

**OVERVIEW:  
REGULATION OF COAL MINE SAFETY IN UTAH**

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**SUMMARY OF HISTORY, CURRENT STATUS  
AND COMPARISON WITH OTHER STATES**



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Replacement Vol. 5A,

## **I. HISTORY OF UTAH COAL MINING<sup>1</sup>**

Relative to its vast coal resources, Utah's coal industry was slow to develop. During the initial phase of settlement, production was limited by labor and transportation. Coal was mined out of small prospects that served local markets.

The nature of coal mining changed when railroads pushed into Utah during the last third of the 19<sup>th</sup> century. Railroads themselves were large consumers of coal. They also provided the means to transport coal to distant markets. Together, these factors encouraged large-scale operations that exposed large numbers of workers to the dangers of underground coal mining. In 1900, only a few years after the commencement of large-scale mining operations, 200 Utah miners died in a coal mine at Winter Quarters—some from the initial explosion, others from the carbon monoxide poisoning that followed. The Winter Quarters disaster remains the worst but, sadly, not the last coal mine catastrophe in Utah.

As with most extractive industries, Utah's coal industry has experienced cycles of recession and prosperity. World War I, World War II, and the 1970's oil embargo increased demand for domestic energy resources and stimulated coal mining activity. In each case, these times of increased activity have been followed by periods of retrenchment. Currently, high demand for generation of electricity is encouraging greater coal production in Utah and elsewhere.

Despite the cyclical nature of the coal industry, the long-term trend of coal production in Utah has been upward. From 1960 through 2006, coal production has increased more than 500% while the numbers of mines and miners have declined.

Obviously, Utah’s robust coal production is the result of large mines using sophisticated equipment operated by highly skilled miners. It also requires the extraction of coal from more technically challenging deposits.

**Table One: Historical data—coal mining in Utah<sup>2</sup>**

<b>Year</b>	<b>Mines</b>	<b>Miners</b>	<b>Average Days Worked/Year</b>	<b>Production (tons)</b>	<b>Tons per day/miner</b>
1960	45	2,418	191	4,955,000	10.73
1965	31	1,495	212	4,992,000	15.75
1970	20	1,469	226	4,733,000	14.26
1975	20	2,550	197	6,937,000	13.81
1980	29	3,512	229	13,236,000	16.46
1985	22	2,563	213	12,831,000	23.50
1990	18	2,791	234	22,012,000	33.70
1995	14	1,989	225	25,051,000	55.98
2000	13	1,672	253	26,920,000	63.64
2005	13	1,803	300	24,556,000	45.40
2006	13	1,994	314	26,131,000	41.74

**II. UTAH REGULATION OF COAL MINE SAFETY**

**State Coal Mine Inspector.** Utah achieved Statehood in 1896. That same year, the first session of the Utah Legislature created the position of State Coal Mine Inspector.

The State Coal Mine Inspector was required to “make careful and thorough inspection” of every Utah coal mine every three months. The Inspector was specifically directed to examine “appliances for the safety of miners, the number of air and ventilation shafts, slopes, or tunnels, the number of shafts, slopes, or tunnels for ingress or egress, the character and condition of the machinery for operating, ventilating, and draining of such mines, and the quantity of air supplied to the same.”<sup>3</sup>

The State Coal Mine Inspector was authorized to enter and inspect any coal mine at any time. The Inspector was required to notify the mine operator of any unsafe conditions and to order correction of such conditions. If corrections were not made,

continued operation of the mine was unlawful. The Inspector was also authorized to obtain an injunction against operation of unsafe mines. Additionally, the Inspector was required to investigate and report on any coal mine accident. In performing the foregoing duties, the State Coal Mine Inspector was assisted by a Deputy Inspector and a support clerk.<sup>3</sup>

In subsequent years, the Utah Legislature expanded the scope of coal mine regulation under the authority of the State Coal Mine Inspector. In 1905, the Utah Legislature required the Inspector to certify the qualifications of individuals working as mine foremen and fire bosses. The Legislature periodically amended the statutes to add specific provisions for safe operation of coal mines.<sup>4</sup>

**Utah Industrial Commission.** In 1917, the Utah Legislature established the Utah Industrial Commission to administer laws dealing with employment conditions and labor relations. At the same time, the Legislature discontinued the office of State Coal Mine Inspector and transferred the Inspector's duties to the Industrial Commission.<sup>5</sup>

Transfer of administrative responsibility from the State Coal Mine Inspector to the Industrial Commission did not change the substance of Utah's coal mine safety standards. Rather, the Legislature maintained what had become a substantial statutory code of safety regulations, with only modest incremental amendments from time to time.

The full scope of Utah's statutory provisions for coal mine safety are found in Title 40, Chapter 2, "Coal Mines," Utah Code Annotated 1953, 1981 Replacement Vol. 5A, included herein as **Appendix A**. In summary, Utah's safety regulations and enforcement powers included:

- Industrial Commission's authority to enter any active coal mine at any time; refusal of entry could result in up to a \$500 fine.
- Obligation of mine operators to maintain accurate mapping of mine workings and provide reports regarding production, use of explosives, workforce data and number of accidents.
- Standards for safe egress from the mine.
- Obligation of mine operators to maintain "a constant and adequate supply of pure air," and setting standards to achieve that purpose.
- Obligation of mine operators to establish sprinkling systems for coal dust control.
- Timbering requirements.
- Provisions for certification of fitness for positions of mine foreman, fire boss and shot firer.
- Authority of the Industrial Commission to establish standards for various aspects of coal mining, such as definition of "gassy" mines and the design of lighting equipment to be used.
- Detailed statutory requirements for other operations, such as hoisting or lowering miners, prohibition against intoxication, storage of explosives, etc.
- In cases of accident, Industrial Commission authority to direct emergency operations and investigate the cause of accident.
- Enforcement powers, including monetary penalties, criminal misdemeanors and prohibitions against continued operation of non-compliant mines.

Thus, beginning with statehood and continuing to approximately 1980, the Utah Legislature maintained a comprehensive state program for coal mine safety that included

safety standards, procedures and enforcement tools, with administrative authority resting first with the State Coal Mine Inspector and later with the Industrial Commission.

### **III. ADVENT OF FEDERAL REGULATION<sup>6</sup>**

The federal government was slow to participate in coal mine safety. The evolution of federal involvement took place over 100 years, in incremental steps:

- **1881**—Congress established minimal coal mine standards and prohibited employment of children under 12 years of age. These provisions applied only to coal mines in U.S. territories, including Utah Territory.
- **1910**—After a decade in which more than 2,000 miners had died annually in coal mine accidents, Congress established the Bureau of Mines, but limited its duties to research and gave it no enforcement authority.
- **1941**--The Bureau of Mines was given inspection authority.
- **1947**--Congress authorized the first code of federal regulations for mine safety.
- **1952**--Congress enacted the Federal Coal Mine Safety Act of 1952, which authorized annual federal inspections of some underground coal mines and gave the Bureau of Mines authority to issue violation notices, order mine closures in case of imminent danger, and assess civil penalties.
- **1966**--Congress extended the coverage of the 1952 Coal Mine Safety Act to all underground coal mines.
- **1969**—Congress enacted the Federal Coal Mine Health and Safety Act (“the Coal Act”), the first comprehensive federal legislation governing both surface and underground coal mines. The Coal Act required quarterly federal inspections of underground mines and dramatically increased federal enforcement powers. The

Coal Act also provided compensation for miners suffering from pneumoconiosis (“black lung”).

- **1973**—The Secretary of Interior established the Mining Enforcement and Safety Administration (“MESA”), separate from the Bureau of Mines, to assume the safety and health enforcement functions formerly carried out by the Bureau. This was done to avoid any conflict of interest between enforcement of mine safety and health standards on one hand, and mineral resource development on the other.
- **1977**—Congress enacted the Federal Mine Safety and Health Act of 1977. This Act created the Mine Safety and Health Administration (“MSHA”) with authority to develop and enforce coal mine safety standards. The 1977 Act expanded the rights of miners in safety matters and protected them from retaliation for exercising those rights.

