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**COAL MINE SAFETY ACT**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Dmitrich**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to mines and mining to enact the Coal Mine Safety Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ establishes the scope and administration of the chapter;
- ▶ addresses rulemaking;
- ▶ creates the Utah Office of Coal Mine Safety;
- ▶ provides for the appointment of the director;
- ▶ creates the Mine Safety Technical Advisory Council and establishes its duties;
- ▶ establishes the commission's and office's duties related to safety conditions;
- ▶ addresses the reporting of unsafe conditions in coal mines;
- ▶ requires annual reports on safety by the commission and council;
- ▶ provides for the commission by rule to require certification and recertification of other coal mine occupations including the certification of a new coal miner; and
- ▶ makes technical and conforming amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **34A-1-202**, as last amended by Laws of Utah 2006, Chapter 155

32 ENACTS:

33 **40-2-101**, Utah Code Annotated 1953

34 **40-2-102**, Utah Code Annotated 1953

35 **40-2-103**, Utah Code Annotated 1953

36 **40-2-201**, Utah Code Annotated 1953

37 **40-2-202**, Utah Code Annotated 1953

38 **40-2-203**, Utah Code Annotated 1953

39 **40-2-301**, Utah Code Annotated 1953

40 **40-2-302**, Utah Code Annotated 1953

41 **40-2-303**, Utah Code Annotated 1953

42 RENUMBERS AND AMENDS:

43 **40-2-104**, (Renumbered from 40-2-1.1, as last amended by Laws of Utah 1997, Chapter  
44 375)

45 **40-2-204**, (Renumbered from 40-2-14, as last amended by Laws of Utah 2006, Chapter  
46 5)

47 **40-2-401**, (Renumbered from 40-2-16, as last amended by Laws of Utah 2006, Chapter  
48 5)

49 **40-2-402**, (Renumbered from 40-2-15, as last amended by Laws of Utah 2007, Chapter  
50 222)



51 *Be it enacted by the Legislature of the state of Utah:*

52 Section 1. Section **34A-1-202** is amended to read:

53 **34A-1-202. Divisions -- Creation -- Duties -- Labor Relations Board, Appeals**  
54 **Board, councils, and panels.**

55 (1) There is created within the commission the following divisions and office:

56 (a) the Division of Industrial Accidents that shall administer the regulatory  
57 requirements of this title concerning industrial accidents and occupational disease;  
58

59 (b) the Division of Occupational Safety and Health that shall administer the regulatory  
60 requirements of Chapter 6, Utah Occupational Safety and Health Act;

61 (c) the Division of Boiler and Elevator Safety that shall administer the regulatory  
62 requirements of Chapter 7, Safety;

63 (d) the Division of Antidiscrimination and Labor that shall administer the regulatory  
64 requirements of:

65 (i) Chapter 5, Utah Antidiscrimination Act;

66 (ii) this title, when specified by statute; and

67 (iii) Title 57, Chapter 21, Utah Fair Housing Act; [~~and~~]

68 (e) the Division of Adjudication that shall adjudicate claims or actions brought under  
69 this title[-]; and

70 (f) the Utah Office of Coal Mine Safety created in Section 40-2-201.

71 (2) In addition to the divisions created under this section, within the commission are  
72 the following:

73 (a) the Labor Relations Board created in Section 34-20-3;

74 (b) the Appeals Board created in Section 34A-1-205;

75 (c) the following program advisory councils:

76 (i) the workers' compensation advisory council created in Section 34A-2-107;

77 (ii) the antidiscrimination and labor advisory council created in Section 34A-5-105;

78 [~~and~~]

79 (iii) the occupational safety and health advisory council created in Section 34A-6-106;

80 [~~and~~]

81 (iv) the Mine Safety Technical Advisory Council created in Section 40-2-203; and

82 [~~(v)~~] (v) the [~~mining certification panel~~] Coal Miner Certification Panel created in  
83 Section [~~40-2-14~~] 40-2-204.

84 (3) In addition to the responsibilities described in this section, the commissioner may  
85 assign to a division a responsibility granted to the commission by law.

