

AN ACT

RELATING TO MINING; PROVIDING FOR AN APPEAL PROCESS FOR PENALTIES FOR FAILURE TO GIVE EMERGENCY NOTICE; PROVIDING FOR A CORRECTION IN A SECTION OF THE MINING SAFETY ACT; CHANGING REQUIREMENTS FOR RECERTIFICATION OF MINE PERSONNEL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 69-5-17 NMSA 1978 (being Laws 1933, Chapter 153, Section 23, as amended by Laws 2007, Chapter 301, Section 6 and by Laws 2007, Chapter 302, Section 6) is amended to read:

"69-5-17. FATAL AND SERIOUS MINE ACCIDENTS-- ASSISTANCE--INVESTIGATION--NOTIFICATION--CIVIL PENALTY.--

A. The state mine inspector shall proceed immediately upon notification to the site of any mine accident causing the loss of life or requiring activation of a mine rescue team and shall assist in the rescue of persons within the mine. The state mine inspector shall participate in the accident investigation with any other federal, state and local agency and company representatives.

B. Whenever an accident occurs in or about a mine or the machinery connected to a mine, the operator of the mine shall give notice within thirty minutes of ascertaining the occurrence of the accident to the mine accident emergency operations center at the statewide telephone number

established by the state mine inspector stating the particulars of the accident.

C. Nothing in this section shall be construed to relieve the operator of the mine from any reporting or notification requirement under federal law.

D. As used in this section, "accident" means "accident" as provided in 30 C.F.R. 50.2.

E. The state mine inspector shall impose a civil penalty of up to one hundred thousand dollars (\$100,000) on the operator of the mine if it is determined that the operator failed to give immediate notice as required in this section. The inspector may waive imposition of the civil penalty at any time if the inspector finds that the failure to give immediate notice was caused by circumstances outside the control of the operator.

F. The penalties imposed by the state mine inspector for violations of this section shall be derived from criteria-based penalty points. A penalty conversion table developed by the state mine inspector shall serve as a guide for determining penalty assessments.

G. A person who receives a notice of violation that includes a penalty assessment under this section may, within twenty days after receipt of the notice, submit a written petition to the state mine inspector to review the notice. Within sixty days after receipt of the petition, the

state mine inspector shall issue a final order upholding, amending or rescinding the notice. Within twenty days after the date of notice of the final order by the state mine inspector, a person who is the subject of the notice may file a written appeal of the order with the mining safety board. The mining safety board shall adopt rules to govern the appeal process."

Section 2. Section 69-8-5.1 NMSA 1978 (being Laws 1986, Chapter 54, Section 1, as amended) is amended to read:

"69-8-5.1. TRAINING FEES.--The inspector is authorized to charge fees to mining companies for mine safety training given to their personnel. The amount of the training fees shall be arrived at by the inspector after consultation with the board. Fees collected shall be deposited in the state mine inspector fund to assist in the funding of the inspector."

Section 3. Section 69-14-4 NMSA 1978 (being Laws 1933, Chapter 153, Section 42, as amended by Laws 2007, Chapter 301, Section 17 and by Laws 2007, Chapter 302, Section 17) is amended to read:

"69-14-4. CERTIFICATION PERIOD--RECERTIFICATION--DISCIPLINE--APPEAL.--

A. Certification for mine personnel shall be issued for a period of five years. All mine personnel certified by the state mine inspector prior to June 15, 2007

shall have their certification period extended five years. Each certified person has the responsibility to notify the state mine inspector of any change in address or change in mine employment within thirty days of the change. Failure to provide current information may result in suspension of certification.

B. Certified persons may apply for recertification within twelve months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. Recertification will require the applicant to submit an application and appropriate documentation as required by the state mine inspector. The mining safety board shall adopt rules for requirements for recertification.

C. The state mine inspector may refuse to certify or recertify or may suspend or revoke any certification held or applied for under Chapter 69 NMSA 1978 upon grounds that the applicant or certified person:

(1) gave false or forged evidence to the state mine inspector to obtain certification;

(2) is grossly negligent or incompetent in duties as a certified person;

(3) has failed to maintain certification;

(4) has violated or aided or abetted any

person in a violation of the Federal Mine Safety and Health Act of 1977 or the state mine safety laws; or

(5) has been disciplined in another state that certifies mine personnel.

D. If the state mine inspector contemplates taking any of the actions in Subsection C of this section for any of the reasons provided in that subsection, the state mine inspector shall provide written notice to the applicant or certified person. The notice shall include a statement that the state mine inspector has sufficient evidence that, if not rebutted or explained, will justify the state mine inspector in taking the contemplated action, that indicates the general nature of the evidence and that provides the applicant or person at least twenty days to submit written evidence to rebut or explain the allegations.

E. If, after the response period ends, the state mine inspector takes any action of a type specified in Subsection C of this section, the state mine inspector shall serve upon the applicant or certified person a written notice of the action containing a statement that the applicant or certified person may file a petition for review with the mining safety board pursuant to the Mining Safety Act."