

CHAPTER 155

AN ACT concerning mine safety, increasing certain fees and penalties and amending P.L.1954, c.197.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.1954, c.197 (C.34:6-98.2) is amended to read as follows:

C.34:6-98.2 Definitions relative to mine safety.

2. As used in this act:

"Approved" means approved by the commissioner.

"Commissioner" means the Commissioner of Labor and Workforce Development or any of his authorized representatives.

"Department" means the Department of Labor and Workforce Development.

"Excavations" or "workings" means shafts, tunnels, entries, winzes, raises, stopes, open cut and any and all working places and parts of a mine, either above ground or underground, excavated or being excavated, whether abandoned or in use.

"Face" means the advancing breast of any place of work.

"Mine" includes any mines within the State, whether on the surface or underground and any mining plant, material, equipment or explosives on the surface or underground, which may contribute to the mining or handling of ore or other metalliferous or nonmetalliferous products. The term "mine" shall also include quarry, sand pit, gravel pit, clay pit and shale pit.

"Operator" means the person, firm, association, company, corporation or any officers or agents thereof, in immediate possession of any mine or mining claim or its accessories as owner or lessee and, as such, responsible for its management and condition.

"Section" means the mine safety section within the Department of Labor and Workforce Development.

"Superintendent" means the person who has immediate supervision of a mine for an operator.

Words used in the singular shall include the plural, and the plural shall include the singular.

2. Section 3 of P.L.1954, c.197 (C.34:6-98.3) is amended to read as follows:

C.34:6-98.3 Mine safety section, powers, duties.

3. a. There is hereby created within the Department of Labor and Workforce Development a mine safety section.

b. The mine safety section shall be under the immediate supervision of a section chief, who shall be responsible for the efficient, effective administration of the work of the section. The section chief shall be assisted by and supervise such other mine safety inspectors, technicians and other employees as may be necessary to perform the work.

c. The section chief shall personally or by assignment to employees of the section, inspect, investigate, inquire and examine into the operation, workings, methods, safety devices and appliances, machinery, sanitation, ventilation, means of ingress and egress, means taken to protect the lives and insure the safety and health of miners, together with the causes of accidents, injuries and fatalities and means taken to comply with the law; conduct scientific tests to determine amount and condition of air together with contaminants therein

or for any purpose that shall provide for the maintenance of safe, sanitary and healthful conditions, furnish such reports and do other related work as required.

d. Employees of the section shall have the power and authority, upon exhibition of official credentials, at all reasonable hours to enter and examine any part of a mine, mining plant, equipment or workings. All operators and their employees shall render all assistance necessary to facilitate such examination.

e. (Deleted by amendment, P.L.2007, c.155).

f. (Deleted by amendment, P.L.2007, c.155).

g. (Deleted by amendment, P.L.2007, c.155).

h. No employee of the department shall make public, directly or indirectly to any person any knowledge or information obtained by him in the exercise of his official duties concerning ores, ore bodies or values of any mine or part thereof. Any employee who shall violate any of the provisions of this subsection shall be guilty of a crime of the fourth degree and, on conviction, shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00 or imprisonment in the county jail not to exceed 1 year, or both, and shall be dismissed from his position.

i. It shall be the duty of the section to cause to have inspected at least once in every 3 months, every underground mine in this State, and every other working mine at least twice each year, and more often, if it is deemed necessary for the safety of the persons involved with the mine.

j. After every inspection, the mine safety inspector shall enter forthwith in a book to be kept at the mine and designated as the "record of mine safety inspection," the portion of the mine inspected, the nature of the inspection and the dangers and defects observed. This record shall be open at all reasonable hours to the examination of the operator, any employee or the designated representative of the employees of the mine inspected. Nothing contained in or omitted from any entry in such record shall limit or affect the duty and obligations of the operator, superintendent or employee.

3. Section 4 of P.L.1954, c.197 (C.34:6-98.4) is amended to read as follows:

C.34:6-98.4 Authorities and duties of the commissioner.