86 Section 2. Section **40-2-101** is enacted to read:

87 **CHAPTER 2. COAL MINE SAFETY ACT**

88 **Part 1. General Provisions**

89 **40-2-101. Title.**

90           This chapter is known as the "Coal Mine Safety Act."  
91           Section 3. Section **40-2-102** is enacted to read:  
92           **40-2-102. Definitions.**  
93           As used in this chapter:  
94           (1) "Adverse action" means to take any of the following actions against a person in a  
95 manner that affects the person's employment or contractual relationships:  
96           (a) discharge the person;  
97           (b) threaten the person;  
98           (c) coerce the person;  
99           (d) intimidate the person; or  
100           (e) discriminate against the person, including to discriminate in:  
101           (i) compensation;  
102           (ii) terms;  
103           (iii) conditions;  
104           (iv) location;  
105           (v) rights;  
106           (vi) immunities;  
107           (vii) promotions; or  
108           (viii) privileges.  
109           (2) "Coal mine" means:  
110           (a) the following used in extracting coal from its natural deposits in the earth by any  
111 means or method:  
112           (i) the land;  
113           (ii) a structure;  
114           (iii) a facility;  
115           (iv) machinery;  
116           (v) a tool;  
117           (vi) equipment;  
118           (vii) a shaft;  
119           (viii) a slope;  
120           (ix) a tunnel;

- 121 (x) an excavation; and
- 122 (xi) other property; and
- 123 (b) the work of preparing extracted coal, including a coal preparation facility.
- 124 (3) "Commission" means the Utah Labor Commission created in Section 34A-1-103.
- 125 (4) "Commissioner" means the commissioner appointed under Section 34A-1-201.
- 126 (5) "Director" means the director of the Utah Office of Coal Mine Safety appointed
- 127 under Section 40-2-202.
- 128 (6) "Council" means the Mine Safety Technical Advisory Council created in Section
- 129 40-2-203.
- 130 (7) "Office" means the Utah Office of Coal Mine Safety created in Section 40-2-201.
- 131 (8) "Panel" means the Coal Miner Certification Panel created in Section 40-2-204.
- 132 (9) "Unsafe condition" means a danger that reasonably could be expected to cause
- 133 serious harm to a person or property.

134 Section 4. Section **40-2-103** is enacted to read:

135 **40-2-103. Scope and administration of chapter.**

136 (1) This chapter applies to any coal mine located in the state.

137 (2) The commission:

138 (a) shall administer this chapter with the assistance of the office; and

139 (b) has jurisdiction over a coal mine in this state.

140 Section 5. Section **40-2-104**, which is renumbered from Section 40-2-1.1 is  
141 renumbered and amended to read:

142 **[40-2-1.1]. 40-2-104. Rulemaking authority.**

143 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
144 ~~[Labor Commission]~~ commission may make rules necessary to implement this chapter.

145 Section 6. Section **40-2-201** is enacted to read:

146 **Part 2. Utah Office of Coal Mine Safety**

147 **40-2-201. Utah Office of Coal Mine Safety created.**

148 (1) There is created within the commission the "Utah Office of Coal Mine Safety."

149 (2) The office, under the direction of the commissioner, shall assist the commission in  
150 administering this chapter.

151 Section 7. Section **40-2-202** is enacted to read:

152 **40-2-202. Appointment of director.**

153 (1) The director is the chief officer of the office and serves as the executive and  
154 administrative head of the office.

155 (2) (a) The commissioner shall appoint the director.

156 (b) The director may be removed from that position at the will of the commissioner.

157 (3) The director shall receive compensation as provided by Title 67, Chapter 19, Utah  
158 State Personnel Management Act.

159 (4) The director shall be experienced in administration and possess such additional  
160 qualifications as determined by the commissioner.

161 Section 8. Section **40-2-203** is enacted to read:

162 **40-2-203. Mine Safety Technical Advisory Council created -- Duties.**

163 (1) Within the office there is created the "Mine Safety Technical Advisory Council"  
164 consisting of 11 voting members and 5 nonvoting members as provided in this section.

165 (2) (a) The commissioner shall appoint the voting members of the council as follows:

166 (i) two individuals who represent coal miners;

167 (ii) two individuals who represent coal mine operators;

168 (iii) two individuals who represent local law enforcement agencies or emergency  
169 medical service providers;

170 (iv) three individuals who are expert in:

171 (A) seismology;

172 (B) mining engineering;

173 (C) mine safety; or

174 (D) another related subject; and

175 (v) two individuals who represent entities that provide mine safety training.

176 (b) The nonvoting members of the council are:

177 (i) the commissioner or the commissioner's designee;

178 (ii) the executive director of the Department of Natural Resources or the executive  
179 director's designee;

180 (iii) the commissioner of the Department of Public Safety or the commissioner's  
181 designee;

182 (iv) a representative of the federal Mine Safety and Health Administration selected by

183 the Mine Safety and Health Administration; and

184 (v) a representative of the federal Bureau of Land Management selected by the federal  
185 Bureau of Land Management.

186 (3) (a) Except as required by Subsection (3)(b), a voting member shall serve a  
187 four-year term beginning July 1 and ending June 30.

