeanor, and upon conviction, shall be  
5 subject to the same fine and imprisonment that may be imposed  
6 upon a person in subsection (d)(2) of this section.

7 (4) Any person who gives advance notice of any inspection to  
8 be conducted is guilty of a misdemeanor and, upon conviction,  
9 shall be sentenced to pay a fine not exceeding two thousand  
10 dollars (\$2,000) or to imprisonment not exceeding six months, or  
11 by both.

12 Section 3. Section 120 of the act is amended to read:

13 [Section 120. Mine Inspector; Cease Work.--If the mine  
14 inspector discovers any room, entry, airway, or other working  
15 places being driven in advance of the air current, contrary to  
16 the requirements of this act, he shall order the workmen in such  
17 places to cease work at once until the law is complied with.]

18 Section 4. The act is amended by adding a section to read:

19 Section 120.1. Review of Order.--(a) (1) An operator  
20 issued a citation or an order pursuant to the provisions of  
21 section 119.1, or any representative of miners in any mine  
22 affected by such citation or order, may apply to the department  
23 for review of the citation or order within thirty days of  
24 receipt thereof or within thirty days of its modification or  
25 termination. An operator issued such citation or order, or any  
26 representative of miners in any mine affected by such citation  
27 or order may, if he believes that the period of time fixed in  
28 such citation or order for the abatement of the violation is  
29 unreasonable, apply to the department for review of the citation  
30 or order within thirty days of the receipt thereof. The

1 applicant shall send a copy of such application to the  
2 representative of miners in the affected mine, or to the  
3 operator, as appropriate. Upon receipt of such application, the  
4 department shall cause an investigation to be made as it deems  
5 appropriate. Such investigation shall provide an opportunity for  
6 a public hearing, at the request of the operator or the  
7 representative of miners in such mine, to enable the operator  
8 and the representative of miners to present information relating  
9 to the issuance and continuance of such order, to the  
10 modification or termination thereof, or to the time fixed in  
11 such citation or order. The filing of an application for review  
12 under this law shall not operate as a stay of any order or  
13 notice.

14 (2) The operator and the representative of the miners shall  
15 be given written notice of the time and place of the hearing at  
16 least five days prior to the hearing.

17 (b) Upon receiving the report of such investigation, the  
18 department shall make findings of fact, and it shall issue a  
19 written decision, incorporating therein an order vacating,  
20 affirming, modifying or terminating the citation or order, or  
21 the modification or termination of such citation or order, or  
22 the citation or order complained of, and incorporating his  
23 findings therein. In view of the urgent need for prompt decision  
24 of matters submitted to the department under this law, all  
25 actions which the department takes under this section shall be  
26 taken as promptly as practicable, consistent with adequate  
27 consideration of the issues involved.

28 (c) Pending completion of the investigation required by this  
29 section, the applicant may file with the department a written  
30 request that the department grant temporary relief from any

modification or termination of any citation or order, or from any citation or order issued under this article, except a citation or an order issued under section 119.1, together with a detailed statement giving reasons for granting such relief. The department may grant relief, under such conditions as it may prescribe, if all of the following conditions are met:

(1) A hearing has been held in which all parties were given an opportunity to be heard.

(2) The applicant shows that there is substantial likelihood that the findings of the department will be favorable to the applicant.

(3) Such relief will not adversely affect the health and safety of miners in the coal mine.

(d) No temporary relief shall be granted in the case of a notice issued under section 118.1(a).

Section 5. Section 121 of the act is amended to read:

Section 121. [Mine Inspectors' Findings.--] Enforcement by Mine Inspectors.--(a) To enable the mine inspector to perform the duties imposed upon him by this act, he shall have the right at all times to enter any mine in his district or any mine in any other district when directed to do so by the secretary, to make examinations or obtain information; and upon the discovery of any violation of this act, or upon being informed of any violation of the act, he shall institute proceedings against the person or persons at fault, under the provisions of this act.

[In case any mine or portion of a mine is, in the judgment of the mine inspector, in so dangerous a condition, from any cause, as to jeopardize life and health, he shall at once notify the secretary, who shall immediately appoint a commission to accompany promptly the said mine inspector to the mine wherein



1 said dangerous condition is alleged to exist. The commission  
2 shall make a full investigation, and if they shall agree that  
3 there is immediate danger they shall direct the superintendent  
4 of the mine, in writing, to remove forthwith said dangerous  
5 condition.]

6 (b) If the superintendent or operator fails to [do so,]:

7 (1) obey any order or decision issued under this act;

8 (2) hinders, refuses or delays an inspection or enforcement;

9 (3) refuses to furnish information or report requested;

10 (4) refuses to permit access to or copying of records;

11 (5) refuses to admit persons to the mine; or

12 (6) otherwise fails to comply with any duty under any law or  
13 regulation;

14 the mine inspector in the district or the department shall

15 immediately apply, in the name of the Commonwealth, to the court  
16 of common pleas of the county in which said mine is located, or  
17 to a judge of said court in chambers, for an injunction to  
18 enjoin the operation of all work in and about said mine.

