

**Senator Mike Dmitrich** proposes the following substitute bill:

**COAL MINE SAFETY ACT**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike Dmitrich**

House Sponsor: Kay L. McIff

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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 safety conditions in coal mines;
- ▶ requires annual reports on safety by the commission, office, 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:**



26 None

27 **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)



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

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

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

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

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

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) 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**

Part 1. General Provisions

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

This chapter is known as the "Coal Mine Safety Act."

Section 3. Section **40-2-102** is enacted to read:

**40-2-102. Definitions.**

As used in this chapter:

(1) "Adverse action" means to take any of the following actions against a person in a manner that affects the person's employment or contractual relationships:

(a) discharge the person;

(b) threaten the person;

(c) coerce the person;

(d) intimidate the person; or

(e) discriminate against the person, including to discriminate in:

(i) compensation;

(ii) terms;

(iii) conditions;

(iv) location;

(v) rights;

(vi) immunities;

(vii) promotions; or

(viii) privileges.

(2) "Coal mine" means:

(a) the following used in extracting coal from its natural deposits in the earth by any means or method:

(i) the land;

(ii) a structure;

(iii) a facility;

(iv) machinery;

(v) a tool;

(vi) equipment;

(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) "Mine Safety and Health Administration" means the federal Mine Safety and
- 131 Health Administration within the United States Department of Labor.
- 132 (8) "Major coal mine accident" means any of the following at a coal mine located in
- 133 Utah:
  - 134 (a) a mine explosion;
  - 135 (b) a mine fire;
  - 136 (c) the flooding of a mine;
  - 137 (d) a mine collapse; or
  - 138 (e) the accidental death of an individual at a mine.
- 139 (9) "Office" means the Utah Office of Coal Mine Safety created in Section 40-2-201.
- 140 (10) "Panel" means the Coal Miner Certification Panel created in Section 40-2-204.
- 141 (11) "Unsafe condition" means a danger that reasonably could be expected to cause
- 142 serious harm to a person or property.

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

144 **40-2-103. Scope and administration of chapter.**

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

146 (2) The commission:

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

148 (b) has jurisdiction over a coal mine in this state as set forth in this chapter.

149 Section 5. Section **40-2-104**, which is renumbered from Section 40-2-1.1 is

150 renumbered and amended to read:

151 ~~[40-2-1.1].~~ **40-2-104. Rulemaking authority.**

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

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

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

156 **40-2-201. Utah Office of Coal Mine Safety created.**

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

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

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

161 **40-2-202. Appointment of director.**

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

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

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

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

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

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

171 **40-2-203. Mine Safety Technical Advisory Council created -- Duties.**

172 (1) Within the office there is created the "Mine Safety Technical Advisory Council"  
173 consisting of 13 voting members and 5 nonvoting members as provided in this section.

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

175 (i) one individual who represents a coal miner union;

176 (ii) two individuals with coal mining experience;

177 (iii) two individuals who represent coal mine operators;

178 (iv) one individual who represents an industry trade association;

179 (v) two individuals from local law enforcement agencies or emergency medical service  
180 providers;

- 181 (vi) three individuals who have expertise in one or more of the following:  
182 (A) seismology;  
183 (B) mining engineering;  
184 (C) mine safety; or  
185 (D) another related subject; and  
186 (vii) two individuals from entities that provide mine safety training.
- 187 (b) The nonvoting members of the council are:  
188 (i) the commissioner or the commissioner's designee;  
189 (ii) the executive director of the Department of Natural Resources or the executive  
190 director's designee;  
191 (iii) the commissioner of the Department of Public Safety or the commissioner's  
192 designee;  
193 (iv) a representative of the Mine Safety and Health Administration selected by the  
194 Mine Safety and Health Administration; and  
195 (v) a representative of the federal Bureau of Land Management selected by the federal  
196 Bureau of Land Management.
- 197 (3) (a) Except as required by Subsection (3)(b), a voting member shall serve a  
198 four-year term beginning July 1 and ending June 30.
- 199 (b) Notwithstanding the requirements of Subsection (3)(a), the commission shall, at the  
200 time of appointment of the initial voting members of the council, adjust the length of terms of  
201 the voting members to ensure that the terms of voting members are staggered so that  
202 approximately half of the voting members are appointed every two years.
- 203 (4) (a) The commissioner shall terminate the term of a voting member who ceases to be  
204 representative as designated by the voting member's original appointment.
- 205 (b) If a vacancy occurs in the voting members, the commissioner shall appoint a  
206 replacement for the unexpired term after soliciting recommendations from the council  
207 members.
- 208 (5) (a) The council shall meet at least quarterly.  
209 (b) A majority of the voting members constitutes a quorum.  
210 (c) A vote of the majority of the members of the council when a quorum is present  
211 constitutes an action of the council.

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

213 (b) The commission shall staff the council.

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

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

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

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

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

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

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

234 (a) safety of coal mines located in Utah;

235 (b) prevention of coal mine accidents;

236 (c) effective coal mine emergency response;

237 (d) coal miner certification and recertification; and

238 (e) other topics reasonably related to safety of coal mines located in Utah.