Under the authority of the 1977 Federal Mine Safety and Health Act, MSHA administers a comprehensive federal scheme for: 1) establishing safety standards and procedures for underground coal mines; 2) frequent inspection of each underground mine and investigation of complaints; 3) protection of miners against retaliatory discrimination; and 4) enforcement authority. Additionally, MSHA also reviews mining plans and training programs. It operates an academy to train inspectors, technical support personnel, and mining industry personnel. It approves products for use in underground coal mines to avoid fires and explosions. It provides technical assistance to mine operators. It cooperates with states in the development of mine safety and health programs, makes grants to states in which mining takes place, and oversees rescue and recovery operations.

MSHA maintains a substantial staff of inspectors, specialists and administrative personnel in Utah. Additionally, MSHA's local staff have access to MSHA's national resources, including research and training facilities, technical expertise, and emergency response and management.

#### **IV. UTAH'S POST-MSHA ACTIONS**

As the federal government played a larger and larger role in coal mine safety, the Utah Legislature reduced Utah's coal mine safety program.

By the end of 1979, although the statutory basis for Utah's state program remained intact, the state program had only three coal mine inspectors to perform inspections and administer the miner certification program. Even this limited state program depended primarily on federal funding.<sup>7</sup>

In 1987, the Utah Legislature repealed Utah's substantive state rules for coal mine safety and instead required the Industrial Commission to "adopt rules that substantially incorporate the federal safety and health standards relating to coal mining, including those promulgated under the Federal Mine Safety and Health Act of 1977 and its amendments."<sup>8</sup>

In 1988, the Utah Legislature specifically prohibited the Industrial Commission from exercising any authority or perform any mining inspections or enforcement of safety rules "so long as Utah's mining operations are governed by federal regulations." At the same time, the Legislature amended what was then Utah Code Annotated §35-1-19 (now §34A-1-407), which generally gave the Commission authority to investigate complaints of unsafe working conditions in any place of employment. The 1988 amendment limited this general authority by specifying that "For any Utah mine subject to the Federal Mine

Safety and Health Act, the sole duty of the commission shall be to notify the appropriate federal agency of the complaint.”<sup>9</sup> These restrictions have been carried forward through subsequent statutory amendments and recodifications and are now found in § 34A-1-105(10) and § 34A-1-407(1)(b) of the Utah Labor Commission Act..

In 2001, the Legislature repealed statutory provisions that limited underground coal miners to 8-hour shifts, unless longer shifts were approved in advance by the Commission.<sup>10</sup>

In summary, beginning in the late 1970’s, as MSHA began to exercise its authority under federal law to regulate and enforce coal mine safety, the State of Utah has reduced the state’s involvement. This is likely the result of a legislative judgment that, state involvement would be an unnecessary duplication of federal efforts under MSHA.<sup>7</sup> As a result of this policy decision, Utah’s involvement in underground coal mine safety is limited to two areas: 1) certifying the competence of coal mine personnel working in safety-related occupations, pursuant to Title 40, Chapter 2, Utah Code Annotated; and 2) establishing and enforcing standards for certain auxiliary equipment, such as boilers and elevators, pursuant to Title 34A, Chapter 7, Utah Code Annotated.

## **VII. OTHER STATES’ PATTERNS**

There can be no argument that underground coal mining is a dangerous occupation. As noted by the Committee on Education and Labor of the U.S. House of Representatives in 1977:<sup>11</sup>

“Mining represents a small segment of the working population, yet the operation is of a nature that is so unique, so complex, and so hazardous as to not fit neatly under the Occupational Safety and Health Act. A miner’s chances of getting killed on the job are eight times as great as those of a laborer in manufacturing. . . . Studies have shown that accelerated

emphasis on production tends to push up both fatality and injury rates among miners.”

The foregoing comments refer to all mining, not just coal mining. The following table quantifies the United States’ historical experience with the dangers of coal mining.

**Table Two: Historical data—U.S. fatalities from coal mining accidents.** <sup>12</sup>

Year	Miners	Fatalities									
1900	448,581	1,489	1930	644,006	2,063	1960	189,679	325	1990	168,625	66
1901	485,544	1,574	1931	589,705	1,463	1961	167,568	294	1991	158,677	61
1902	518,197	1,724	1932	527,623	1,207	1962	161,286	289	1992	153,128	55
1903	566,260	1,926	1933	523,182	1,064	1963	157,126	284	1993	141,183	47
1904	593,693	1,995	1934	566,426	1,226	1964	150,761	242	1994	143,645	45
1905	626,045	2,232	1935	565,202	1,242	1965	148,734	259	1995	132,111	47
1906	640,780	2,138	1936	584,582	1,342	1966	145,244	233	1996	126,451	39
1907	680,492	3,242	1937	589,856	1,413	1967	139,312	222	1997	126,429	30
1908	690,438	2,445	1938	541,528	1,105	1968	134,467	311	1998	122,083	29
1909	666,552	2,642	1939	539,375	1,078	1969	133,302	203	1999	114,489	35
1910	725,030	2,821	1940	533,267	1,388	1970	144,480	260	2000	108,098	38
1911	728,348	2,656	1941	546,692	1,266	1971	142,108	181	2001	114,458	42
1912	722,662	2,419	1942	530,861	1,471	1972	162,207	156	2002	110,966	27
1913	747,644	2,785	1943	486,516	1,451	1973	151,892	132	2003	104,824	30
1914	763,185	2,454	1944	453,937	1,298	1974	182,274	133	2004	108,734	28
1915	734,008	2,269	1945	437,921	1,068	1975	224,412	155	2005	112,449	22
1916	720,971	2,226	1946	463,079	968	1976	221,255	141	2006	119,248	47
1917	757,317	2,696	1947	490,356	1,158	1977	237,506	139			
1918	762,426	2,580	1948	507,333	999	1978	255,588	106			
1919	776,569	2,323	1949	485,306	585	1979	260,429	144			
1920	784,621	2,272	1950	483,239	643	1980	253,007	133			
1921	823,253	1,995	1951	441,905	785	1981	249,738	153			
1922	844,807	1,984	1952	401,329	548	1982	241,454	122			
1923	862,536	2,462	1953	351,126	461	1983	200,199	70			
1924	779,613	2,402	1954	283,705	396	1984	208,160	125			
1925	748,805	2,518	1955	260,089	420	1985	197,049	68			
1926	759,033	2,234	1956	260,285	448	1986	185,167	89			
1927	759,177	2,231	1957	254,725	478	1987	172,780	63			
1928	682,831	2,176	1958	224,890	358	1988	166,278	53			
1929	654,494	2,187	1959	203,597	293	1989	164,929	68			

Utah has followed a policy for the last 30 years of deferring to MSHA with respect to coal mine safety regulation and enforcement. Of the 17 states, including Utah, with underground coal mining operations, 7 have followed a similar pattern and have no state coal mine safety program. The remaining 10 states have maintained state enforcement programs of various size and intensity.

Table three, below, lists each of the 17 states with underground coal production and indicates the size of their respective state programs, if any. The table provides additional information regarding the quantity of coal produced and injuries experienced during the three years of 2004 through 2006.

