

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2888**

4 (By Hamilton, Barker, M. Poling,
5 Mahan, Marshall, Moore, D. Poling, Caputo,
6 Longstreth, Ellem and Savilla)

7 (Originating in the House Committee on the Judiciary)

8 [February 24, 2011]

9
10 A BILL to amend and reenact §22A-1-22 of the Code of West Virginia,
11 1931, as amended, relating to the strengthening of protections
12 for whistleblowers of unsafe working conditions in mine;
13 directing the Office of Miners' Health, Safety and Training to
14 conduct a study and report to the Legislature.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §22A-1-22 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;**
19 **ADMINISTRATION; ENFORCEMENT.**

20 **§22A-1-22. Discrimination.**

21 **§22A-1-22. Discrimination.**

22 (a) No person shall discharge or in any other way discriminate
23 against or cause to be discharged or discriminated against any
24 miner or any authorized representative of miners by reason of the
25 fact that the person believes or knows that such miner or

1 representative (1) has notified the director, his or her
2 authorized representative, or an operator, directly or indirectly,
3 of any alleged violation or danger, (2) has filed, instituted or
4 caused to be filed or instituted any proceeding under this law, (3)
5 has testified or is about to testify in any proceeding resulting
6 from the administration or enforcement of the provisions of this
7 law. No miner or representative shall be discharged or in any
8 other way discriminated against or caused to be discriminated
9 against because a miner or representative has done (1), (2) or (3)
10 above.

11 (b) Any miner or a representative of miners who believes that
12 he or she has been discharged or otherwise discriminated against,
13 or any miner who has not been compensated by an operator for lost
14 time due to the posting of a withdrawal order, may, within thirty
15 days after such violation occurs, apply to the appeals board for a
16 review of such alleged discharge, discrimination or failure to
17 compensate. A copy of the application shall be sent to such person
18 who shall be the respondent. Upon receipt of such application, the
19 appeals board shall cause such investigation to be made as it deems
20 appropriate. Such investigation shall provide an opportunity for
21 a public hearing at the request of any party to enable the parties
22 to present information relating to such violation. The parties
23 shall be given written notice of the time and place of the hearing
24 at least five days prior to the hearing. Mailing of the notice of

1 hearing to the charged party at the party's last address of record
2 as reflected in the records of the office is adequate notice to the
3 charged party. Such notice shall be by certified mail, return
4 receipt requested. Any such hearing shall be of record. Upon
5 receiving the report of such investigation, the board shall make
6 findings of fact. If it finds that such violation did occur, it
7 shall issue a decision within forty-five days, incorporating an
8 order therein, requiring the person committing such violation to
9 take such affirmative action to abate the violation as the board
10 deems appropriate, including, but not limited to, the rehiring or
11 reinstatement of the miner or representative of miners to his or
12 her former position with back pay, and also pay compensation for
13 the idle time as a result of a withdrawal order. If it finds that
14 there was no such violation, it shall issue an order denying the
15 application. Such order shall incorporate the board's finding
16 therein. If the proceedings under this section relative to
17 discharge are not completed within forty-five days of the date of
18 discharge due to delay caused by the operator, the miner shall be
19 automatically reinstated until the final determination. If such
20 proceedings are not completed within forty-five days of the date of
21 discharge due to delay caused by the board, then the board may, at
22 its option, reinstate the miner until the final determination. If
23 such proceedings are not completed within forty-five days of the
24 date of discharge due to delay caused by the miner the board shall

1 not reinstate the miner until the final determination.

2 (c) Whenever an order is issued under this section, at the
3 request of the applicant, a sum equal to the aggregate amount of
4 all costs and expenses including the attorney's fees as determined
5 by the board to have been reasonably incurred by the applicant for,
6 or in connection with, the institution and prosecution of such
7 proceedings, shall be assessed against the person committing such
8 violation.

9 (c) The Office of Miners' Health, Safety and Training is
10 directed to conduct a study of the need to expand protections for
11 whistleblowers and other miners who refuse to work in situations
12 they perceive as unsafe in underground mines. The office shall
13 study the benefits and appropriateness of requiring additional
14 protections that will encourage miners to withdrawal from and
15 report unsafe working conditions. The Office shall investigate
16 whether any pattern of retribution exists against these persons,
17 and if so to make recommendations to the to the Legislature
18 regarding implementing additional protections. The Office shall
19 report to the Legislature's Joint Committee on Government and
20 Finance by December 31, 2011 with recommendations regarding whether
21 it is appropriate to implement any additional protections.