4. a. The commissioner shall administer the provisions of this act and may promulgate, make, amend and repeal necessary and reasonable rules and regulations not inconsistent with the provisions of this act. Such rules and regulations shall have the force and effect of law and shall be enforced in the same manner. It is the policy and intent of this section that the physical plant, operations and methods of the mining industry or any part thereof including mines abandoned prior to the passage of this act and mines abandoned subsequent to the passage of this act shall be so constructed, equipped, arranged, operated, maintained and conducted in all respects as to provide for reasonable and adequate protection to the lives, health and safety of miners, others employed in the mining industry and frequenting the same, the owners of the surface of the ground above such mines and the general public, as well as the protection of property.

b. When requested to do so, the commissioner may make tests, or have same made, to determine if any device, safeguard or equipment may be approved for use in connection with any provisions of this act. The commissioner may charge a fee for such approval, payable by the approval applicant, in any amount commensurate with the cost to the State for making such tests or have same made, in which case he may require the applicant to pay all cost directly to the private agency making the test.

c. The commissioner shall appoint all personnel pursuant to the provisions of Title 11A of the New Jersey Statutes and arrange for all services necessary to administer the provisions of this act. He shall arrange for operations to be conducted in branch offices located near the mining centers of the State if, in his opinion, the effectiveness of the service can be thereby improved.

d. If, upon examination or inspection, it shall appear to an inspector that a mine or part thereof is, from any cause, in a dangerous condition, or fails to comply with the provisions of this act or any rule or regulation promulgated hereunder, he shall so report to the section and the commissioner shall at once notify the operator in charge thereof, such notice to be in writing and to be served by copy upon the operator. Said notice shall state in detail in what particular said mine or part thereof is deemed dangerous, insecure and not in compliance with the provisions of this act, and provide a reasonable specified time to comply. The operator of said mine shall forthwith make such change in order to comply with the requirements of this act.

e. In case of any civil or criminal proceedings at law against the parties so notified, on account of loss of life or bodily injuries sustained by an employee, subsequent to such notice, and in consequence of such dangerous condition, and without an affirmative and diligent effort having been made to remedy the same to the satisfaction of the commissioner, a certified copy of the notice served by the commissioner shall be prima facie evidence of the negligence of such party or parties.

f. If it appears from a reexamination of the mine by the inspector that such changes or compliances have not been made within the time specified in such notice, and that the mine or part of such mine is still in an unlawful condition or dangerous to life, health or property and in the opinion of the commissioner, it is necessary for the protection of life, health or property that such mine or part of the mine be vacated, the commissioner shall forthwith order the cessation of the operation and working of said mine or part of mine, and order that the employees shall not be permitted therein for any purpose other than to remedy the defects complained of, until the provisions of this act are complied with to the satisfaction of the commissioner. The operator of said mine shall forthwith obey said order.

g. If a representative of the section finds conditions in any mine which in his opinion are dangerous to the health and lives of employees, owners of the surface of the ground above the mine or the general public, he shall report the facts forthwith to the commissioner. The commissioner shall order all workings stopped in the particular section of the mine in which the dangerous condition was found, if in his opinion such an action is necessary to preserve life and limb. Work shall not be resumed until the commissioner so authorizes.

h. The commissioner shall have the power and authority to require that every mine, pit or quarry of any operator be registered with him and that a certificate of registration be obtained before the opening of such mine, pit or quarry. The application and certificate forms shall be prescribed by the commissioner.

A certificate of registration shall expire 1 year from its effective date, unless sooner revoked or suspended by the commissioner. A certificate of registration may be renewed upon the filing of an application of renewal on a form prescribed by the commissioner. A certificate of registration shall at all times be prominently displayed at each mine, pit or quarry of the operator.

The commissioner shall have the power and authority to charge an annual registration fee of not less than \$500 nor more than \$3,000 for each certificate of registration issued. Thereafter, these fees may be adjusted by the commissioner in accordance with fee schedules adopted by regulation.

4. Section 5 of P.L.1954, c.197 (C.34:6-98.5) is amended to read as follows:

C.34:6-98.5 Annual report to Governor.

5. The commissioner shall embody in his annual report to the Governor a statistical summary and report of work of the section during the year ending June 30.

a. The report shall contain a statement showing for each mine, the number of persons employed underground and above-ground; the number and nature of fatal, lost-time injuries and serious accidents; the number of inspections made, complaints filed, inquests attended, workings ordered vacated and violations found; and any other information deemed important and relevant to safety in the mining industry of the State together with such recommendations as in the judgment of the commissioner are necessary to enforce the law, insure the safety of persons in mines and preserve property. The commissioner may prepare supplemental reports containing any or all of the above described statements, from time to time. A copy of any supplemental or annual report shall be made publicly available.

5. Section 6 of P.L.1954, c.197 (C.34:6-98.6) is amended to read as follows:

C.34:6-98.6 General requirements.