188 (b) Notwithstanding the requirements of Subsection (3)(a), the commission shall, at the  
189 time of appointment of the initial voting members of the council, adjust the length of terms of  
190 the voting members to ensure that the terms of voting members are staggered so that  
191 approximately half of the voting members are appointed every two years.

192 (4) (a) If a vacancy occurs in the voting members, the commissioner shall appoint a  
193 replacement for the unexpired term.

194 (b) The commissioner shall terminate the term of a voting member who ceases to be  
195 representative as designated by the voting member's original appointment.

196 (5) (a) The council shall meet at least quarterly.

197 (b) A majority of the voting members constitutes a quorum.

198 (c) A vote of the majority of the members of the council when a quorum is present  
199 constitutes an action of the council.

200 (6) (a) The commissioner or the commissioner's designee is the chair of the council.

201 (b) The commission shall staff the council.

202 (7) (a) (i) A member who is not a state or local government employee may not receive  
203 compensation or benefits for the member's service, but may receive per diem and expenses  
204 incurred in the performance of the member's official duties at the rates established by the  
205 Division of Finance under Sections 63A-3-106 and 63A-3-107.

206 (ii) A member who is not a state or local government employee may decline to receive  
207 per diem and expenses for the member's service.

208 (b) (i) A state government officer and employee member who does not receive salary,  
209 per diem, or expenses from the agency the member represents for the member's service may  
210 receive per diem and expenses incurred in the performance of the member's official duties at  
211 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

212 (ii) A state government officer and employee member may decline to receive per diem  
213 and expenses for the member's service.

214 (c) (i) A local government member who does not receive salary, per diem, or expenses  
215 from the entity that the member represents for the member's service may receive per diem and  
216 expenses incurred in the performance of the member's official duties at the rates established by  
217 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

218 (ii) A local government member may decline to receive per diem and expenses for the  
219 member's service.

220 (8) The council shall advise and make recommendations to the commission, the office,  
221 and the Legislature regarding:

222 (a) coal mine safety;

223 (b) prevention of coal mine accidents;

224 (c) effective coal mine emergency response;

225 (d) miner certification and recertification; and

226 (e) other topics reasonably related to coal mine safety.

227 Section 9. Section **40-2-204**, which is renumbered from Section 40-2-14 is renumbered  
228 and amended to read:

229 **[40-2-14]. 40-2-204. Coal Miner Certification Panel created -- Duties.**

230 ~~[(1) The commissioner of the Labor Commission shall appoint a panel composed of]~~

231 (1) There is created within the office the "Coal Miner Certification Panel."

232 (2) The panel consists of:

233 (a) the commissioner or the commissioner's designee; and

234 (b) at least eight other members appointed by the commissioner with equal  
235 representation and participation from:

236 ~~[(a)]~~ (i) coal mining management representatives; and

237 ~~[(b)]~~ (ii) hourly coal mining employee representatives.

238 ~~[(2) The panel members shall:]~~

239 (3) A member appointed by the commissioner shall:

240 (a) have at least five years' experience in coal mining in this state;

241 (b) administer the certification test to ~~[those applicants]~~ an applicant referred to in

242 Section ~~[40-2-15]~~ 40-2-402;

243 (c) consult with the commission about applicant qualifications specified in Section

244 ~~[40-2-15]~~ 40-2-402;



245 (d) meet when directed by the commissioner or the commissioner's designee; and  
 246 (e) hold office at the pleasure of the commissioner.

247 ~~[(3) Panel members who are not government employees shall receive no]~~

248 (4) A panel member who is not a government employee may not receive compensation  
 249 or benefits for ~~[their]~~ the member's services, but may receive per diem and expenses incurred in  
 250 the performance of the member's official duties at the rates established by the Division of  
 251 Finance under Sections 63A-3-106 and 63A-3-107.

252 ~~[(4)(a) The Labor Commission shall grant a certificate to each applicant referred to in~~  
 253 ~~Section 40-2-15 who passes the certification test administered by the panel and meets the~~  
 254 ~~qualifications specified in Section 40-2-15.]~~

255 ~~[(b) The Labor Commission may grant a certificate to an applicant involved in~~  
 256 ~~gilsonite or other hydrocarbon mining as provided by rule.]~~

257 ~~[(c) The Labor Commission shall enact rules governing the certification procedure,~~  
 258 ~~test, and qualifications for applicants involved in gilsonite or other hydrocarbon mining.]~~

259 Section 10. Section **40-2-301** is enacted to read:

### 260 **Part 3. Safety Conditions**

#### 261 **40-2-301. Commission and office responsibilities.**

262 (1) The commissioner shall:

263 (a) direct the state's efforts to promote coal mine safety; and

264 (b) investigate or participate in an investigation of a coal mine accident.

