Article 2A.

Mine Safety and Health Act.

§ 74-24.1. Short title and legislative purpose.

(a) This Article shall be known as the Mine Safety and Health Act of North Carolina.

(b) Legislative findings and purpose:

(1) The General Assembly finds that the burden of operators and miners of this State's mines resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope in attaining this objective lies in programs of research, engineering, education, and enforcement, and in earnest cooperation of the federal and state governments, operators, and miners.

(2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to assure so far as possible every worker in North Carolina's mines safe and healthful working conditions and to preserve our human resources:

a. By encouraging operators and miners in their effort to reduce the number of occupational safety and health hazards in mines and to stimulate and assist operators and miners to institute new programs and to perfect existing programs for providing safe and healthful working conditions through technical assistance and consultation;

b. By recognizing that operators and miners have separate but interdependent responsibilities and rights with respect to achieving safe and healthful working conditions;

c. By authorizing the Commissioner to develop occupational safety and health standards applicable to mines giving consideration to the needs of operators and miners and to adopt standards promulgated from time to time by the federal government;

d. By providing occupational health criteria which will assure insofar as practicable that no miner will suffer diminished health, functional capacity, or life expectancy as a result of his work experience in a mine;

e. By providing education and training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

f. By providing an effective enforcement program which shall include a prohibition against giving advance notice of a mine inspection;

g. By providing for appropriate reporting procedures with respect to occupational safety and health which will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problems in mines;

h. By providing for research and technical assistance in the field of occupational safety and health in mines and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems in mines; and

i. By authorizing the Commissioner to enter into agreements and contracts with public and private agencies, including agencies of the United States

government, organizations, and individuals in order to carry out the ends and purposes of this Article.

(c) The General Assembly of North Carolina appoints the North Carolina Department of Labor as the designated agency to administer the Mine Safety and Health Act of North Carolina. (1975, c. 206, s. 1.)

§ 74-24.2. Definitions.

The following definitions apply in this Article:

(1) Accident. – An unexpected event resulting in injury to, illness of, or death of a person or persons as a result of mining operations and any mine explosion, mine ignition, mine fire, mine inundation, mine cave-in, or other event which could have readily resulted in serious physical harm.

(2) Repealed by Session Laws 2021-82, s. 1, effective July 8, 2021.

(3) Agent. – Any person charged by the operator with responsibility for the operation of all or part of a mine or supervision of the miners in a mine, and for the purposes of this Article includes contractors, subcontractors, or independent contractors employed by the operator to perform any work or services at, in, or on the mine.

(4) Commissioner. – The Commissioner of Labor of North Carolina.

(5) Director. – The person authorized under G.S. 74-24.19 and appointed by the Commissioner for the purpose of assisting in the administration of this Article.

(6) Imminent danger. – The existence of any condition or practice in a mine which could reasonably be expected to cause death or serious physical harm immediately to any miner if such condition or practice is not abated at once.

(7) Mine. – An area of land and all private ways and roads appurtenant thereto, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed or constructed on, under, or above the surface of such land by any person, used in, or to be used in, or resulting from (including the reclamation of mined areas or the storage of materials in mined areas), or to facilitate the work of exploring for, developing of, or extracting by any means or method in such area all minerals, inorganic and organic, from their natural deposits. The term "mine" also includes all mineral processing and milling facilities except those used in the processing of source materials as defined in the Atomic Energy Act of 1954, as amended.

(8) Miner. – Any individual, other than an operator or an agent, working in or about a mine.

(9) Operator. – An individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization owning, operating, leasing, controlling, or supervising a mining operation.

(10) Repeated violation. – A violation for which an operator was issued a notice or an order on an inspection and which is found to exist again on the next regular inspection, even though the violation was abated within the time fixed for abatement.

(11) State. – The State of North Carolina. (1975, c. 206, s. 2; 2021-82, s. 1(a).)

§ 74-24.3. Coverage.