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

241 **[40-2-14]. 40-2-204. Coal Miner Certification Panel created -- Duties.**

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



- 243 (1) There is created within the office the "Coal Miner Certification Panel."  
 244 (2) The panel consists of:  
 245 (a) the commissioner or the commissioner's designee; and  
 246 (b) at least eight other members appointed by the commissioner with equal  
 247 representation and participation from:  
 248 [(a)] (i) [coal mining] management [representatives] of coal mine operations; [and]  
 249 [(b)] (ii) hourly coal mining [employee representatives.] employees.  
 250 [(2) The panel members shall:]  
 251 (3) A member appointed by the commissioner shall:  
 252 (a) have at least five years' experience in coal mining in this state;  
 253 (b) administer the certification test to [those applicants] an applicant referred to in  
 254 Section [40-2-15] 40-2-402;  
 255 (c) consult with the commission about applicant qualifications specified in Section  
 256 [40-2-15] 40-2-402;  
 257 (d) meet when directed by the commissioner or the commissioner's designee; and  
 258 (e) hold office at the pleasure of the commissioner.  
 259 [(3) Panel members who are not government employees shall receive no]  
 260 (4) A panel member who is not a government employee may not receive compensation  
 261 or benefits for [their] the member's services, but may receive per diem and expenses incurred in  
 262 the performance of the member's official duties at the rates established by the Division of  
 263 Finance under Sections 63A-3-106 and 63A-3-107.  
 264 [(4) (a) The Labor Commission shall grant a certificate to each applicant referred to in  
 265 Section 40-2-15 who passes the certification test administered by the panel and meets the  
 266 qualifications specified in Section 40-2-15:]  
 267 [(b) The Labor Commission may grant a certificate to an applicant involved in  
 268 gilsonite or other hydrocarbon mining as provided by rule.]  
 269 [(c) The Labor Commission shall enact rules governing the certification procedure;  
 270 test, and qualifications for applicants involved in gilsonite or other hydrocarbon mining:]  
 271 Section 10. Section **40-2-301** is enacted to read:

### Part 3. Safety Conditions

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

274 (1) The commissioner shall:  
275 (a) direct the state's efforts to promote coal mine safety; and  
276 (b) investigate or participate in an investigation of a major coal mine accident in Utah.  
277 (2) The commission shall establish by rule, made in accordance with Title 63, Chapter  
278 46a, Utah Administrative Rulemaking Act:  
279 (a) a system consistent with Section 40-2-302 to receive, evaluate, and act on a report  
280 of an alleged unsafe condition at a coal mine; and  
281 (b) requirements for a coal mine operator regarding notification of a coal mine accident  
282 as part of a coal mine operator's emergency response plan.  
283 (3) The office may:  
284 (a) conduct one or more studies to promote coal mine safety;  
285 (b) cooperate with educational and other organizations to promote mining engineering  
286 and mine safety training;  
287 (c) establish a cooperative relationship with the Mine Safety and Health Administration  
288 to promote coal mine safety in Utah;  
289 (d) serve as the lead state agency in developing and implementing state and local  
290 response and communication plans for major coal mine accidents in Utah; and  
291 (e) implement the notification requirements established under Subsection (2)(b).  
292 Section 11. Section **40-2-302** is enacted to read:  
293 **40-2-302. Reporting of an unsafe condition in coal mines -- Adverse action**  
294 **prohibited.**  
295 (1) Subject to the other provisions of this section, upon the office's receipt of  
296 information from a person of a possible unsafe condition in a coal mine located in Utah, the  
297 office may:  
298 (a) notify the federal Mine Safety and Health Administration;  
299 (b) notify another appropriate federal, state, or local government agency;  
300 (c) contact the operator of the coal mine;  
301 (d) refer the information to the council on a confidential basis; or  
302 (e) take any other authorized action.  
303 (2) The commission, council, or office may not disclose or otherwise make public the  
304 identity of a person who reports a possible unsafe condition in a coal mine located in Utah

305 unless that person authorizes the commission, council, or office to disclose the person's  
306 identity.

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

309 (a) reports an alleged unsafe mine condition; or

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

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

313 **40-2-303. Annual report on coal mine safety.**

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

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

318 (a) a compilation of major coal mine accidents or other coal mine emergencies within  
319 the state during the calendar year;

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

322 (c) without a breach in confidentiality, a summary of reports of alleged unsafe  
323 conditions received by the office, with a statement of the office's responses;

324 (d) recommendations for additional action to promote coal mine safety; and

325 (e) any other items the commission, office, and council consider appropriate.

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

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

329 ~~[40-2-16].~~ **40-2-401. Necessity of certificate.**

330 (1) A person may not work in ~~[any]~~ an occupation referred to in Section ~~[40-2-15]~~  
331 ~~40-2-402~~ unless granted a certificate by the ~~[Labor Commission]~~ commission.

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

335 (A) recommended by a coal mine; and

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

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

339 (A) the next scheduled certification test;

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

341 [~~(C) terminated by the Labor Commission;~~]

342 (B) the person is retested; or

343 (C) the commission terminates the certificate.

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

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

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

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

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

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

358 (5) The commission shall grant a certificate to an applicant referred to in Section  
359 40-2-402 who:

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

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

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

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

366 (7) The commission may by rule require certification and recertification of other coal

367 mine occupations, including the certification of a new coal miner.

368 Section 14. Section ~~40-2-402~~, which is renumbered from Section 40-2-15 is  
369 renumbered and amended to read:

370 ~~[40-2-15].~~ **40-2-402. Certification requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

391 (ii) The [~~Labor Commission~~] commission may grant a surface foreman certificate  
392 applicant credit for surface experience in any other industry that has substantially equivalent  
393 surface facilities.

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

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

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

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

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

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

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**S.B. 224 1st Sub. (Green) - 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> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <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.