



Am. S.B. 323

127th General Assembly
(As Passed by the General Assembly)

Sens. Niehaus, Wilson, Harris, Carey, Schuler, Padgett, Seitz, Spada, Mumper, Schaffer, Morano, Boccieri, Cafaro, Fedor, Goodman, Grendell, Kearney, D. Miller, R. Miller, Sawyer, Smith, Stivers, Cates, Amstutz, Faber, Mason, Wagoner, Austria

Reps. Sayre, Yates, Domenick, Gibbs, Batchelder, Bolon, Book, Budish, Celeste, Chandler, Collier, Combs, Driehaus, Dyer, Evans, Flowers, Foley, Gardner, Garrison, Gerberry, Goyal, J. Hagan, Harwood, Hite, Hottinger, Hughes, Luckie, Lundy, J. McGregor, Mecklenborg, Oelslager, Patton, Schlichter, Schneider, Skindell, Slesnick, D. Stewart, J. Stewart, Strahorn, Szollosi, Uecker, B. Williams, Yuko

Effective date: Emergency, June 11, 2008

ACT SUMMARY

- Creates the Mine Safety Fund to be used for specified mine safety purposes, and authorizes the Administrator of Workers' Compensation to transfer a portion of the interest money from the continuing Coal-Workers Pneumoconiosis Fund to the Mine Safety Fund.
- Requires applicants for examination for certification as mine forepersons or forepersons of gaseous or nongaseous mines to pay a fee established in rules adopted by the Chief of the Division of Mineral Resources Management in the Department of Natural Resources under the act rather than a \$10 fee established in former law.
- Requires a person who has been certified as a mine foreperson or foreperson of a gaseous mine or nongaseous coal mine and who has not worked in an underground coal mine for more than two years to be recertified, requires such a previously certified person who has not worked in an underground coal mine for at least one year to successfully complete a retraining course, and requires the Chief to adopt rules governing recertification and retraining.

- Generally, establishes immunity for mine rescue crew members, employers of crew members, and employees of the Division of Mineral Resources Management from liability in any civil action that arises for damage or injury caused in the performance of rescue work at an underground coal mine.
- Allows the operator of an underground coal mine to provide a mine medical responder at the mine in order to comply with the continuing requirement that an emergency medical technician be on duty at the mine when miners are working, requires the Chief to adopt rules governing mine medical responder training, continuing training, examination, and an examination fee, and defines "mine medical responder" as a person who has satisfied the requirements established in rules.
- Requires the operator of an underground coal mine to provide tag lines or tie-off lines for each miner at the mine, requires mine employees to use tag lines or tie-off lines, and requires the Chief to adopt rules governing tag line and tie-off line use.
- Requires the operator of an underground coal mine to install fire detection devices on each conveyor belt that is used in the mine, and requires the Chief to adopt rules governing the use of such fire detection devices.
- Delays by one day the date by which the Administrator of Workers' Compensation must transition from use of the Micro Insurance Reserve Analysis System.
- Declares an emergency.

CONTENT AND OPERATION

Mine Safety Fund and Coal-workers Pneumoconiosis Fund

For the purposes of the statutes governing coal mine safety and surface mine safety, the act creates the Mine Safety Fund in the state treasury. The Fund consists of money transferred to it by the Administrator of Workers' Compensation from the Coal-workers Pneumoconiosis Fund established in continuing law (see below). All investment earnings of the Mine Safety Fund must be credited to the Fund. The Chief of the Division of Mineral Resources Management in the Department of Natural Resources must use money in the Fund for mine safety and health inspections and audits, the purchase and maintenance of mine rescue and

inspection equipment, the purchase or lease of facilities for use as mine rescue stations and for mine rescue and safety training, safety and health training of miners, and certification and recertification of mine officials. (R.C. 1561.011 and 1561.24.)

Continuing law establishes the Coal-workers Pneumoconiosis Fund as a custodial fund consisting of premiums and other payments and requires the Bureau of Workers' Compensation to make disbursements from the Fund to persons who are entitled to payments under federal law. The act authorizes the Administrator of Workers' Compensation to transfer a portion of the investment earnings credited to the Coal-workers Pneumoconiosis Fund to the Mine Safety Fund created by the act (see above). The Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, must adopt rules governing the transfer in order to ensure the solvency of the Coal-workers Pneumoconiosis Fund. For that purpose, the rules may establish tests based on measures of net assets, liabilities, expenses, interest, dividend income, or other factors that the Administrator determines appropriate that may be applied prior to a transfer. (R.C. 4131.03(B)(2).)

The act states that it is the intent of the General Assembly that the authorization of a transfer of a portion of the interest money in the Coal-Workers Pneumoconiosis Fund to the Mine Safety Fund in accordance with the act is not to be a long-term funding source for the Mine Safety Fund. In addition, the General Assembly's authorization of such a transfer does not establish a precedent for the transfer of money from other Bureau of Workers' Compensation funds to other funds. Finally, the Department of Natural Resources must examine sources other than the Coal-Workers Pneumoconiosis Fund to provide money for the Mine Safety Fund and report its findings to the Bureau of Workers' Compensation Board of Directors immediately prior to the five-year review of the rules adopted under the act governing the transfers. (Section 3.)