**Table Three: Summary of states with underground coal mining.**<sup>13</sup>

States with underground coal mining	State inspection program	Number of state inspectors Insp.- FTE	Coal production	Injuries (non-fatal with no work time loss)	Injuries (non-fatal with work time loss)	Injuries (fatal)
			(tons) FY	FY	FY	FY
Alabama	Yes	20-----21	(04) 16,114,223 (05) 13,294,916 <b>(06) 10,737,477</b>	(04) 1 (05) 55 <b>(06) 15</b>	(04) 0 (05) 193 <b>(06) 42</b>	(04) 0 (05) 3 <b>(06) 0</b>
Arkansas	No		(04) 19,440 (05) n/a <b>(06) 17,565</b>	(04) 28 (05) n/a <b>(06) 3</b>	(04) 0 (05) n/a <b>(06) 1</b>	(04) 0 (05) n/a <b>(06) 0</b>
Colorado	No		(04) 29,608,462 (05) 28,439,200 <b>(06) 26,659,157</b>	(04) 23 (05) 19 <b>(06) 17</b>	(04) 63 (05) 51 <b>(06) 55</b>	(04) 0 (05) 0 <b>(06) 0</b>
Illinois	Yes	12-----17	(04) 26,907,160 (05) 26,342,902 <b>(06) 27,120,280</b>	(04) 93 (05) 111 <b>(06) 86</b>	(04) 246 (05) 223 <b>(06) 218</b>	(04) 0 (05) 0 <b>(06) 0</b>

States with underground coal mining	State inspection program	Number of state inspectors	Coal production (tons)	Injuries (non-fatal with no work time loss)	Injuries (non-fatal with work time loss)	Injuries (fatal)
Indiana	Yes	1-----1	(04) 10,091,614	(04) 39	(04) 48	(04) 1
			(05) 11,188,861	(05) 19	(05) 29	(05) 0
			<b>(06) 10,736,428</b>	<b>(06) 22</b>	<b>(06) 47</b>	<b>(06) 0</b>
Kentucky	Yes	9-----61	(04) 71,123,576	(04) 273	(04) 541	(04) 2
			(05) 73,701,842	(05) 262	(05) 588	(05) 5
			<b>(06) 73,167,272</b>	<b>(06) 338</b>	<b>(06) 653</b>	<b>(06) 11</b>
Maryland	No		(04) 3,338,713	(04) 9	(04) 14	(04) 0
			(05) 3,174,905	(05) 12	(05) 10	(05) 0
			<b>(06) 2,826,381</b>	<b>(06) 9</b>	<b>(06) 3</b>	<b>(06) 1</b>
Montana	No		(04) 157,578	(04) 0	(04) 3	(04) 0
			(05) 162,238	(05) 2	(05) 4	(05) 0
			<b>(06) 320,847</b>	<b>(06) 1</b>	<b>(06) 0</b>	<b>(06) 0</b>
New Mexico	Yes	1-----5	(04) 7,685,041	(04) 16	(04) 2	(04) 0
			(05) 7,905,477	(05) 5	(05) 21	(05) 0
			<b>(06) 6,993,143</b>	<b>(06) 5</b>	<b>(06) 12</b>	<b>(06) 0</b>
Ohio	Yes	6-----16	(04) 14,270,084	(04) 33	(04) 78	(04) 0
			(05) 15,822,618	(05) 31	(05) 83	(05) 1
			<b>(06) 15,126,041</b>	<b>(06) 21</b>	<b>(06) 56</b>	<b>(06) 0</b>
Oklahoma	No		(04) 409,066	(04) 2	(04) 10	(04) 0
			(05) 465,459	(05) 3	(05) 6	(05) 1
			<b>(06) 464,087</b>	<b>(06) 1</b>	<b>(06) 7</b>	<b>(06) 0</b>
Pennsylvania	Yes	5-----60	(04) 47,234,742	(04) 94	(04) 290	(04) 0
			(05) 49,303,213	(05) 80	(05) 270	(05) 2
			<b>(06) 48,755,199</b>	<b>(06) 79</b>	<b>(06) 202</b>	<b>(06) 1</b>
Tennessee	No		(04) 826,033	(04) 3	(04) 8	(04) 1
			(05) 1,223,959	(05) 11	(05) 23	(05) 0
			<b>(06) 1,191,129</b>	<b>(06) 1</b>	<b>(06) 28</b>	<b>(06) 0</b>
<b>Utah</b>	<b>No</b>		<b>(04) 21,746,089</b>	<b>(04) 28</b>	<b>(04) 38</b>	<b>(04) 2</b>
			<b>(05) 24,521,343</b>	<b>(05) 27</b>	<b>(05) 43</b>	<b>(05) 0</b>
			<b>(06) 26,017,697</b>	<b>(06) 37</b>	<b>(06) 54</b>	<b>(06) 1</b>
Virginia	Yes	20-----50	(04) 20,345,574	(04) 56	(04) 131	(04) 3
			(05) 16,386,075	(05) 60	(05) 111	(05) 0
			<b>(06) 18,666,646</b>	<b>(06) 56</b>	<b>(06) 24</b>	<b>(06) 0</b>

States with underground coal mining	State inspection program	Number of state inspectors	Coal production (tons)	Injuries (non-fatal with no work time loss)	Injuries (non-fatal with work time loss)	Injuries (fatal)
West Virginia	Yes	80-----	(04) 96,337,600	(04) 236	(04) 700	(04) 4
		109	(05) 96,268,427	(05) 279	(05) 687	(05) 3
			<b>(06) 89,667,214</b>	<b>(06) 256</b>	<b>(06) 681</b>	<b>(06) 20</b>
Wyoming	Yes	1-----1	(04) 43,187	(04) 0	(04) 1	(04) 0
			(05) 410,065	(05) 2	(05) 0	(05) 0
			<b>(06) 519,151</b>	<b>(06) 5</b>	<b>(06) 10</b>	<b>(06) 0</b>

## **BIBLIOGRAPHY**

1. The information contained in this section is primarily taken from the article "Coal Mining In Utah," Utah History Encyclopedia, Allan Kent Powell, Editor. University of Utah Press.
2. Utah Geological Survey coal company questionnaires.
3. Title 42, Chapter 2, Revised Statutes of Utah 1898. See also Utah State Divisions of Archives & History, Agency; History #210, "Inspector of Coal and Hydrocarbon Mines." Rosemary Cundiff, June 2000.
4. Compiled Laws of Utah 1917, Title 66, Chapter 2, "Coal Mines."
5. Law of Utah 1917, Chapter 100, §1.
6. U.S. Dept. of Labor, Mine Safety and Health Administration, "History of Mine Safety and Health Legislation, [www.msha.gov](http://www.msha.gov).
7. Interviews with Stephen Hadley, Utah Industrial Commissioner from 1967 until 1996, and Gordon Linnet, Administrative Services Director for Industrial Commission and Labor Commission.
8. Laws of Utah 1987, Chapter 239, §6, effective April 27, 1987.
9. Laws of Utah 1988, Chapter 198, §§ 1 and 2, effective April 25, 1988.
10. Laws of Utah, 2001, Chapter 348, §1. Effective April 30, 2001.
11. Report of the Committee on Education and Labor, May 13, 1977, relative to the Federal Mine Safety and Health Act of 1977.
12. "Coal Fatalities from 1900 to 2006," Mine Safety & Health Administration, at <http://www.msha.gov/stats/centurystats/coalstats.asp>
13. Data compiled by the Safety Division of the Utah Labor Commission, Pete Hackford, Director.

**APPENDIX A**

**Title 40, Chapter 2, "Coal Mines,"  
Utah Code Annotated 1953, 1981 Replacement Vol. 5A,**

percolating through others' grounds after leaving dump, under statute similar to 78-34-1(5); and where adjoining mining company had been precipitating copper from waters after percolating through dump, copper company was entitled to immediate possession under statute similar to 78-34-9, pending final determination of condemnation proceeding. *Utah Copper Co. v. Montana-Bingham Consol. Min. Co.* (1926) 69 U 423, 255 P 672.