Each mine shall be subject to the provisions of this Article, and each operator of such mine shall comply with all standards, rules, regulations, orders, and notices adopted or issued under this Article. The operator of such mine shall be responsible for the health and safety of all miners in a mine and shall assure insofar as practicable conditions of work and places of work free from hazards that are causing or are likely to cause death or serious physical harm. (1975, c. 206, s. 3.)

§ 74-24.4. Safety and health standards.

(a) The Commissioner shall develop, adopt, revise, and promulgate safety and health standards for the purpose of the protection of life, the promotion of safety and health, and the prevention of "accidents" in mines which are subject to this Article. In the development of safety and health standards, the Commissioner shall consult with interested federal agencies, appropriate representatives of other State agencies, appropriate representatives of mine operators and miners, and other interested persons and organizations whose participation would further the purposes of this Article.

(b) In developing and promulgating safety standards pursuant to this section, the Commissioner shall include standards with respect to the training of miners in first aid, safety, the proper use of rescue equipment available within mines, and periodic evacuation drills and disaster procedure training.

(c) The State Health Director shall have primary responsibility for research and the recommendation of health standards to the Commissioner to effectuate the purposes of this Article, and nothing in this subsection shall affect the authority of the Commissioner with respect to the promulgation and enforcement of both safety and health standards.

(d) The procedures utilized for the adoption and promulgation of safety and health standards, including notice and public hearings, shall be in accordance with the Administrative Procedure Act as set out in Chapter 150B of the General Statutes. (1975, c. 206, s. 4; 1989 (Reg. Sess., 1990), c. 1004, ss. 52, 53; 1993, c. 513, s. 8; 2021-82, s. 1(b).)

§ 74-24.5. Modification of safety and health standards.

Upon petition by an operator, a representative of miners, or a miner, the Commissioner may modify the application of any safety and health standard to a mine if the Commissioner determines that an alternative method of protecting the miners will guarantee the same measure of protection afforded the miners by the standard, or will enhance the level of safety and health provided by that standard. Upon receipt of such petition the Commissioner shall give public notice thereof and give notice to the operator, the representative of miners, or the miner in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of such operator, representative of the miners, or miner to enable the operator, the representative of miners, or miner in such mine or any interested party to present information relating to the modification of such standard. The Commissioner shall issue a decision incorporating his findings of fact therein and send a copy thereof to the operator, the representative of the miners, or miner as appropriate. A record shall be kept of a public hearing held under this section. The decision of the Commissioner is considered a final agency decision for purposes of judicial review. (1975, c. 206, s. 5; 1987, c. 827, s. 258.)

§ 74-24.6: Repealed by Session Laws 2021-82, s. 1(c), effective July 8, 2021.

§ 74-24.7. Inspections and investigations.

(a) The Commissioner through the Director shall make as many inspections and investigations in mines each year as are deemed necessary to effectively and accurately fulfill the requirements of:

(1) Obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of "accidents" and causes of illnesses and physical impairments originating in such mines,

(2) Gathering information with respect to the necessity for health and safety standards,

(3) Determining whether an imminent danger exists,

(4) Determining whether or not there is compliance with safety and health standards or with any notice, order, or decision issued under this Article.

(5) In carrying out the requirements of (4) of this subsection, no advance notice of an inspection shall be provided to any mine operator, official, miner, representative of the miners, or other person, except that the Commissioner or Director may authorize the giving of advance notice only when such notice is essential to the effectiveness of the inspection.

(b) For the purpose of making any inspection or investigation under this Article, the Commissioner or his authorized representative shall have a right of entry to, upon, or through any mine at reasonable times.

(c) For the purpose of making any investigation of any "accident" relating to safety and health in a mine, the Commissioner may, after notice, hold hearings, and may issue subpoenas for the attendance and testimony of persons and the production of relevant documents, and administer oaths in any investigation conducted by him. In case of contumacy or refusal to obey a subpoena served upon any person under this section, the general court of justice, superior court division, of the county in which such person is found or resides or transacts business, upon application by the Commissioner and after notice to such person, shall have jurisdiction to determine whether such person shall be punished as for contempt of court.