Recertification and retraining of mine forepersons and forepersons

Continuing law establishes requirements for applicants for certificates as mine forepersons or forepersons of gaseous mines and nongaseous mines. Each applicant for examination for certification as a mine foreperson or foreperson must pay a fee to the Chief of the Division of Mineral Resources Management on the first day of examination. Former law established a \$10 fee in statute. The act instead requires an applicant to pay a fee established in rules adopted under the act (see below). (R.C. 1561.16(B) and 1561.17(A).)

In addition, the act requires a person who has been issued a certificate as a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine and who has not worked in an underground coal mine for a period of more than two

calendar years to apply for and obtain recertification from the Chief in accordance with rules adopted under the act before performing the duties of a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine, as applicable. An applicant for recertification must pay a fee established in rules adopted under the act at the time of application for recertification. (R.C. 1561.16(C) and 1561.17(B).)

The act also requires a person who has been issued a certificate as a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine and who has not worked in an underground coal mine for a period of one or more calendar years to successfully complete a retraining course in accordance with rules adopted under the act before performing the duties of a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine, as applicable. (R.C. 1561.16(D) and 1561.17(C).)

Under the act, the Chief, in consultation with a statewide association representing the coal mining industry and a statewide association representing employees of coal mines, must adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Prescribe requirements, criteria, and procedures for the recertification of a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine who has not worked in an underground coal mine for a period of more than two calendar years;

(2) Prescribe requirements, criteria, and procedures for the retraining of a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine who has not worked in an underground coal mine for a period of one or more calendar years;

(3) Establish fees for the examination and recertification of mine forepersons or forepersons of gaseous mines or nongaseous coal mines under the act; and

(4) Prescribe any other requirements, criteria, and procedures that the Chief determines are necessary to administer the act's requirements governing recertification and retraining. (R.C. 1561.16(E) and 1561.17(D).)

Finally, continuing law requires the Chief to issue certificates to applicants who pass their examination for specified mine positions, including mine forepersons and forepersons of gaseous or nongaseous mines, as applicable. Law retained in part by the act specifies that any certificate that was issued by the former Mine Examining Board prior to October 29, 1995, remains in effect notwithstanding the classifications of certificates established in continuing law.

The act specifies that the provision regarding continuation of certificates does not apply to the act's requirements governing recertification. (R.C. 1561.23.)

Immunity from civil liability for mine rescue crews and Division of Mineral Resources Management employees

Continuing law requires the Superintendent of Rescue Stations in the Division of Mineral Resources Management to train and employ rescue crews of six members each at the four rescue stations that the Division is required to establish and maintain in the state. The Superintendent must train and employ the number of rescue crews that the Superintendent believes necessary. One member of each crew must be certified as a mine foreperson or fire boss and be designated captain. In addition, one member of each rescue crew must be certified as an EMT-basic, EMT-1, or paramedic. The act adds mine medical responder to that list and defines "mine medical responder" as a person who has satisfied the requirements established in rules adopted under the act (see "**Mine medical responders**," below). (R.C. 1561.26(A) and (B), by reference to 1565.15(A)(3).)

The act then states that no member of a mine rescue crew who performs mine rescue at an underground coal mine and no operator of a mine whose employee participates as a member of such a mine rescue crew is liable in any civil action that arises under Ohio laws for damage or injury caused in the performance of rescue work at an underground coal mine. However, a member of such a mine rescue crew may be liable if the member acted with malicious purpose, in bad faith, or in a wanton or reckless manner. The act states that the immunity established by the act does not eliminate, limit, or reduce any immunity from civil liability that is conferred on a member of such a mine rescue crew or an operator by any other Ohio statute or by case law. (R.C. 1561.26(D).)

Additionally, the act provides that except for civil actions in which the state is the plaintiff, no employee of the Division who performs rescue work at an underground coal mine is liable in any civil action that arises under Ohio laws for damage or injury caused in the performance of rescue work at an underground coal mine unless the employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner. The act states that the immunity established by the act does not eliminate, limit, or reduce any immunity from civil liability that is conferred on an employee of the Division by any other Ohio statute or by case law. (R.C. 1561.261.)

Mine medical responders

Law largely unchanged by the act requires the operator of an underground coal mine where 20 or more persons are employed on a shift, including all persons working at different locations at the mine within a ten-mile radius, to provide at

least one EMT-basic or EMT-I on duty at the mine whenever employees at the mine are actively engaged in the extraction, production, or preparation of coal. The operator must provide EMTs-basic or EMTs-I on duty at the mine at times and in numbers sufficient to ensure that no miner works in a mine location that cannot be reached within a reasonable time by an EMT-basic or an EMT-I. EMTs-basic and EMTs-I must be employed on their regular coal mining duties at locations convenient for quick response to emergencies in order to provide emergency medical services inside the underground coal mine and transportation of injured or sick employees to the entrance of the mine. Law generally unchanged by the act also requires the operator to make available to EMTs-basic and EMTs-I all of the equipment for first aid and emergency medical services that is necessary for those personnel to function and to comply with the regulations pertaining to first aid and emergency medical services that are adopted under the Federal Mine Safety and Health Act. The operator must install telephone service or equivalent facilities that enable two-way voice communication between the EMTs-basic or EMTs-I in the mine and the emergency medical service organization outside the mine that provides emergency medical services on a regular basis. (R.C. 1565.15(A) and (B).)