265 (2) The commission shall establish by rule, made in accordance with Title 63, Chapter  
 266 46a, Utah Administrative Rulemaking Act:

267 (a) a system consistent with Section 40-2-302 to receive, evaluate, and act on a report  
 268 of an unsafe condition at a coal mine; and

269 (b) requirements for a coal mine operator to notify the necessary persons of a coal mine  
 270 accident.

271 (3) The office may:

272 (a) conduct one or more studies and investigations to determine what actions are  
 273 necessary to promote coal mine safety;

274 (b) cooperate with educational and other organizations to promote mining engineering  
 275 and mine safety training;

276 (c) establish a cooperative relationship with the federal Mine Health and Safety  
277 Administration to allow participation of the commission in the Mine Health and Safety  
278 Administration's regulation, inspection, and plan approval systems;

279 (d) serve as the lead state agency in developing and implementing emergency response  
280 and communication plans for a coal mine accident; and

281 (e) implement the notification requirements established under Subsection (2)(b).

282 Section 11. Section **40-2-302** is enacted to read:

283 **40-2-302. Reporting of an unsafe condition in coal mines -- Adverse action**

284 **prohibited.**

285 (1) Subject to the other provisions of this section, upon receipt of a report by a person  
286 of a possible unsafe condition, the office may:

287 (a) notify the federal Mine Safety and Health Administration of the report;

288 (b) notify another appropriate federal, state, or local government agency;

289 (c) contact the operator of the coal mine that is the subject of the report;

290 (d) refer the report to the council; or

291 (e) take any other action the office considers appropriate.

292 (2) The commission or office may not disclose or otherwise make public the identity of  
293 a person who reports a possible unsafe condition unless that person authorizes the commission  
294 or office to disclose the person's identity.

295 (3) A coal mine operator may not take adverse action against a person because that  
296 person:

297 (a) reports an unsafe mine condition; or

298 (b) testifies, assists, or participates in any manner in an investigation, proceeding, or  
299 hearing under this chapter.

300 Section 12. Section **40-2-303** is enacted to read:

301 **40-2-303. Annual report on safety.**

302 (1) By October 1 of each year, the commission and council shall compile and submit to  
303 the governor and the Legislature a comprehensive report of the status of coal mine safety  
304 within the state for the immediately preceding calendar year.

305 (2) The report required by this section shall include:

306 (a) a compilation of coal mine emergencies within the state during the calendar year;

307 (b) a statement of actions by the commission, office, or council to implement this  
 308 chapter;

309 (c) a summary of reports of unsafe conditions received by the office, with a statement  
 310 of the office's actions with respect to each report of an unsafe condition;

311 (d) recommendations for additional action to improve coal mine safety; and

312 (e) any other items the commission and council consider appropriate.

313 Section 13. Section **40-2-401**, which is renumbered from Section 40-2-16 is  
 314 renumbered and amended to read:

315 **Part 4. Certification of Coal Miners**

316 ~~[40-2-16].~~ **40-2-401. Necessity of certificate.**

317 (1) A person may not work in ~~[any]~~ an occupation referred to in Section ~~[40-2-15]~~  
 318 40-2-402 unless granted a certificate by the ~~[Labor Commission]~~ commission.

319 (2) (a) (i) The ~~[Labor Commission]~~ commission may ~~[issue]~~ grant a temporary mine  
 320 foreman certificate or a temporary surface foreman certificate to an applicant who is:

321 (A) recommended by a coal mine; and

322 (B) interviewed and found competent by two panel members.

323 (ii) A certificate ~~[issued]~~ granted under Subsection (2)(a)(i) ~~[shall remain]~~ remains in  
 324 effect until:

325 (A) the next scheduled certification test;

326 ~~[(B) retest; or]~~

327 ~~[(C) terminated by the Labor Commission.]~~

328 (B) the person is retested; or

329 (C) the commission terminates the certificate.

330 (b) (i) The ~~[Labor Commission may issue]~~ commission may grant a surface foreman  
 331 certificate to a current holder of an underground mine foreman certificate, if the applicant has  
 332 three years of varied surface mining experience.

333 (ii) A surface foreman certificate applicant may receive credit for surface experience in  
 334 any other industry that has substantially equivalent surface facilities, if the applicant has  
 335 performed or is presently performing the duties normally required of a surface foreman.

336 (3) (a) The ~~[Labor Commission]~~ commission shall collect a fee described in Subsection  
 337 (3)(b) for each temporary certificate.