(d) In the event of an "accident" occurring in a mine, the operator shall notify the Commissioner or the Director thereof at such time as may be required and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any "accident" occurring in a mine where rescue and recovery work is necessary, the Commissioner through the Director shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

(e) In the event of any "accident" occurring in a mine, the Commissioner through the Director may issue such orders as he deems appropriate to insure the safety of any person in the mine, and the operator of such mine shall obtain the approval of the Commissioner or his authorized representative in consultation with appropriate federal representatives, when feasible, of any plan to recover any person in the mine or to recover the mine or to return affected areas of the mine to normal.

(f) Whenever any miner or representative of the miners has reasonable grounds to believe that a violation of a safety or health standard exists, or that an imminent danger exists, such miner or representative of the miners may request an inspection by giving notice to the Commissioner or the Director of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall show the name of the miner, be

signed by the miner or representative of the miners, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that, upon request of the person giving such notice, his name and the names of individual miners referred to therein shall not appear in such copy. If, after receipt of such notification, the Commissioner finds that there are reasonable grounds to believe a violation may exist, a special inspection shall be made as soon as practicable to determine if, in fact, such violation or danger does exist under the provisions of this Article.

(g) At the commencement of any inspection of a mine by the Commissioner or his authorized representative, under subsection (a)(3) or subsection (a)(4) of this section, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the Commissioner or his authorized representative on such inspection, to inform the Commissioner or his authorized representative of conditions and practices in the mine, without loss or deduction in pay. Where there is no authorized representative of the miners, the Commissioner or his authorized representative shall have the right to consult with a reasonable number of miners concerning matters of safety and health in the work place. (1975, c. 206, s. 7.)

§ 74-24.8. Findings, notices, and orders.

(a) (1) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that an imminent danger exists, he shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Commissioner or his authorized representative determines such imminent danger no longer exists.

(2) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that an imminent danger exists with respect to the condition or manner of use of any equipment, machinery, article, or apparatus, he shall thereupon issue an order requiring the operator or his agent to cause immediately such equipment, machinery, article, or apparatus to be withdrawn from, and to be prohibited from, use or operation until the Commissioner or his authorized representative determines that such imminent danger no longer exists.

(3) As a result of any investigation of any "accident" or as a result of any other investigation or tests performed, the Commissioner or his authorized representative may cause to be withdrawn and prohibited from use or operation in any mine any equipment, machinery, article, or apparatus the use of which is likely to cause serious physical harm or an "accident" until the Commissioner or his authorized representative determines that such equipment, machinery, article, or apparatus has been repaired, modified, reconditioned, or altered in such manner that "accidents" or serious physical harm will thereafter be avoided.

(b) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that there has been a violation of any safety and health standard but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period as originally fixed or subsequently extended, the Commissioner or his authorized representative finds that the violation

has not been totally abated, and if he also finds that the period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Commissioner or his authorized representative determines that the violation has been abated.

(c) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that there has been a repeated violation of a safety or health standard which could reasonably be expected to result in serious physical harm to any miner, he shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Commissioner or his authorized representative determines that the violation has been abated.

(d) The following persons may enter, upon approval of the Commissioner or his authorized representative, any area of a mine subject to an order issued under this section:

(1) Any person whose presence in such area is necessary, in the judgment of the operator or the Commissioner or his authorized representative, to eliminate the condition described in the order;

(2) A public official whose official duties require him to enter such area;

(3) A representative of the miners in such mine who, in the judgment of the operator or the Commissioner, or his authorized representative, is qualified to make mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the condition described in the order;

(4) A consultant to any of the foregoing.

(e) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any safety or health standard and where appropriate, a description of the area of the mine from which persons must be withdrawn and prohibited from entering, and a description of the equipment, machinery, article, or apparatus which shall be withdrawn and prohibited from use or operation.

