

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**MINE HEALTH AND SAFETY
AMENDMENT BILL**

[B 54—2008]

*(As agreed to by the Portfolio Committee on Minerals and Energy
(National Assembly))
(The English text is the official text of the Bill)*

[B 54A—2008]

ISBN 978-1-77037-431-7

No. of copies printed 800

AMENDMENTS AGREED TO

MINE HEALTH AND SAFETY AMENDMENT BILL

[B 54—2008]

CLAUSE 2

1. On page 2, from line 16, to omit subsection (6) and to substitute the following:

(6)(a) The *employer* must inform the *Chief Inspector of Mines*, in writing, within seven days of the appointment of the *chief executive officer*.

(b) The information to the *Chief Inspector of Mines* includes—

- (i) the name of the *chief executive officer*;
- (ii) the nature of such person's function; and
- (iii) the name of persons who are *managers* under the supervision of the *chief executive officer*.

CLAUSE 3

1. On page 3, in line 3, to omit “subsection” and to substitute “subsections”.
2. On page 3, in line 4, after “all” to insert “formal”.
3. On page 3, in line 5, to omit “.”.
4. On page 3, after line 5, to insert the following subsection:

(5) All *mines* must submit a workplace skills plan and the annual training reports to the Mining Qualifications Authority.”.

CLAUSE 4

1. On page 3, in line 26, to omit “and”.
2. On page 3, in line 27, to omit “subsection” and to substitute “subsections”.
3. On page 3, in line 31, to omit “.”.
4. On page 3, after line 31, to add the following:

“(5B) The *employer* must notify the *Principal Inspector of Mines* of any accident or occurrence at a *mine* that results in—

(a) the serious injury;

(b) illness; or

(c) death,

of any person, in order to allow the *Principal Inspector of Mines* to instruct an *Inspector* to conduct an investigation simultaneously with the *employer* as required in section 11(5)(a).”; and

5. On page 3, after line 31, to add the following:

- (e) by the addition of the following subsection:

“(8) In the event of an incident in which a person died, or was injured to such an extent that he or she is likely to die, or suffered the loss of a limb or part of a limb, no person may without the consent of the *Principal Inspector of Mines* disturb the site at which the incident occurred or remove any article or substance involved in the incident: Provided that an article or substance may only be removed if it is necessary to—

(a) prevent any further incident;

(b) remove the injured or dead; or

(c) rescue any person from danger.”

CLAUSE 5

1. On page 3, in line 34, to omit “and”.
2. On page 3, in line 35, to omit “.” and to substitute “; and”.
3. On page 3, after line 35, to insert the following:

- (c) by the insertion after subsection (4) of the following subsections:

“(4A) The *employer* must inform the *Principal Inspector of Mines*, in writing, within seven days of the appointment of the *occupational medical practitioner*.
 (4B) The information submitted in terms of subsection (4A) must include—

(a) the name of a *occupational medical practitioner*;

(b) his or her practice number; and

(c) whether the occupational medical practitioner is engaged full time or part time.”.

NEW CLAUSES

1. That the following be new Clauses:

Amendment of section 20 of Act 29 of 1996, as amended by section 11 of Act 72 of 1997

7. Section 20 of the principal Act is hereby amended by the addition of the following subsection:

“(7) An *employee* lodging an appeal under subsection (1) may not be dismissed on any grounds relating to unfitness to perform work, pending the outcome of the appeal.”.

Amendment of section 23 of Act 29 of 1996, as amended by section 12 of Act 72 of 1997

8. Section 23 of the principal Act is hereby amended by the addition of the following subsection:

“(4) The *Minister*, by notice in the *Gazette*, must determine minimum requirements for the procedures contemplated in subsection (2).”.

CLAUSE 12

1. On page 5, after line 47, to insert the following:

(g) by the addition of the following subsection:

“(6) The *Chief Inspector of Mines* must issue guidelines by notice in the *Gazette*.”.

CLAUSE 13

1. On page 5, after line 59, to insert the following:

(3) The *Chief Inspector of Mines* must, after consultation with the *Council*, use the monies collected in terms of section 55B for the promotion of *health* and *safety* in the mining industry.

2. On page 6, after line 10, to insert the following subsection:

(7) The report of the *Chief Inspector of Mines* referred to in section 49(1)(j) must reflect the financial affairs of the fund.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 50 of Act 29 of 1996

16. Section 50 of the principal Act is hereby amended by the insertion after subsection (7) of the following subsection:

“(7A) The *Inspector* must impose a prohibition on the further functioning of the site where—
(a) a person’s death;
(b) serious injury or illness to a person; or
(c) a health threatening occurrence,
has occurred by blocking, barring or barricading the site in such a manner as the *Inspector* may deem necessary.”.