The act adds mine medical responders to all of the above provisions (R.C. 1565.15(A) and (B)). It then requires the Chief, in consultation with persons certified under the Division of Emergency Medical Services Law to teach in an emergency medical services training program, to adopt rules in accordance with the Administrative Procedure Act that do all of the following:

- (1) Prescribe training requirements for a mine medical responder that specifically focus on treating injuries and illnesses associated with underground coal mining;
- (2) Prescribe an examination for a mine medical responder;
- (3) Prescribe continuing training requirements for a mine medical responder;
- (4) Establish the fee for examination for a mine medical responder; and
- (5) Prescribe any other requirements, criteria, and procedures that the Chief determines are necessary regarding the training, examination, and continuing training of mine medical responders (R.C. 1565.15(E)).

As indicated above, "mine medical responder" is defined as a person who has satisfied the requirements established in the rules (R.C. 1565.15(A)(3)).

The act also provides that if a person qualifies as a mine medical responder or similar classification in another state, the person may provide emergency medical services as a mine medical responder in Ohio without completing the training or passing the examination that is required in rules adopted under the act, provided that the Chief determines that the person's qualifications from the other state satisfy all of the applicable requirements that are established in those rules. (R.C. 1565.15(E).)

Tag lines and tie-off lines

The act requires the operator of an underground coal mine to provide tag lines or tie-off lines for each miner at the mine (R.C. 1567.64(B)). The act defines "tag lines" and "tie-off lines" to have the same meanings as in rules adopted under the act as discussed below (R.C. 1567.64(A)). The operator must provide and employees of the mine must use tag lines or tie-off lines in accordance with requirements and procedures established in those rules (R.C. 1567.64(B)). The Chief, in consultation with a statewide association representing the coal mining industry and a statewide association representing employees of coal mines, must adopt rules in accordance with the Administrative Procedure Act concerning the use of tag lines or tie-off lines in an underground coal mine. The rules must include all of the following:

- (1) A definition of "tag line" and of "tie-off line";
- (2) A description or list of acceptable tag lines and tie-off lines;
- (3) Procedures and requirements for the use of tag lines and tie-off lines;
- (4) Procedures for the approval and inspection of the use of tag lines and tie-off lines in a mine; and
- (5) Any other requirements concerning tag lines or tie-off lines that the Chief determines are necessary. (R.C. 1567.64(C).)

The act prohibits an operator of a mine from refusing or neglecting to comply with the act's provisions discussed above or rules adopted under them (R.C. 1567.64(D)). Violation is a minor misdemeanor (R.C. 1567.99, not in the act).

Fire detection devices

The act requires the operator of an underground coal mine that uses conveyor belts in the operation of the mine to install fire detection devices on each conveyor belt that is used in the mine. The fire detection devices must be of a design and type established in rules adopted under the act as discussed below. The

Chief must inspect the fire detection devices after the operator of the mine has installed them on the conveyor belts that are used in the operation of the mine. The Chief must approve or disapprove the installation of the fire detection devices and must notify the operator of the Chief's decision. (R.C. 1567.681(A).)

The act requires the Chief, in consultation with a statewide association representing the coal mining industry and a statewide association representing employees of coal mines, to adopt rules in accordance with the Administrative Procedure Act concerning the installation and use of fire detection devices on conveyor belts that are used in an underground coal mine. The rules must include all of the following:

- (1) The design and types of fire detection devices that must be used on a conveyor belt in order to provide for the earliest possible detection of a fire;
- (2) The number of fire detection devices that are required on a conveyor belt;
- (3) A procedure for the notification of the Chief after the operator of a mine has installed the fire detection devices;
- (4) A procedure for the inspection of fire detection devices installed on a conveyor belt; and
- (5) Any other requirements that the Chief determines are necessary. (R.C. 1567.681(B).)

The act prohibits an operator of a mine from refusing or neglecting to comply with the act's provisions discussed above or rules adopted under them (R.C. 1567.681(C)). Violation is a minor misdemeanor (R.C. 1567.99, not in the act).

Transition from use of Micro Insurance Reserve Analysis System

Law largely retained by the act requires the Administrator of Workers' Compensation to completely transition from use of the Micro Insurance Reserve Analysis System to a different system or different version of that system to determine the reserves for use in establishing premium rates assessed for purposes of the Industrial Commission Law, the Workers' Compensation Law, the Public Works Relief Compensation Law, or the Separate Compensation Funds Law on or before June 30, 2008. The act delays the date by which the transition must occur to July 1, 2008. (Sections 3 and 4.)

HISTORY

ACTION	DATE
Introduced	04-23-08
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Reported, H. Agriculture & Natural Resources	05-28-08
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House moved to reconsider (95-1)	05-29-08
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