**Mineral content of water.**

Where owner of land conveyed it to defendant's predecessor in title reserving minerals on or in land conveyed, and subsequently

conveyed mineral rights to plaintiff, held, in action by plaintiff to quiet title to water containing copper, that such water was not mineral, and hence, defendant was entitled to remove copper from water. *Stephens Hays Estate v. Togliatti* (1934) 85 U 137, 38 P 2d 1066.

**Collateral References.**

Trespass ⇔ 60.

87 CJS Trespass §§ 134 to 137.

Right of trespasser to credit for expenditures in producing, as against his liability for value of, oil or minerals, 21 ALR 2d 380.

Severance of title or rights to oil and gas in place from title to surface, 146 ALR 880.

**40-1-13. Prospecting permits — Term — Conditions.** To further the development of the mineral resources of the state, the state land board is hereby authorized to issue prospecting permits to citizens of the United States upon any lands in which the state owns the mineral rights, and to grant to the permittee the exclusive right to prospect for minerals upon said lands, together with the exclusive right at any time during the life of the permit to have a mineral lease issued to him upon said lands in accordance with the laws of this state relating to mineral leases. No permit shall be issued for a longer period than one year, but the board shall make yearly renewals as long as the permittee shall comply with the terms of the permit. No person or group of persons shall be entitled to a permit covering more than one hundred and sixty acres within any one township, and the said one hundred and sixty acres shall be described in square tracts of not less than ten acres each. The permittee shall cause not less than \$250 worth of development work to be performed upon the lands in each township every six months, and he shall not remove therefrom any ore until a mineral lease is issued to him by the land board. All permits shall be in writing and attested and signed by the executive secretary of the land board.

**History:** L. 1935, ch. 45, § 1; C. 1943, 55-1-13.

**Title of Act.**

An act authorizing the state land board to issue prospecting permits and providing the terms and conditions thereof. — Laws 1935, ch. 45.

**Effective Date.**

Section 2 of Laws 1935, ch. 45 provided that the act should take effect on approval. Approved March 26, 1935.

**Collateral References.**

Mines and Minerals ⇔ 6.

58 CJS Mines and Minerals § 129.

Permits, 54 AmJur 2d 280, Mines and Minerals § 100.

**Law Reviews.**

Equal Protection and the Supremacy Clause Limitations on State Legislation Restricting Aliens, 1970 Utah L. Rev. 136.

## CHAPTER 2

### COAL MINES

Section

40-2-1. Duties of industrial commission.

rights to plaintiff, held, in to quiet title to water con- at such water was not min- defendant was entitled to om water. Stephens Hays i (1934) 85 U 137, 38 P 2d

nces.

§§ 134 to 137.

sser to credit for expendi- ; as against his liability for erals, 21 ALR 2d 380. le or rights to oil and gas to surface, 146 ALR 880.

**itions.** To further the the state land board citizens of the United ninerl rights, and to ct for minerals upon time during the life n upon said lands in eral leases. No permit the board shall make ly with the terms of entitled to a permit in any one township, described in square e shall cause not less ed upon the lands in omove therefrom any id board. All permits xecutive secretary of

nces.

als ⇌ 6.  
d Minerals § 129.  
ur 2d 280, Mines and Min-

on and the Supremacy ns on State Legislation 1970 Utah L. Rev. 136.

- 40-2-2. Right of visitation and inspection.
- 40-2-3. Mine owners to make maps of workings — Annual reports.
- 40-2-4. Provision for safe egress.
- 40-2-5. Ventilation.
- 40-2-6. Sprinkling system.
- 40-2-7. Timbering.
- 40-2-8. General rules for operators and employees.
- 40-2-9. Inspection and reports by industrial commission.
- 40-2-10. Notice to operators to make safe.
- 40-2-11. Oil and greases — Underground storage — Containers — Oiling or greasing of cars inside of mines.
- 40-2-12. Speaking tubes and signaling devices.
- 40-2-13. Explosions and accidents.
- 40-2-14. Mine foreman, fireboss and shotfirer — Applicants for — Examining board — Composition of — Certificates of competency — Term of office of examiners — Compensation and expenses of examining board.
- 40-2-15. Certificate — Fee — Qualifications.
- 40-2-16. Necessity of certificate — Temporary mine foreman certificate — Posting — Prohibition and effect as to employment of one not having certificate — Liability of operator for injury or death of miner — Actions — Time limitation.
- 40-2-17. Violation of chapter — Penalty.

**40-2-1. Duties of industrial commission.** For the purpose of securing an efficient and thorough inspection of all coal and hydrocarbon mines within the state, coal mine inspection and all matters relating thereto shall be under the control of the industrial commission.

**History:** C.L. 1917, § 3076 [9]; L. 1921, ch. Health of miners, Const. Art. XVI, § 6.  
67, § 1; R.S. 1933 & C. 1943, 55-2-1.

**Cross-References.**

Children, employment generally, 34-23-1 et seq.  
Eight-hour day, 34-21-2.  
Employment of children in mines, Const. Art. XVI, § 3, 34-22-1.

**Collateral References.**

Mines and Minerals ⇌ 92.9.  
58 CJS Mines and Minerals § 240.  
Generally, 54 AmJur 2d 183 et seq., Mines and Minerals § 1 et seq.

**40-2-2. Right of visitation and inspection.** Every owner, agent, manager or lessee of any coal or hydrocarbon mine, whenever it is in active operation, shall freely admit any representative of the industrial commission to such mine, on the exhibition of his certificate of appointment, for the purpose of making the examinations and inspections provided for in this chapter, and shall render any necessary assistance for such inspection; but such representative shall not unnecessarily obstruct the working of the mine. Every owner, agent, manager or lessee of such mine refusing to so admit such representative is guilty of a misdemeanor, and shall be punished by a fine of not less than \$50 nor more than \$500 for every such offense.

**History:** C.L. 1907, § 1511; C.L. 1917, § 3914; R.S. 1933 & C. 1943, 55-2-2.

**40-2-3. Mine owners to make maps of workings — Annual reports.** The owner, agent, manager or lessee of every coal or hydrocarbon mine shall make, or cause to be made, an accurate map or plan of the workings

of such mine on a scale of 100 feet to the inch, which shall show all the openings or excavations, shafts, tunnels, slopes, planes, entries, cross headings and rooms therein, and the direction of the air currents and the water system therein, and shall accurately show the boundary lines between the mine and adjoining mines. Such map or plan, or a true copy thereof, shall be furnished to the industrial commission, and one copy shall be kept at such mine for the inspection of the industrial commission or its representatives. The owner, agent, manager or lessee, at least once in every six months, shall cause to be placed on the map or plan an accurate showing of all additional excavations which have been made in the mine. The several maps of plans of mines which are furnished to the industrial commission shall remain in its care and shall remain the property of the state, but in no case shall any copy of any of them be made without the consent of the owner, agent, manager or lessee. If the industrial commission shall find or have good reason to believe that any map or plan of any mine made or furnished in pursuance of the provisions of this section is materially inaccurate or imperfect, it is authorized to cause a correct plan or map of such mine to be made at the expense of the owner, agent, manager or lessee thereof; provided, that if the map or plan which was claimed to have been inaccurate shall be found to be practically correct, the state shall pay the expense of making such new map or plan. All persons operating coal or hydrocarbon mines shall, on or before the fifteenth day of December of each year, furnish the industrial commission a statement of the output of each mine, distribution of such product, pounds of powder used, number and nationality of men employed, days worked, number of fatal and nonfatal accidents, from the first day of December of the preceding year to November 30, of the current year. Each owner, agent or lessee shall within thirty days after opening a new mine notify the industrial commission, giving name and address of the person, company or corporation so opening such mine, together with its location and the character of such mine and opening.

**History:** R.S. 1898, § 1515; C.L. 1907, § 1512; L. 1911, ch. 132, § 1; C.L. 1917, § 3915; R.S. 1933 & C. 1943, 55-2-3.