6. a. Every operator shall comply with the provisions of this act and the rules and regulations issued hereunder and every person shall comply with such provisions as applicable to that person.

b. Every operator before opening a new mine, pit or quarry, shall report the location of such proposed mine, pit or quarry and the operator's name and address in writing to the commissioner and to the local governing body of the municipality in which the mine, pit or quarry is to be located, and make application in writing to the commissioner for permission to open such mine, pit or quarry.

c. Every operator shall report the location of the mine and the name and address of the owner of the surface and of the mineral rights in writing to the commissioner and the local governing bodies involved before the commencement of operations by him.

d. Every operator abandoning or permanently discontinuing any mine, pit or quarry shall notify the commissioner and the local governing bodies involved in writing no less than 60 days prior to such abandonment or discontinuance.

e. The operator shall post at the surface entrance, or around the surface extremities of any mine, pit or quarry, appropriate, conspicuous and readily legible warning notices of the existence and dangers thereof and shall also place or cause to be placed guardrails, fences or other approved means, sufficient to prevent accidental fallings in any operating or abandoned mine, pit or quarry as the commissioner may direct.

f. The protection shall include adequate fences, when any such mine or area is declared a hazard as provided by this act, or effective and secure capping of surface access to mine workings or other protective measures which in the judgment of the commissioner are necessary to prevent injury to persons or damage to property by accidental fallings into the abandoned mine.

In any case where an abandoned mine constitutes an imminent hazard to persons and the order of the commissioner to protect such mine has not been complied with in the time specified, the commissioner is authorized to take such steps as may be necessary to eliminate the imminent hazard. The operator of the mine shall reimburse the commissioner for the actual cost of whatever corrective measures have been employed in eliminating the imminent

hazard. The cost of any such corrective measures, until reimbursed, shall constitute a lien on such property and the mineral rights thereto.

The provisions of subsection e. of this section shall be applicable to mines abandoned prior to the passage of this act when any such mine is declared a hazard by the municipal governing body or by the State, after public hearing, and after such protection is requested by the municipality or State.

g. It shall be the duty of the mine operator, superintendent, or any one in charge of a mine, with 10 or more persons, to keep at such places about the mine as may be designated by the commissioner, a stretcher and a woolen and waterproof blanket, in good condition, for use in caring for any person who may be injured at the mine. When more than 50 persons are employed, two or more stretchers with woolen and waterproof blankets shall be kept, and in all mines, a supply of first-aid equipment as may be prescribed by the section shall be kept readily accessible for the treatment of anyone injured. In all mines a first-aid corps shall be organized, consisting of the foreman, shift bosses, and other employees designated by the operator or superintendent of the mine to cause the organization of such; and to procure the services of a physician or qualified first-aid instructor to instruct the members of such first-aid corps from time to time, not less than once in each calendar month, until a sufficient number of members of such corps as may be required by the section shall be certified by said physician or instructor to be qualified in the proper handling and treatment of injured persons before treatment by a physician.

h. Adequate medical care or attention shall be provided for all injuries arising out of and in the course of employment.

i. When considered necessary by the section, and so ordered by it, the operator of every underground mine shall make and maintain, or cause to be made and maintained, a reasonably accurate map of the workings of such mine. At least once in every 6 months, or more often, if necessary, the operator or engineer of such mine shall cause to be shown, with reasonable accuracy on the map of said mine, all the excavations made therein during the time elapsed since such excavations were last shown on said map, and all parts of said mine which were worked and abandoned during said elapsed period of time shall be clearly indicated on said map, and all underground workings shall be surveyed and mapped before they are allowed to become inaccessible. Such maps shall at all times be open to examination by an inspector of the section.

j. No person shall disobey an order given in pursuance of the law, or do a willful act whereby the lives or health of persons working in such mines, or the security of a mine, or the machinery connected therewith, may be endangered.

k. Notices shall be placed by the superintendent, or under his direction by the mine foreman or shift boss, at the entrance of any working place deemed dangerous, and at the entrance to old or abandoned workings; and no person other than those who are authorized by the operator or superintendent, shall remove or go beyond any caution board or danger signal so placed.

l. At any mine employing 25 or more persons underground, the operator shall provide, and keep in a readily accessible place, at least 2 approved portable oxygen breathing apparatuses in condition to be used in case of emergency; also, the operator or superintendent of such mine shall provide training and periodic drills for a mine rescue crew in the use of such apparatuses, fire protection methods and rescue work all in a manner as may be required by the section. Tests, at least once monthly, of apparatuses by the actual use thereof shall be made.