CLAUSE 16

Clause rejected.

CLAUSE 17

Clause rejected.

CLAUSE 18

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Repeal of sections 55C to 55H of Act 29 of 1996

19. Sections 55C, 55D, 55E, 55F, 55G and 55H of the principal Act are hereby repealed.

NEW CLAUSE

1. That the following be a new Clause:

Insertion of section 86A in Act 29 of 1996

27. The following section is hereby inserted in the principal Act after section 86:

“Criminal liability

86A. (1) An *employer, chief executive officer, manager, agent or employee* commits an offence if he or she contravenes or fails to comply with the provisions of *this Act* thereby causing—
 (a) a person’s death; or
 (b) serious injury or illness to a person.
 (2) If a *chief executive officer, manager, agent or employee* of the *employer* commits an offence by performing or omitting to perform an act and such performance or omission would have constituted an offence had it been done by the *employer*, that *employer* is equally committing an offence if the performance or an omission fell within the scope of the authority or employment of the *chief executive officer, manager, agent or employee* concerned and the *employer*—
 (a) connived at or permitted the performance or omission by the *chief executive officer, manager, agent, or employee* concerned; or
 (b) did not take all reasonable steps to prevent the performance or an omission.
 (3) For the purposes of subsection (1) the—
 (a) fact that the person issued instructions prohibiting the performance or an omission is not in itself sufficient proof that all reasonable steps were taken to prevent the performance or an omission;
 (b) defence of ignorance or mistake by any person accused cannot be admitted; or
 (c) defence that the death of a person, injury, illness or endangerment was caused by the performance or an omission of any individual within the employ of the *employer* may not be admitted.”.

CLAUSE 26

1. On page 9, from line 5, to omit all the words following “any” up to and including “any—” in line 7 and to substitute:
 “person, [other than] including an *employer*, [commits an offence] who contravenes, or fails to comply with, any—”.
2. On page 9, in line 17, after “fine” to insert “or imprisonment”.
3. On page 9, in line 22, to omit “[, or fails to comply with,]” and to substitute “[, or fails to comply with,]”.

4. On page 9, in line 29, to omit “[contravenes or]” and to substitute “contravenes or”.

CLAUSE 27

1. On page 9, in line 37, to omit “subsection” and to substitute “subsections”.
2. On page 9, in line 42, to omit “; and”.
3. On page 9, after line 42, to insert the following subsection:

“(6) Any *owner* convicted of an offence in terms of section 86 or 86A may be sentenced to—

- (a) withdrawal or suspension of the permit; or
- (b) a fine of three million rands or a period of imprisonment not exceeding five years or to both such fine or imprisonment.

(7) In the event of a conviction, the court may, in addition to imposing a sentence in respect of the offence and making an order, order the person convicted to—

- (a) repair any damage caused, to the satisfaction of the *Chief Inspector of Mines*, and
- (b) comply with a provision of *this Act* within a specified period of time.”; and

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 98 of Act 29 of 1996, as amended by section 41 of Act 72 of 1997

30. Section 98 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) of the following paragraph:
“(zN) any other matter the *regulation* of which may be necessary or desirable in order to achieve the objects of *this Act*; **[and]**”;
- (b) by the substitution in subsection (1) of the following paragraph:
“(z0) the system of fines contemplated in sections 55A **[to H,]** and 55B including *regulations* regarding forms and documents, periods of time, procedures, *records* to be kept and the payment of fines~~[.]~~”; and
- (c) by the addition to subsection (1) of the following paragraph:
“(zP) minimum standards for the establishment, functioning, training, equipping and staffing of rescue services at *mines* and reporting by *employers* in respect of rescue services.”.

CLAUSE 31

1. On page 10, after line 40, to insert the following rows:

<u>2</u>	R1 000 000 or 5 yrs imprisonment
<u>2A</u>	R1 000 000 or 5 yrs imprisonment
<u>3</u>	R1 000 000 or 5 yrs imprisonment
<u>5</u>	R1 000 000 or 5 yrs imprisonment
<u>6</u>	R1 000 000 or 5 yrs imprisonment

<u>2</u>	<u>R1 000 000 or 5 yrs imprisonment</u>
<u>7(1)</u>	<u>R1 000 000 or 5 yrs imprisonment</u>
<u>10</u>	<u>R1 000 000 or 5 yrs imprisonment</u>
<u>11</u>	<u>R1 000 000 or 5 yrs imprisonment</u>

2. On page 11, in line 8, to omit “the row”.