338 (b) The [~~Labor Commission~~] commission shall establish the fee by following [~~the~~  
339 ~~procedures and requirements of~~] Section 63-38-3.2.

340 (4) (a) An owner, operator, contractor, lessee, or agent may not employ a worker in any  
341 occupation referred to in Section [~~40-2-15~~] 40-2-402 who is uncertified.

342 (b) The certificate shall be on file and available for inspection to interested persons in  
343 the office of the coal mine.

344 (5) The commission shall grant a certificate to an applicant referred to in Section  
345 40-2-402 who:

346 (a) passes the certification test administered by the panel; and

347 (b) meets the qualifications specified in Section 40-2-402.

348 (6) (a) The commission may grant a certificate to an applicant involved in gilsonite or  
349 other hydrocarbon mining as provided by rule.

350 (b) The commission shall enact rules governing the certification procedure, test, and  
351 qualifications for applicants involved in gilsonite or other hydrocarbon mining.

352 (7) The commission may by rule require certification and recertification of other coal  
353 mine occupations, including the certification of a new coal miner.

354 Section 14. Section **40-2-402**, which is renumbered from Section 40-2-15 is  
355 renumbered and amended to read:

356 [~~40-2-15~~]. **40-2-402. Certification requirements.**

357 (1) The [~~Labor Commission~~] commission shall collect a fee for:

358 [~~(a) certification tests; or~~]

359 [~~(b) sections of the test that must be retaken.~~]

360 (a) the taking of a certification test; or

361 (b) the retaking of one or more sections of a certification test.

362 (2) (a) The [~~Labor Commission~~] commission shall establish fees by following [~~the~~  
363 ~~procedures and requirements of~~] Section 63-38-3.2.

364 (b) Notwithstanding Subsection 63-38-3.2(2)(e), the [~~Labor Commission~~] commission:

365 (i) shall retain the fees as dedicated credits; and

366 (ii) may only use the fees to administer the certification test.

367 (3) An applicant who fails any section of the certification test may retake that section  
368 of the test.

369 (4) (a) An applicant who wishes to obtain a mine foreman certificate shall have at least  
370 four years varied underground coal mining experience, of which:

371 (i) two years' experience may be credited to a mining engineering graduate of an  
372 ~~approved~~ accredited four-year college; or

373 (ii) one year's experience may be credited to a graduate of a two-year course in mining  
374 technology.

375 (b) (i) An applicant who wishes to obtain a surface foreman certificate shall have at  
376 least three years of varied surface experience.

377 (ii) The ~~Labor Commission~~ commission may grant a surface foreman certificate  
378 applicant credit for surface experience in any other industry that has substantially equivalent  
379 surface facilities.

380 (c) An applicant who wishes to obtain a fire boss certificate shall have at least two  
381 years of underground coal mining experience, of which:

382 (i) one year's experience may be credited to a mining engineering graduate of an  
383 ~~approved~~ accredited four-year college; or

384 (ii) six months' experience may be credited to a graduate of a two-year course in  
385 mining technology.

386 (d) An applicant who wishes to obtain an underground mine electrician certificate shall  
387 have at least one year of varied electrical experience as specified in 30 C.F.R. Sec. 75.153.

388 (e) An applicant who wishes to obtain a surface mine electrician certificate shall have  
389 at least one year of varied surface electrical experience as specified in 30 C.F.R. Sec. 77.103.

390 (5) A certificate ~~issued~~ granted under Section ~~[40-2-14]~~ 40-2-401 and this section  
391 shall expire if the certificate holder ceases to work in the mining industry or a mine related  
392 industry for more than five consecutive years.

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**Legislative Review Note**  
as of 2-13-08 11:20 AM

**Office of Legislative Research and General Counsel**

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**S.B. 224 - Coal Mine Safety Act**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will require an additional on-going appropriation of \$280,000 from the General Fund for the Labor Commission to hire additional staff.

|              | <u>FY 2008</u><br><u>Approp.</u> | <u>FY 2009</u><br><u>Approp.</u> | <u>FY 2010</u><br><u>Approp.</u> | <u>FY 2008</u><br><u>Revenue</u> | <u>FY 2009</u><br><u>Revenue</u> | <u>FY 2010</u><br><u>Revenue</u> |
|--------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| General Fund | \$0                              | \$280,000                        | \$280,000                        | \$0                              | \$0                              | \$0                              |
| <b>Total</b> | <b>\$0</b>                       | <b>\$280,000</b>                 | <b>\$280,000</b>                 | <b>\$0</b>                       | <b>\$0</b>                       | <b>\$0</b>                       |

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.