(f) A notice or order issued pursuant to this section may be modified, vacated, or terminated upon review by the Commissioner or his authorized representative. (1975, c. 206, s. 8.)

§ 74-24.9. Issuance and delivery of notices, orders, and decisions.

(a) All notices or orders issued under G.S. 74-24.8 shall be in writing, signed by the Commissioner or his authorized representative, and shall be given promptly to the operator of the mine.

(b) In order to insure prompt compliance with all notices, orders, or decisions issued under this Article, the Commissioner or his authorized representative may deliver such notices, orders, or decisions to an agent of the operator, and such agent shall immediately take appropriate measures to insure compliance with such notice, order, or decision.

(c) Each operator of a mine shall file with the Commissioner the name and address of such mine and the name and address of the operator of the mine. Any revisions in such names or addresses shall be promptly filed with the Commissioner. Each operator of a mine shall designate a responsible official, and shall file the name and address of said official with the Commissioner, as the principal officer in charge of safety and health at such mine, and such official shall receive a

copy of any notice, order, or decision issued under this Article affecting such mine. In any case, where the mine is subject to the control of any person not directly involved in the daily operations of the mine, there shall be filed with the Commissioner the name and address of such person and the name and address of a principal official who shall have overall responsibility for the conduct of an effective safety and health program at any mine subject to the control of such person, and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a safety and health official under this subsection shall not be construed as making such official subject to any penalty under this Article. (1975, c. 206, s. 9.)

§ 74-24.10. Administrative and judicial review of decisions on mine safety.

(a) An operator to whom a notice or order is issued under G.S. 74-24.8 and G.S. 74-24.9 may contest the notice or order by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving the notice or order. An operator who files a petition for a contested case shall send a copy of the petition to all affected miners or to their representative, if any, when the petition is filed. Judicial review of a decision by the Commissioner in a contested case is available under Article 4 of Chapter 150B of the General Statutes.

(b) A notice or order, except an order issued under G.S. 74-24.8(a), shall be stayed while it is under administrative or judicial review. (1975, c. 206, s. 10; 1987, c. 827, s. 259.)

§ 74-24.11. Repealed by Session Laws 1987, c. 827, s. 260.

§ 74-24.12. Injunctions.

The Commissioner through the Director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the superior court of the county in which a mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (i) violates or fails or refuses to comply with any final order or decision issued under this Article or (ii) interferes with, hinders, or delays the Commissioner in carrying out the provisions of this Article, or (iii) refuses to admit the Commissioner or his authorized representative to the mine, or (iv) refuses to permit the inspection of the mine, or the investigation of an accident or occupational illness occurring in, or connected with, such mine, or (v) refuses to furnish any information or report requested by the Commissioner in furtherance of the provisions of this Article. (1975, c. 206, s. 12.)

§ 74-24.13. Mandatory reporting.

Under such regulations as he may prescribe, the Commissioner shall require that:

(1) Operators of mines which are subject to this Article submit, at least annually and at such other times as he deems necessary, and in such form as he may prescribe, reports of "accidents," injuries, occupational disease, and related data, and the Commissioner through the Director shall compile, analyze, and publish, either in summary or detailed form, the information obtained; and all information, reports, orders, or findings, obtained or issued under this Article may be published and released to any interested person, and shall be made available for public inspection.

(2) All "accidents" shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such "accidents" and investigations shall be kept, and the information shall be made readily

available for inspection by the Commissioner or his authorized representative. Such records shall include man-hours worked and shall be reported for periods determined by the Commissioner, but at least annually.

(3) The operators of mines which are subject to this Article shall notify the Commissioner, before starting operations, of the approximate or actual date mine operations will commence. The notification shall include mine name, location, the company name, mailing address, the person in charge, and whether operations will be continuous or intermittent. When any mine subject to this Article is closed, the operator shall notify the Commissioner of such closure and indicate whether the closure is temporary or permanent. (1975, c. 206, s. 13.)