**40-2-4. Provision for safe egress.** It shall be unlawful for the owner-operator or superintendent of any such mine to employ any person to work therein unless there are in connection with every seam or stratum of coal worked therein not less than two openings or outlets, separated by a stratum of not less than 150 feet at surface and not less than 30 feet at any place, at which safe and distinct means of ingress and egress shall at all times be available to the persons so employed. The escapements, shafts or slopes shall be fitted with safe and available appliances by which the employees of the mine may readily escape in case an accident occurs deranging the hoisting machinery at the outlets. In slopes used as haulage

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roads, where the dip or incline is ten degrees or more, there must be provided a separate traveling way, which shall be maintained in a safe condition for travel and kept free from dangerous gases. No inflammable structure, other than a frame to sustain pulleys or sheaves, shall be erected over the entrance to any mine; and no inflammable structure for the purpose of storing coal shall be erected within 200 feet of any such opening; but this chapter shall not be construed to prohibit the erection of a fan and its approaches for the purpose of ventilation, or of a trestle for the transportation of cars from any slope or other opening. All entrances to any place, not in the actual course of working, where explosive gas is known to exist shall be properly fenced across the whole width so as to prevent all persons from entering the same. Hand rails and sufficient safety catches shall be attached to, and a sufficient cover overhead shall be provided on, every cage used for lowering or hoisting persons in any shaft. The ropes, safety catches, links and chains shall be carefully examined every day that they are used, by a competent person employed for that purpose by the mine owner, agent, manager or lessee, and any defect therein found shall be immediately remedied.

History: R.S. 1898, §§ 1515, 1517, 1521; Cross-References.  
C.L. 1907, § 1513; C.L. 1917, § 3916; R.S. 1933 Safety cages, 40-5-3.  
& C. 1943, 55-2-4.

**40-2-5. Ventilation.** Every owner, agent, manager or lessee of a coal or hydrocarbon mine shall provide and maintain a constant and adequate supply of pure air and to that end the following provisions shall apply:

(1) It shall be unlawful to use a furnace for the purpose of ventilating any mine.

(2) The ventilation current shall be conducted and circulated to the face of each working place through the entire mine in sufficient quantities to dilute, render harmless and sweep away smoke and noxious or dangerous gases, and to such an extent that all working places and traveling roads shall be in a safe condition for working and traveling therein.

(3) All worked-out or abandoned parts of any mine in operation so far as practicable shall be kept free from dangerous bodies of gases or water; and if found impracticable to keep the entire mine free from dangerous accumulation of standing gases or water, the industrial commission shall be immediately notified.

(4) Every mine wherein are employed more than seventy-five persons must be divided into two or more districts. Each district shall be provided with a separate split of pure air, and the ventilation shall be so arranged that not more than seventy-five persons shall be employed at the same time in any one current or split of air.

(5) All crosscuts, when it becomes necessary to close them permanently, shall be substantially closed whenever practicable with brick or other suitable material laid in mortar or with cement, but in no case shall such crosscut stopping be constructed of plank, except for temporary purposes.

(6) All doors used in assisting or in any way affecting the ventilation shall be so hung and adjusted that they will close automatically; main doors regulating the principal air currents of the mine shall be so placed, in all cases where it is practicable, that when one door is open another, which has the same effect upon the same current of air, will be and remain closed.

(7) All permanent air bridges shall be built when and as circumstances require and shall be built of fireproof material and be of such strength as the circumstances may require.

(8) The quantities of air in circulation shall be ascertained with an anemometer or other efficient instrument; such measurement to be made by the inside foreman or other competent person at least once every week and a report of air measurements to be forwarded to the industrial commission, together with a statement of the number of persons employed in each district, on or before the twelfth day of each month for the preceding month.

(9) For the purpose of properly ventilating rooms and entries in a coal mine crosscuts in rooms shall be not more than 100 nor less than 50 feet apart, and crosscuts in the main entrance shall not, except in cases of urgent necessity according to the opinion of the industrial commission, be less than 75 feet nor more than 200 feet apart.

**History:** R.S. 1898, § 1518; C.L. 1907, § 1515; L. 1911, ch. 132, § 1; C.L. 1917, § 3918; R.S. 1933 & C. 1943, 55-2-5; L. 1945, ch. 83, § 1; 1949, ch. 64, § 1.

**Compiler's Notes.**

The 1945 amendment increased the minimum quantity of air from 100 cubic feet per minute to 150 cubic feet per minute.

The 1949 amendment deleted "wherein explosive gases are generated" at the end of subd. (1); deleted a subd. (2) providing for minimum quantity of air; redesignated former subds. (3) through (10) as subds. (2) through (9); and inserted "when and as circumstances require and shall be built of fireproof material" in subd. (7).

**40-2-6. Sprinkling system.** Every owner, agent, manager or lessee of a coal or hydrocarbon mine shall provide and maintain a water system for the purpose of conducting water to the face of each working place and throughout the entire open part of the mine in sufficient quantities for sprinkling purposes to wet down dust arising and accumulating in and around the mine. It shall be the duty of the superintendent, mine foreman and the industrial commission to see that this is done; provided, that in mines or parts of mines where by reason of naturally wet conditions or moisture derived from the introduction of steam into the air currents, or both, such sprinkling may not be necessary it shall not be required.

**History:** C.L. 1907, § 1516; C.L. 1917, § 3919; R.S. 1933 & C. 1943, 52-2-6.

**40-2-7. Timbering.** It shall be the duty of every owner, operator, superintendent and mine foreman to furnish to the miners all props, ties, rails and timbers necessary for safe mining in coal and hydrocarbon mines, and for the protection of the lives of the workmen. Such props, ties, rails and timbers shall be suitably prepared and shall be delivered within 100 feet

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of the face of the room or entry and other working places, free of charge. Whenever underhand stoping is used to extract hydrocarbon ore, an efficient system of timbering, approved by the industrial commission, shall be enforced.

**History:** R.S. 1898, § 1519; C.L. 1907, § 1517; L. 1911, ch. 132, § 1; C.L. 1917, § 3920; R.S. 1933 & C. 1943, 55-2-7.

**Collateral References.**

Duty of an employer with respect to the timbering of a mine, 15 ALR 1380, 1430.

**40-2-8. General rules for operators and employees.** The following general rules shall be observed by every owner, operator, superintendent, mine foreman and employee of a coal or hydrocarbon mine:

(1) Every owner and operator shall use every reasonable precaution to insure the safety of the workmen in all cases, and when employing more than five men underground shall place the underground workings thereof under the charge and daily supervision of a person who shall be known as "mine foreman," and who must hold a mine foreman's certificate.

In coal mines not employing more than five men on any one shift in a twenty-four hour period, the operator or owner must designate a man known as a mine foreman to supervise the operation of that mine while men are on shift. Such authorized foreman must have had at least five years' underground experience in coal mines and before being placed in charge must undergo an oral examination given by a coal mine inspector to determine his competence. If he successfully passes said examination to the satisfaction of the mine inspector he will then be issued an oral examination certificate which shall only apply to that particular mine.

In mines classified as "gassy" by the industrial commission regardless of the number of men employed therein on any one shift, the owner-operator must employ a certified mine foreman to supervise the underground operations while men are on shift and said foreman must have successfully passed the examination given by the coal mine examining board and have been issued a certificate by the industrial commission.

Should an oral examination certificate be issued to a mine foreman in a nongassy mine and the status or classification of the mine changes from "nongassy" to "gassy" the oral examination certificate is automatically revoked and none other than a regular certified mine foreman shall be employed.

Where not more than five men are employed on any one shift and a mine foreman is certified orally, this does not exempt the owner or certified man from any provisions of the general coal mine safety orders but they are subject to all of them as is the case in any coal or hydrocarbon mine operating in the state of Utah.