m. It shall be the duty of the superintendent of any mine, within the provisions of this act, to keep at all times in the office of the mine and in the timekeeper's office thereof, in an accessible place and subject to inspection by all persons, at least one printed copy of this act.

n. No minor under 18 years of age shall be employed, permitted or suffered to work in, about, or in connection with any mine.

o. Strangers and visitors shall not be allowed underground unless accompanied by the owner, official or employee deputized to accompany them.

p. No person shall be required, without his consent, to work underground in any mine for more than 8 hours in any consecutive 24 hours, which 8 hours shall be reckoned from the time he arrives at his place of work in the mine until he leaves such place, provided that:

(a) A Saturday shift may work longer hours for the purpose of avoiding work on Sunday or changing shift at the end of the week or giving any of the persons a part holiday;

(b) The said limit shall not apply to a foreman, pumpman, cagetender, or any person engaged solely in surveying or measuring, nor shall it apply in cases of emergency, where life or property is in imminent danger, or in any case of repair work.

q. No person shall knowingly injure or destroy any equipment or machinery of any mine; nor, unless lawfully authorized to do so, obstruct or open an airway, handle or disturb any part of the machinery of the hoisting engine of the mine, open the door of a mine and neglect to close it, endanger the mine or those working therein, disobey an order given in pursuance of the law, or do a willful act whereby the lives or health of persons working in such mines, or the security of a mine, or the machinery connected therewith, may be endangered.

6. Section 7 of P.L.1954, c.197 (C.34:6-98.7) is amended to read as follows:

C.34:6-98.7 Safety.

7. a. Every mine shall be so constructed, equipped, arranged, operated, maintained and conducted in all respects as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein, or legally frequenting the same, the owners of the surface of the ground above the mine, the general public and to provide for the protection of property.

b. No person shall work or be permitted to work alone in an unsafe place.

c. No person shall be permitted to work in an unsafe place unless for the purpose of making it safe, and then only after proper precautions have been taken to protect the persons who are doing the work.

No person shall be in solitary employment at a working face unless he is in communication with another employee at reasonable intervals as determined by the commissioner.

d. An air current sufficient to remove smoke, dust and noxious gases and to insure the safety of every person shall be conducted along every passageway and working place in underground workings in such a manner and in accordance with the standards established by the section.

e. Every mine shall install and maintain approved washing, dressing and toilet facilities and every underground mine shall install and maintain an approved miner's dryhouse for drying the working clothes of the miners.

f. The commissioner shall require that an underground mine, operating either through a vertical or inclined shaft, or a horizontal tunnel, and producing from stoping operations shall have not less than two approved outlets, at least 150 feet apart. Where there is no such

escapement shaft or opening, work thereon must be commenced as soon as stoping begins, and must be diligently prosecuted until the escapement shaft, raise, or opening is completed and continued to and connected with the lowest workings. The subterranean workings shall connect such outlets with each other in a safe, approved manner. Such outlets shall at all times provide safe and separate passage between the subterranean workings and the surface.

g. Every mine shall be properly and sufficiently protected in an approved manner against the hazards of fire from any cause.

h. All working places and travel roads shall be, when necessary, kept timbered, barricaded, or otherwise guarded to prevent injury to any person from falling material, falling objects or fall of such person.

i. When advancing a drift, exit, level or incline toward a mine working that is suspected to be filled with water, a bore hole must be kept at least 20 feet in advance of the breast of the drive, and also, if necessary, in directions laterally from the course of the drive. Such additional precautionary measures shall be taken as may be deemed necessary by the commissioner to obviate the danger of a sudden break through of water.

j. No raise shall be allowed to approach within 10 feet of any portion of a winze or stope in which there is a dangerous accumulation of water, unless such winze or stope be first unwatered by bailing or pumping or by means of a bore from the raise.

k. In every mine where, in the opinion of the commissioner, there is danger of a sudden inrush of water, such additional raises, drifts or other working shall be constructed as are necessary to insure the escape of persons from the lower workings, and all sumps and places for the storage of water in mines shall be so constructed as to prevent leakage as far as possible, and insure the safety of the persons working below the same.

l. It shall be unlawful for any operator to impound water or to keep water impounded within any mine in which persons are working below the water so impounded in such manner as to endanger the safety of such persons, unless the water be impounded by a dam or dams or wall or walls approved by the section.

m. Every place where drilling or blasting work is being carried on in an underground mine shall be adequately supplied at all times with clean water under pressure or other approved appliances for controlling dust.

n. Potable drinking water shall be available to employees during working hours.

o. Approved personal protective equipment shall be worn by all employees during the course of their work as required by standards and the rules and regulations promulgated pursuant to the provisions of this act.