§ 74-24.14. Criminal penalties.

Any person who (i) willfully violates any standard, order, notice, decision, rule, or regulation issued under authority of this Article, and said violation causes death or serious physical harm to another; (ii) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Article or required by any order, notice, or decision issued under this Article; (iii) knowingly distributes, sells, offers for sale, introduces, or delivers any equipment, machinery, article, or apparatus which is represented as complying with the provisions of this Article, or with any specification or regulation of the Commissioner applicable to such equipment, machinery, article, or apparatus and knowing it does not so comply, shall be guilty of a Class 2 misdemeanor. In any instance in which such offense is committed by a corporation, the officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both. (1975, c. 206, s. 14; 1993, c. 539, s. 553; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 74-24.15. Rights and duties of miners.

Miners shall comply with all safety and health standards and all rules, regulations, or orders issued pursuant to this Article which are applicable to their own actions and conduct and shall have the rights afforded under Article 21 of Chapter 95 of the General Statutes. (1975, c. 206, s. 15; 1987, c. 827, s. 261; 1991 (Reg. Sess., 1992), c. 1021, s. 5.)

§ 74-24.16. Education, training, technical assistance, and research.

(a) The Commissioner through the Director is authorized to develop and conduct expanded programs for the education, training, and technical assistance of operators and miners in the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions and to conduct such research as may be necessary in mines which are subject to this Article.

(b) The Commissioner is authorized to conduct, directly or by grants, short-term training of personnel engaged in work related to the Commissioner's responsibilities under this Article.

(c) In carrying out the provisions of this Article, the Commissioner is authorized to enter into agreements and contracts with, and accept grants from and make grants to, public and private agencies and organizations and individuals.

(d) Repealed by Session Laws 2006-66, s. 13.1, effective July 1, 2006. (1975, c. 206, s. 16; 2005-276, s. 42.2(a); 2005-345, s. 48(a); 2006-66, s. 13.1.)

§ 74-24.17. State-federal plan.

In order to promote sound and effective coordination in State and federal activities within the field covered by this Article, the Commissioner is hereby authorized to enter into and, from time to time, to amend or terminate a State-federal plan agreement with the federal agency charged with administering laws relating to safety and health in mines. (1975, c. 206, s. 17.)

§ 74-24.18. Legal representation.

It shall be the duty of the Attorney General of North Carolina to represent the Department of Labor in all actions or proceedings in connection with this Article. (1975, c. 206, s. 18.)

§ 74-24.19. Administrative provisions.

(a) The Commissioner shall appoint a Director to assist him in administering the provisions of this Article and, through the Director, shall have authority to appoint, subject to Chapter 126 of the General Statutes of North Carolina, such officers, engineers, inspectors, and employees as he deems requisite for the administration of this Article; and to prescribe powers, duties, and responsibilities of all officers, engineers, inspectors, and employees engaged in the administration of this Article.

(b) All persons appointed as representatives of the Commissioner shall be qualified by practical experience in mine safety and health administration or practical experience in mining or by experience as a practical mining engineer or by education. All persons so appointed shall be physically able to perform their duties predicated on their work assignments, and all persons subject to making inspections, investigations, or participating in rescue and recovery work shall be examined prior to their employment and annually thereafter by a physician who shall certify their physical ability to perform their duties in mines subject to this Article. The fee for the required annual examination shall be satisfied as recommended by the Commissioner.

(c) The Commissioner, the Director, or any other officer, engineer, inspector, or employee engaged in the administration of this Article shall not, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation, financial or otherwise, with any operating mining company, operator's association, or labor union. (1975, c. 206, s. 19.)

§ 74-24.20. Construction of Article and severability.

This Article shall receive a liberal construction to the end that the safety and health of miners in the State may be effectuated and protected. If any provision of this Article or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1975, c. 206, s. 20.)