(2) All accessible parts of abandoned portion of a mine in which explosive gases have been found or are known to exist shall be carefully examined by the mine foreman or his assistants at least once in each week, and danger existing therein from such gases shall be removed as soon as possible. A report of each examination shall be recorded in a book kept for that purpose, signed by the person making the examination.

(3) In any mine the mine foreman or fire bosses shall make a careful examination every morning of all working places and traveling ways and all other places which might endanger the safety of the workmen, within three hours prior to the time at which the workmen enter the mine. Such examination shall be made with the safety lamp. No person, except those whose presence is necessary to prepare the mine for the entrance of the workmen, shall enter the mine, or any part thereof, until the mine foreman or fire boss of his district shall report to him that his place is in a safe condition. The mine foreman or fire boss making such examination shall record the result of his examination in a book kept for that purpose, which shall be open to the inspection of the representatives of the industrial commission and all employees.

(4) In any working place where there is likely to be an accumulation of explosive gases no light or fire other than locked flame safety lamps or approved permissible electric storage battery lamps shall be allowed or used. Whenever such lamps are required in any mine, they shall be the property of the owner or operator, and a competent person shall be appointed for the purpose of examining every such lamp, which examination shall be made immediately before it is taken into the mine for use. He shall clean, lock and otherwise ascertain if it is safe for use. In all hydrocarbon mines only approved permissible electric storage battery lamps shall be used for lighting purposes; the style of such lamps to be approved by the industrial commission. Every such owner, agent, lessee or operator of coal or hydrocarbon mines, when working the same in close proximity to an abandoned mine or part of a mine containing water or fire damp, shall cause bore holes to be kept at least twenty-five feet in advance of the working face and the sides of all working places in such mines known to be approaching old or abandoned mines, or other mines containing water or fire damp. Such holes shall not be more than twenty-five feet apart, and shall be twenty-five feet in depth and at an angle of at least twenty-five degrees from the center hole.

(5) Every miner or other person having charge of a working place in any mine shall keep the roof and sides thereof properly secured by timbering or otherwise so as to prevent such roof and sides from falling and injuring him or his fellow workmen; and he shall not do any work or permit any work to be done under loose rock or dangerous material, except for the purpose of securing the same.

(6) No more than ten persons shall be hoisted or lowered at any one time in any shaft or slope. This, however, shall not prohibit the hoisting or lowering of ten or more persons at any one time on slopes where five or more loaded cars are regularly hoisted.

(7) No person in a state of intoxication shall be allowed to go into or loiter about the mine. It shall be a misdemeanor for any person under the influence of intoxicating liquor to enter any mine or any building connected therewith where miners or other workmen are employed or to loiter about any mine or to carry intoxicating liquor into any mine.

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(8) Any miner or other workman who shall discover anything wrong with the ventilating current, or with the condition of the roof, sides, timbers or roadway, or with any other part of the mine in general, such as would lead him to suspect danger to himself or his fellow workmen or the property of his employer shall as soon as possible report the same to the mine foreman or other person in charge of that portion of the mine.

(9) Any person who knowingly or willfully damages or, without proper authority, removes or renders useless any fencing, means of signaling, apparatus, instrument or machine, or who throws open or obstructs any airway, or opens any ventilating door and does not leave the same closed, or enters a place in or about a mine against caution, or carries fire, open lights or matches in places where safety lamps are used, or handles, without proper authority, or disturbs any machinery or cars, or does any other act or thing whereby the lives or health of persons or the security of property in or about the mine is endangered, is guilty of a misdemeanor.

(10) Not more than one day's supply of explosives shall be stored in a mine, provided, however, where a mine uses less than 300 pounds of explosives in any one day, an amount of explosives not in excess of 300 pounds may be stored in such mine, and a workman shall not have at any time in any place more than six and one-quarter pounds of powder; provided, that under special conditions a larger amount may be allowed in a mine for immediate use when approval of such action is made in writing by the industrial commission.

(11) Every person who has explosives in a mine shall keep it in a box made of nonconducting material securely locked, and such box shall be kept at least twenty-five feet from the tracks or trolley wires in all cases where room at such distance is available.

(12) In charging holes for blasting in coal, slate or rock only wooden tamping rods shall be used.

(13) The charge of powder or any other explosive in coal, slate or rock which has missed fire shall not be withdrawn or the hole reopened, except where such holes are tamped with wet wood pulp, and it shall be unlawful for the purpose of blasting coal to tamp shot holes with drillings, coal dust or small pieces of coal, but it shall be the duty of every superintendent, foreman or lessee to furnish clay or earth tamping, except when wood pulp is used.

(14) Before commencing work, and also after the firing of every blast, the miner working a room, or other place in the mine, shall enter such room or place to examine and ascertain its conditions, and his assistant shall not go to the face of such room or place until the miner has examined the same and found it to be safe.

(15) When more than five men are employed, no person shall be employed to blast coal or rock unless such person is certified.

In nongassy mines employing not more than five men, no person shall be employed to blast coal or rock unless such person has undergone and

successfully passed an oral examination given by a state coal mine inspector, and an oral certificate issued to him authorizing him to do such blasting.

(16) Every passageway equipped with mechanical haulage and used by persons as a regular traveling way and at the same time for transportation of coal or other material shall be of sufficient width to permit persons to pass moving cars with safety. If found impracticable to make any passageway of sufficient width, then holes of ample dimensions, and not more than 150 feet apart, shall be made on one side of the passageway. Passageways and safety holes shall be kept free from obstruction, and the roof and sides of the same shall be made secure. Safety holes shall be made at the bottom of all slopes and planes when necessary, and kept free from obstruction to enable the footmen to escape readily in case of danger.

(17) It shall be unlawful for any owner, operator, superintendent or mine foreman of any mine which generates explosive gases to employ any person who is not competent to understand the regulations of any mine evolving explosive gases.

(18) No person shall be permitted to enter any dry gilsonite or elaterite mine with any kind of light other than an electric or other safety lamp.

(19) For the purpose of making known the provisions of this section to all persons employed in and around mines the owner and operator of every coal and hydrocarbon mine shall post in a conspicuous place at or near the entrance of the mine, where they may be conveniently read by all persons employed therein, these rules, and keep the same posted at all times.

(20) Whenever the industrial commission discovers in any mine in which blasting of coal is allowed during working hours that the air is becoming vitiated by unnecessary blasting of coal it may regulate the same, and designate at what hour of the day blasting may be permitted; provided, that where coal is shot off the solid without undermining at least two periods of for shooting shall be allowed during each working day.

(21) It shall be unlawful for any owner, operator, superintendent, mine foreman or any employee of any mine which generates explosive gases to remove any accumulated body of gases by wafting or brushing. All such bodies of gases must be removed from the mine by approved methods of ventilation.

**History:** C.L. 1907, § 1518; L. 1911, ch. 132, § 1; 1913, ch. 78, § 1; C.L. 1917, § 3921; R.S. 1933 & C. 1943, 55-2-8; L. 1949, ch. 64, § 1.

**Compiler's Notes.**

The 1949 amendment inserted "and when employing more than five men underground" in subd. (1); added the last four paragraphs to subd. (1); deleted "known to generate explosive gases" after "In any mine" in subd. (3); inserted "or approved permissible electric storage battery lamps" in the first sen-

tence of subd. (4); deleted a provision relative to lamps of fire bosses and lamps to be used in hydrocarbon mines in subd. (4); added the penalty clause to subd. (7); and rewrote the provisions for handling of explosives.

**Cross-References.**

Examination and appointment of mine foremen, 40-2-14.

Safety cages, 40-5-3.

Storage of explosives, 40-5-4.

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#### Storage of explosives.

Violation of provisions relating to storage  
of explosives in mine renders mine owner-  
operator liable for injuries proximately  
caused to an invitee by such violation. *Skerl*  
v. *Willow Creek Coal Co.* (1937) 92 U 474, 69  
P 2d 502.