7. Section 8 of P.L.1954, c.197 (C.34:6-98.8) is amended to read as follows:

C.34:6-98.8 Explosives.

8. a. When explosives are used in a mine or quarry, the manner of storing, keeping, handling, moving, charging and firing, or in any manner using such explosives, shall be in accordance with the requirements of the "Explosives Act," P.L.1960, c.55 (C.21:1A-128 et seq.), as amended or supplemented, and the rules and regulations now in effect or hereafter issued thereunder, except for the following limitations:

b. All explosives in excess of the amount required for the work of 1-day underground operations may be stored underground in a safely located secondary storage magazine. The maximum amount of explosives to be stored in such magazine shall not exceed the requirements for a 48 hours' supply.

c. The commissioner may regulate and limit the amount of explosives stored in a primary magazine in any underground portion of a mine with due regard for the safety of miners.

d. Any temporary supply for the work of a shift shall be kept in such a place that its accidental discharge will not endanger the miners.

8. Section 9 of P.L.1954, c.197 (C.34:6-98.9) is amended to read as follows:

C.34:6-98.9 Complaints; serious accidents.

9. a. Whenever the commissioner receives a complaint in writing signed by 2 or more persons employed in a mine, setting forth that the mine or part thereof in which he or they are working is being operated contrary to law, or is dangerous in any respect to the health or lives of those employed therein, he shall cause to be inspected such mine as soon as possible. The names of the persons making such complaint shall be kept secret, unless permission to disclose them be expressly granted by the persons making the complaint. Such complaint shall in all cases set forth the nature of the danger existing at the mine, and the time when such danger was first observed. If, after such inspection, it is found that the conditions are dangerous to the health or lives of those employed therein, the commissioner shall serve a notice, setting forth fully the facts, upon the operator or any person having charge of such mine, and shall order the operator of said mine or mines to remove such dangerous or harmful conditions, and the operator of said mine shall obey said order.

b. Whenever loss of life or serious accident shall occur in any mine, the operator thereof shall forthwith give notice immediately in the quickest possible manner, and, in addition, shall report the facts thereof in writing within 24 hours after such occurrence in a manner prescribed by the section.

The refusal or failure of said owner, agent, manager or operator to so report shall be a misdemeanor. The section, upon receipt of notice of such accident, shall investigate the same and make, or cause to be made, a report which shall be filed for future reference. In case of the loss of life, any inspector of the section may take testimony of witnesses relative to the same, for the purpose of ascertaining the cause of such accident, and for his information in filing a report concerning the same. If, after making such investigation, the section considers the facts warrant it, a copy of the report of such accident and all papers relating thereto shall be forwarded to the county prosecutor of the county in which the accident or loss of life occurred, together with an accompanying statement, showing in what particular or particulars it is believed the law to have been violated, and if upon the receipt thereof, the prosecuting officer of the said county deems the facts sufficient to make a prima facie case of criminal action against any person or persons, he shall present such evidence to the grand jury, or take such steps for the criminal prosecution of such operator, employees or persons as may seem advisable.

9. Section 14 of P.L.1954, c.197 (C.34:6-98.14) is amended to read as follows:

C.34:6-98.14 Violations, penalties.

14. Any person violating any of the provisions of this act shall be liable to a penalty of not more than \$2,500 for the first offense, not more than \$5,000 for the second offense and not more than \$10,000 for the third and any subsequent offense, to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any person violating any provision of this act which results in

serious bodily injury, shall be liable for a penalty of not less than \$100 nor more than \$25,000 to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any violation of the act by an officer, agent or employee shall also be a violation of the act by his employer if such employer had knowledge of and actual control over the cause of such violation. Where the violation is of a continuing nature each day during which it continues, after the date given by which the violation must be eliminated in the order by the commissioner, shall constitute an additional separate and distinct offense, except during the time an appeal from said order may be taken or is pending.

The commissioner is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the commissioner as may appear appropriate and equitable under all of the circumstances.

10. This act shall take effect immediately.

Approved August 21, 2007.