19 Whereupon said court, or judge, shall at once proceed to hear  
20 and determine the case; and if the cause appears to be  
21 sufficient, after hearing the parties and their evidence, as in  
22 like cases, shall issue its writ to restrain the working of said  
23 mine until all cause of danger is removed; and the costs of said  
24 proceedings shall be borne by the owner, lessee, or agent of the  
25 mine: Provided, That if said court shall find the cause not  
26 sufficient, then the case shall be dismissed, and the costs  
27 shall be borne by the county wherein said mine is located:

28 Provided also, That should any mine inspector find during his  
29 inspection of a mine, or portion of a mine, such dangerous  
30 conditions existing therein that, in his opinion, any delay in

1 removing the workmen from such dangerous places might cause loss  
2 of life or serious personal injury to the employees, the said  
3 mine inspector shall have the right to temporarily withdraw all  
4 persons from such dangerous places until the foregoing  
5 provisions of this section can be carried into effect.

6 (c) Any miner affected by the failure of an operator to  
7 comply with the provisions of this act may institute an action  
8 in the court of common pleas of the county where the mine is  
9 located, joining the department as a party to obtain compliance  
10 or other enforcement of this act or to implement departmental  
11 regulations. In addition, a violation of this act which created  
12 a substantial risk of physical harm to a miner and caused death  
13 or serious injury to a miner, where the operator knew or should  
14 have known of the violation, shall give rise to a cause of  
15 action for actual and punitive damages, less any workers'  
16 compensation benefits awarded.

17 Section 6. Section 123 of the act, amended December 21, 1973  
18 (P.L.436, No.154), is amended to read:

19 Section 123. [Discretionary Power of Mine Inspectors]  
20 Judicial Review.--The mine inspector shall exercise sound  
21 discretion in the performance of his duties under the provisions  
22 of this act, and if the operator, superintendent, mine foreman,  
23 or other person employed in or about any mine, shall be  
24 dissatisfied with any decision the mine inspector or department  
25 has given in the discharge of his or its duties, which decision  
26 shall be in writing, [it shall be the duty of] the dissatisfied  
27 person [to] may appeal from said decision to the [secretary, who  
28 shall at once appoint a commission to accompany promptly the  
29 mine inspector in the district to make further examination into  
30 the matter in dispute.] board of appeals, provided such person

1 has first exhausted any applicable means of review provided  
2 under section 120.1. If the [said commission] board of appeals,  
3 after hearing, shall agree with the decision of the mine  
4 inspector in the district, their decision shall be final and  
5 conclusive, unless [an appeal is taken in accordance with the  
6 provisions of the act of June 4, 1945 (P.L.1388, No.442), known  
7 as the "Administrative Agency Law."], within seven days of  
8 receipt of the board's decision, an appeal is taken to the court  
9 of common pleas of the county in which said mine or a portion  
10 thereof is situated, whereupon the court or a judge of said  
11 court in open court or in chambers shall promptly hear such  
12 appeal and shall permit testimony and argument, oral or written,  
13 or both, by both parties. In such appeal the appellant shall be  
14 designated the plaintiff and the board of appeals shall be the  
15 defendant. Within five days after conclusion of testimony and  
16 argument, the said court shall issue such decision and orders as  
17 may be proper and appropriate under the circumstances. Appeals  
18 from decisions of the court shall be taken in the manner  
19 provided by law.

20 Section 7. Section 124 of the act is amended to read:

21 Section 124. Appointment of a Commission by the Secretary--  
22 The secretary may, at his discretion, appoint a commission for  
23 the purpose of investigating any question within the purview of  
24 this act to enable him to make a decision in accordance  
25 therewith: Provided, however, That it shall be mandatory that  
26 the secretary appoint a commission for the purpose of an  
27 investigation wherein such action is required in any of the  
28 provisions of this act. Whenever, on the basis of its  
29 investigation, the commission finds that a violation of this act  
30 has occurred, it shall notify the department, which shall

1 promptly take the appropriate enforcement action.

2 Section 8. The act is amended by adding a section to read:

3 Section 124.1. Board of Appeals.--There is hereby created a  
4 board of appeals, consisting of three members appointed by the  
5 Governor, to hear appeals and proceedings under this article. At  
6 least one person shall be selected to represent the viewpoint of  
7 the operators and one person selected to represent the viewpoint  
8 of the miners. The person appointed by the Governor to represent  
9 the viewpoint of the miners shall be from a list of three  
10 nominees submitted by the major employe organization  
11 representing miners in the State. The person appointed to  
12 represent the viewpoint of the operator shall be from the five  
13 major employer organizations in the State. The chairman of the  
14 board, who shall be selected by the board, shall have the power  
15 to administer oaths and subpoena witnesses. Each member of the  
16 board shall receive all lost wages while actually engaged in the  
17 performance of the work of the board, but not less than fifty  
18 dollars (\$50) nor more than one hundred fifty dollars (\$150),  
19 and shall receive all transportation and other expenses at the  
20 prevailing rates. Board members, before performing their duties,  
21 shall take and subscribe to an appropriate oath of office.

22 Section 9. This act shall take effect immediately.