#### Collateral References.

Liability for property damage by concus-  
sion from blasting, 20 ALR 2d 1372.

Liability of mine operator for damage to  
surface structure by removal of lateral sup-  
port, 32 ALR 2d 1329.

Right of mineral lessee to deposit top soil,  
waste materials, and the like upon lessor's  
additional land not being mined, 26 ALR 2d  
1453.

#### DECISIONS UNDER FORMER LAW

##### Explosive gases.

Former subdivision requiring that all  
mines known to generate explosive gases be  
inspected every morning applied to a mine in  
which explosive gases were discovered on one

occasion, whether or not they existed in the  
mine in sufficient quantity to make it unsafe  
or dangerous in the opinion of experts.  
*Eleganti v. Standard Coal Co.* (1917) 50 U  
585, 168 P 266.

**40-2-9. Inspection and reports by industrial commission.** It shall be  
the duty of the industrial commission to make a careful and thorough  
inspection of each coal and hydrocarbon mine operated within the state  
at least once every three months, and oftener if the condition of the mine  
requires its attention. It shall make an annual report to the governor,  
showing the condition of each coal and hydrocarbon mine in the state. It  
shall examine into the conditions affecting the safety of workmen, mine  
workings, machinery, ventilation and drainage, and into the method of  
lighting and using lights, and all other matters connected with the working  
safety of persons in such mines, and give directions providing for the bet-  
ter health and safety of persons employed in or about the same. Every  
owner or operator is hereby required to freely permit such entry, inspec-  
tion, examination, inquiry and exit, and to furnish a guide when necessary.  
The industrial commission shall make a record of its visits, noting the time  
of the inspection and the material circumstances of the same, and shall  
also notify the owner or operator of the mine by a written report of the  
condition of the mine at the time of such inspection.

**History:** R.S. 1898, §§ 1510, 1512, 1513;  
C.L. 1907, § 1519; C.L. 1917, § 3922 [1]; R.S.  
1933 & C. 1943, 55-2-9.

**40-2-10. Notice to operators to make safe.** If the industrial commis-  
sion finds that a mine is not properly worked, or is not furnished with  
proper machinery or appliances for the safety of the miners and all other  
employees, it shall give written notice to the owner or manager thereof  
that it is unsafe, specifying in what particulars it is unsafe, and shall  
direct the owner or manager thereof to make such improvements as are  
necessary within a reasonable period. If the improvements are not made  
as required in the notice, it shall be unlawful for the owner or manager  
to operate such mine until such improvements are completed.

**History:** R.S. 1898, §§ 1510, 1512, 1513;  
C.L. 1907, § 1519; C.L. 1917, § 3922 [2]; R.S.  
1933 & C. 1943, 55-2-10.

**40-2-11. Oil and greases — Underground storage — Containers — Oiling or greasing of cars inside of mines.** Underground storage for lubricating oils and greases in excess of two days' supply shall be of fire-proof construction. Lubricating oils and greases used in face regions or other working places shall be in portable closed metal containers. The oiling or greasing of cars inside of the mines is forbidden unless the place where the oil or grease is used is thoroughly cleaned at least once every day to prevent the accumulation of waste oil or grease on the roads or in the drains at that point.

**History:** R.S. 1898, §§ 1510, 1512, 1513; C.L. 1907, § 1519; C.L. 1917, § 3922 [3]; R.S. 1933 & C. 1943, 55-2-11; L. 1949, ch. 64, § 1.

**Compiler's Notes.**

The 1949 amendment rewrote this section which read: "No explosive oil shall be used in or taken into coal or hydrocarbon mines for lighting purposes, except when used in approved safety lamps, or, when used by day men, diluted with a nonexplosive animal or vegetable oil. Oil for such purpose shall not be stored or taken into the mines in quantities exceeding five gallons, or otherwise than in tight cans approved by the industrial commission. The oiling or greasing of cars

inside of the mines is forbidden unless the place where the oil or grease used is thoroughly cleaned at least once every day to prevent the accumulation of waste oil or grease on the roads or in the drains at that point; and not more than one barrel of lubricating oil shall be permitted in a mine at any one time. Only a pure animal oil shall be permitted in a mine at any one time. Only a pure animal oil or pure cottonseed oil, or oils that are as free from smoke as pure animal oil or pure cottonseed oil, shall be used for illuminating purposes in any coal or hydrocarbon mine, except as above provided. No person shall use explosive or impure oil contrary to this section."

**40-2-12. Speaking tubes and signaling devices.** In shaft or slope mines where persons are lowered or hoisted by machinery a metal speaking tube or other suitable appliance shall be provided in all cases so that conversation or signaling may be carried on through the same from the top to the bottom of the shaft or slope.

**History:** C.L. 1907, § 1520; C.L. 1917, § 3923; R.S. 1933 & C. 1943, 55-2-12.

**40-2-13. Explosions and accidents.** Whenever by reason of an explosion or any other accident in any coal or hydrocarbon mine, or the machinery connected therewith, loss of life or serious personal injury occurs it shall be the duty of the person having charge of such mine or colliery to give notice thereof promptly to the industrial commission, and, if any person is killed thereby, to the proper justice of the peace of the county, who shall give due notice of an inquest to be held. If such justice of the peace shall determine to hold an inquest, the commission may offer such evidence as it shall deem necessary to thoroughly inform the inquest of the causes of death, and the commission may appear before such inquest and question or cross-question any witness, and there shall be at least two men experienced in coal mines on the jury. The commission, when possible, upon being notified as herein provided shall immediately go to the scene of the accident and give such directions as may appear necessary to secure the future safety of the men, and shall proceed to investigate and ascertain

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d in face regions or  
etal containers. The  
dden unless the place  
d at least once every  
ease on the roads or

es is forbidden unless the  
oil or grease used is thor-  
least once every day to pre-  
tion of waste oil or grease  
1 the drains at that point;  
n one barrel of lubricating  
tted in a mine at any one  
animal oil shall be permit-  
any one time. Only a pure  
cottonseed oil, or oils that  
moke as pure animal oil or  
il, shall be used for illum-  
n any coal or hydrocarbon  
above provided. No person  
e or impure oil contrary to

ns. In shaft or slope  
nery a metal speaking  
all cases so that con-  
ae same from the top

y reason of an explo-  
i mine, or the machin-  
sonal injury occurs it  
ch mine or colliery to  
omission, and, if any  
e peace of the county,  
If such justice of the  
ission may offer such  
inform the inquest of  
ar before such inquest  
e shall be at least two  
nission, when possible,  
iately go to the scene  
ar necessary to secure  
estigate and ascertain

the causes of the explosion or accident, and make a record thereof, which it shall file. The cost of such investigation shall be paid by the county in which the accident occurred.

**History:** R.S. 1898, § 1523; C.L. 1907, § 1521; C.L. 1917, § 3924; R.S. 1933 & C. 1943, 55-2-13.

**Cross-References.**

Investigation of deaths, 26-4-1 et seq.

**Collateral References.**

Shaft, liability of landowner for injury or death of adult falling down unhoused mine shaft or the like, 46 ALR 2d 1069.

Strip or other surface mine or quarry operator, liability to person, other than employee, injured or killed during mining operations, 84 ALR 2d 733.

**40-2-14. Mine foreman, fireboss and shotfirer — Applicants for — Examining board — Composition of — Certificates of competency — Term of office of examiners — Compensation and expenses of examining board.** The industrial commission shall appoint an examining board consisting of six members, two of whom shall be members or employees of the commission, two of whom shall be officials of coal mine operators, and two of whom shall be coal miners, (the latter four must be citizens of the United States, and have had at least five years' experience in coal mining in this state). It shall be the duty of the examining board to examine applicants as to their competency and qualifications to discharge the duties of mine foreman, firebosses and shotfirer. Such board of examiners shall meet at the call of the commission and examine applicants for the positions of mine foreman, fireboss and shotfirer, respectively. The commission shall grant certificates to persons whose examinations disclose their fitness for the duties of mine foreman, fireboss and shotfirer, respectively. A certificate shall be sufficient evidence of the competency and qualifications of the holder to perform the duties of the certified position. The members of the examining board, other than members of the commission or its employees shall receive \$25 per day, to be paid from the state treasury, for each day necessarily and actually employed, and actual and necessary traveling expenses while employed in their official duties. Sessions of the examining board shall not exceed three days in any quarter. The members of the examining board shall hold office at the pleasure of the commission.

