

**351.184 Office to notify applicant of test results when granting or denying certification -- Notification of options -- Issuance after evaluation, treatment, and testing -- Right of appeal.**

- (1) The results of any testing performed by the Office of Mine Safety and Licensing shall be given to the applicant at the time of his or her notification of the granting or denial of certification.
- (2) Certification of an applicant shall be denied if any one (1) or more of the following occur:
  - (a) The applicant's positive drug test results for any of the substances either listed in KRS 351.182(8) or otherwise required to be tested for by order of the Mine Safety Review Commission are deemed to fail by a medical review officer;
  - (b) The applicant's blood alcohol level is above .04 concentration at the time of testing;
  - (c) The applicant's test results demonstrate the submission of an adulterated specimen; or
  - (d) The applicant refuses to submit to a drug or alcohol test as required by KRS 351.182.
- (3)
  - (a) Any applicant who is denied certification due to the results of the drug and alcohol testing required by KRS 351.182 may:
    1. Appeal to the Mine Safety Review Commission within thirty (30) days of receiving the notification required under KRS 351.120(12); or
    2. Notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing within thirty (30) of receiving the notification required under KRS 351.120(12) that the applicant intends to be evaluated by a medical professional trained in substance abuse treatment, to complete any prescribed treatment, and to submit an acceptable result from a drug and alcohol test as required by KRS 351.182.
  - (b) Failure to file an appeal or failure to notify the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of his or her intent to comply with paragraph (a)2. of this subsection within thirty (30) days of the notification shall result in the revocation of all licenses and certifications issued by the Office of Mine Safety and Licensing for a period of not less than three (3) years, and the holder shall remain ineligible for any other certification issued by the Office of Mine Safety and Licensing during the revocation period. Certifications and licenses revoked under this paragraph may be reissued by:
    1. Compliance with all training and testing requirements;
    2. Satisfying the requirements of KRS 351.182 and 351.183; and
    3. Compliance with all orders of the Mine Safety Review Commission.
  - (c) For the purposes of this subsection, the completion of evaluation, treatment, and submission of an acceptable drug test pursuant to

paragraph (a)2. of this subsection or the revocation described under paragraph (b) of this subsection shall be considered a first offense.

- (4) The licenses and certifications of a miner who notifies the commissioner of the Department for Natural Resources or the executive director of the Office of Mine Safety and Licensing of his or her intent to comply with subsection (3)(a)2. of this section shall remain suspended until the miner has provided proof of the evaluation and successful completion of any prescribed treatment and has submitted a negative drug and alcohol test as required by KRS 351.182 to the Office of Mine Safety and Licensing. The drug and alcohol test shall be taken no more than thirty (30) days prior to the submission of the proof required by this section. Upon receipt and review of the proof by the Office of Mine Safety and Licensing, the miner's licenses and certifications shall be restored. In the event that the miner fails to successfully complete the evaluation, treatment, and drug test within one hundred twenty (120) days of the notification required under KRS 351.120(12), the miner's licenses and certifications issued by the Office of Mine Safety and Licensing shall be revoked for a period prescribed under KRS 351.990(8). The one hundred twenty (120) day time period set out in this section shall be extended upon proof that the miner is complying with the recommendations of the medical professional.
- (5) If the denial described in subsection (3) of this section occurs following the miner's first offense as described in this section or KRS 351.120, the miner shall not have the option of notifying the Office of Mine Safety and Licensing of his or her intent to comply with subsection (3)(a)2. of this section. The miner shall only have the right to appeal the denial to the Mine Safety Review Commission within thirty (30) days of notification. If the miner fails to appeal the denial, the penalty shall be assessed according to KRS 351.990(8)(b) or (c).

**Effective:** July 12, 2012

**History:** Amended 2012 Ky. Acts ch. 89, sec. 6, effective July 12, 2012. -- Created 2006 Ky. Acts ch. 241, sec. 4, effective July 12, 2006.

**Legislative Research Commission Note (7/12/2006).** 2006 Ky. Acts ch. 241, sec. 4, subsec. (2)(b), provides that certification shall be denied if "[t]he applicant's blood alcohol level is above four tenths of one percent (.04) concentration at the time of test." The words "four tenths of one percent" and the parentheses around ".04" were removed during codification to correct a manifest clerical error that occurred in the drafting process. Materials in the bill folder for House Bill 572 (which became 2006 Ky. Acts ch. 241) show that the bill was drafted to be an exact copy of a bill requested and later introduced as Senate Bill 201, the initial proposed draft of which provided for denial of certification if "[t]he applicant's blood alcohol level is above .04 concentration at the time of testing." Materials in the bill folder for Senate Bill 201 indicate that the erroneous phrase was inserted during the drafting process to conform with the rules for cardinal numbers set forth in the Bill Drafting Manual of the Kentucky General Assembly. The Reviser of Statutes has made this correction under the authority of KRS 7.136(1).