**History:** R.S. 1898, § 1526; C.L. 1907, § 1522; C.L. 1917, § 3925; L. 1923, ch. 10, § 1; R.S. 1933 & C. 1943, 55-2-14; L. 1945, ch. 83, § 1; 1973, ch. 74, § 1.

**Compiler's Notes.**

The 1945 amendment increased the examining board to six members; inserted refer-

ences to "shotfirer" in the second, third and fourth sentences; increased compensation for board members from \$4 per day to \$10 per day; and made minor changes in phraseology.

The 1973 amendment increased the per diem for board members from \$10 to \$25.

**40-2-15. Certificate — Fee — Qualifications.** For each certificate granted a fee of \$3 shall be collected, to be paid into the state treasury. No person shall be granted a certificate as mine foreman, or fireboss or shotfirer who is not a citizen of the United States, unless he shall produce,

satisfactory evidence of good moral character and has declared his intention to become a citizen under the naturalization laws. No person shall be granted a certificate as mine foreman who has had less than four years of varied underground coal mining experience, and no person shall be granted a certificate as fireboss or shotfirer who has had less than two years of underground coal mining experience; provided, that a graduate of an approved four year college course in mining engineering shall, by reason of such graduation, be given credit for two years' experience toward the mine foreman's certificate and for one year's experience toward the certificate as fireboss or shotfirer and a graduate of a two-year course in mining technology shall by reason of such graduation be given one year's experience toward the mine foreman certificate and six months experience toward the certificate as fireboss or shotfirer.

**History:** R.S. 1898, §1526; C.L. 1907, § 1522; C.L. 1917, § 3925; L. 1923, ch. 10, § 1; R.S. 1933 & C. 1943, 55-2-15; L. 1945, ch. 83, § 1; 1949, ch. 64, § 1; 1973, ch. 74, § 2; 1977, ch. 162, § 1.

**Compiler's Notes.**

The 1945 amendment inserted "or shotfirer" in the second sentence; and made minor changes in phraseology and punctuation.

The 1949 amendment added the last sentence.

The 1973 amendment changed the experience requirements for foremen from "five years' coal mining experience" to "four years of varied underground coal mining experience," for fireboss or shotfirer from "three years' coal mining experience" to "two years

of underground coal mining experience," and for college graduates in mining engineering, substituted credits for two years' experience and one year's experience for "two years' experience toward the required five years of coal mining experience and for one and one-half years' experience toward the required three years of coal mining experience."

The 1977 amendment increased the certificate fee from \$1 to \$3; substituted "mine foreman's certificate" near the end of the section for "required four years of coal mining experience"; substituted: "certificate as fireboss or shotfirer \* \* \* experience toward the certificate as fireboss or shotfirer" in the proviso to the third sentence for "required two years of underground coal mining experience"; and made a minor change in phraseology.

**40-2-16. Necessity of certificate — Temporary mine foreman certificate — Posting — Prohibition and effect as to employment of one not having certificate — Liability of operator for injury or death of miner — Actions — Time limitation.** Except as herein provided, no person shall act as mine foreman or as fireboss or as shotfirer unless granted a certificate of competency by the industrial commission; provided, that the industrial commission may issue, upon a showing of competency, a temporary mine foreman certificate to remain in effect until terminated or until the requirements of this chapter have been satisfied and a permanent certificate is issued. No owner, operator, contractor, lessee or agent shall employ any mine foreman or fireboss or shotfirer who does not have the certificate of competency required. Such certificate shall be posted in the office of the mine, and if any accident shall occur in any mine, in which a mine foreman or a fireboss or a shotfirer was employed who had no certificate of competency as required by this chapter, by which any miner shall be killed or injured, he or his heirs shall have a right of action against such operator, owner, lessee, or agent and shall recover the full damage sustained; such

has declared his intentions. No person shall be employed less than four years and no person shall be employed who has had less than two years' experience, that a graduate of engineering shall, by reason of his experience toward the profession toward the certificate, a one-year course in mining given one year's experience and six months experience

coal mining experience," and substitutes in mining engineering, its for two years' experience for "two years' experience for the required five years' experience and for one and one-half years' experience toward the required coal mining experience." Amendment increased the certificate fee to \$3; substituted "mine certificate" near the end of the required four years of coal mining experience"; substituted: "certificate holder \* \* \* experience certificate as fireboss or shotfirer" for the third sentence for "records of underground coal mining" and made a minor change in

**mine foreman certification of one not employed or death of miner** provided, no person shall be employed unless granted a certificate provided, that the industry competency, a temporary certificate terminated or until the holder and a permanent certificate or agent shall employ not have the certificate issued in the office of the mine in which a mine foreman no certificate of competency shall be killed or injured against such operator, damage sustained; such

action to be brought within two years after the accident, and, in case of death, to be brought by his heirs, or personal representatives for the benefit of his heirs.

**History:** R.S. 1898, § 1526; C.L. 1907, § 1522; C.L. 1917, § 3925; L. 1923, ch. 10, § 1; R.S. 1933 & C. 1943, 55-2-16; L. 1945, ch. 83, § 1; 1949, ch. 64, § 1; 1977, ch. 162, § 2.

#### Compiler's Notes.

The 1945 amendment made minor changes in phraseology.

The 1949 amendment inserted the first sentence; and made minor changes in phraseology.

The 1977 amendment substituted "until terminated or until the requirements of this chapter have been satisfied and a permanent certificate is issued" at the end of the first sentence for "unless sooner revoked for cause, only until the time the next regular examination for certification is held"; and made minor changes in phraseology and punctuation.

**40-2-17. Violation of chapter — Penalty.** The neglect or refusal to perform the duties required to be performed by any section of this chapter, or the violation of any of the provisions hereof is a misdemeanor, and any person so neglecting or refusing to perform such duties or violating any such provisions, shall be punished by a fine of not less than \$100 nor more than \$500 for each such offense.

**History:** R.S. 1898, § 1516; C.L. 1907, § 1524; C.L. 1917, § 3926; R.S. 1933 & C. 1943, 55-2-17.

## CHAPTER 3

### WEIGHING COAL AT MINES

#### Section

- 40-3-1. Operators to provide scales.
- 40-3-2. Weighmen — Oath — Record of coal mined by individual miners.
- 40-3-3. Check-weighmen — Duties and powers.
- 40-3-4. Fraudulent weighing — Penalty.
- 40-3-5. Industrial commission to examine scales.
- 40-3-6. Shipments — Bill of lading to show weight of car before and after loading.

**40-3-1. Operators to provide scales.** The owner, agent or operator of every coal mine at which the miners are paid by weight shall provide at such mine suitable and accurate scales of standard manufacture for the weighing of all coal which shall be hoisted or delivered from such mine. When coal is weighed in the miner's car such car shall be brought to a standstill on the scales before the weight is taken.

**History:** R.S. 1898 & C.L. 1907, § 1529; C.L. 1917, § 3930; R.S. 1933 & C. 1943, 55-3-1.

#### Collateral References.

Public control and regulation, 54 AmJur 2d 359, Mines and Minerals § 183.

**40-3-2. Weighmen — Oath — Record of coal mined by individual miners.** Such owner, agent or operator shall require the person authorized to weigh the coal to take and subscribe an oath to keep the scales correctly