

1 **H. B. 2201**

2
3 (By Delegate Staggers)

4 [Introduced January 12, 2011; referred to the
5 Committee on Energy, Industry and Labor, Economic
6 Development and Small Business then the Judiciary.]

**FISCAL
NOTE**

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §22A-7A-1, §22A-7A-2,
12 §22A-7A-3, §22A-7A-4, §22A-7A-5, §22A-7A-6, §22A-7A-7, §22A-
13 7A-8 and §22A-7A-9, all relating to drug and alcohol free
14 mines; providing credit for workers compensation premiums to
15 mines that have a drug and alcohol free program; requiring
16 proof of drug and alcohol free status for miner certification;
17 providing an approved testing system; denial of certification;
18 secondary testing; confidentiality of test results; providing
19 certain legislative findings; requiring proof of alcohol and
20 drug free status of certain miners; and including additional
21 drug and alcohol abuse training for certain miners; mine
22 inspectors drug and alcohol training; establishment of
23 statewide database of miners failing to provide proof of drug
24 and alcohol free status; making certain actions by persons

1 listed on the database or failing a drug and alcohol test a
 2 second time a misdemeanor offense and providing criminal
 3 penalties; and making deliberate evasion of the database by a
 4 coal operator a misdemeanor and, providing a criminal penalty.

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

6 That the Code of West Virginia, 1931, as amended, be amended
 7 by adding thereto a new article, designated §22A-7A-1, §22A-7A-2,
 8 §22A-7A-3, §22A-7A-4, §22A-7A-5, §22A-7A-6, §22A-7A-7, §22A-7A-8
 9 and §22A-7A-9, all to read as follows:

10 **ARTICLE 7A. DRUG FREE MINES.**

11 **§22A-7A-1. Credit against Workers' Compensation premiums.**

12 (a) Any coal mine operator implementing a drug-free workplace
 13 program, including an employee assistance program, certified by the
 14 Office of Miners' Health Safety and Training is eligible to obtain
 15 a credit on the operator's premium for workers' compensation
 16 insurance.

17 (b) Each insurer authorized to write workers' compensation
 18 insurance policies shall provide the credit on the workers'
 19 compensation premium to any coal mine operator for which the insurer
 20 has written a workers' compensation policy. The credit on the
 21 workers' compensation premium shall not:

22 (1) Be available to those coal mine operators that do not
 23 maintain their drug free workplace program for the entire workers'
 24 compensation policy period; or

1 (2) Apply to minimum premium policies.

2 (c) The Insurance Commissioner shall approve workers'
3 compensation rating plans that give a credit on the premium for a
4 certified drug free workplace so long as the credit is actuarially
5 sound. The credit shall be at least five percent unless the
6 Insurance Commissioner determines that five percent is actuarially
7 unsound.

8 (3) The credit on the workers' compensation premium may be
9 applied by the insurer at the final audit.

10 **§22A-7A-2. Drug and alcohol free status of applicants for**
11 **certification required.**

12 (a) All applicants for certification as new miners and all
13 initial applicants for all other certifications provided in this
14 chapter shall provide proof of drug and alcohol free status prior
15 to certification in accordance with the provisions of this section.

16 (b) Proof of drug and alcohol free status shall be provided in
17 one of two methods:

18 (1) By participation in a drug and alcohol testing program
19 offered by the Office of Miners' Health, Safety and Training and
20 paid by the applicant, in accordance with sections two and three of
21 this article; or

22 (2) By the submission of drug and alcohol test results from
23 other sources, as provided in subsection (2), section three of this
24 article.

1 (c) If a newly certified miner gains employment in the coal
2 industry, the initial employer shall reimburse the certified miner
3 for the cost of one drug and alcohol test required by sections two,
4 three, four and five of this article.

5 (d) If the applicant is currently certified in any category
6 other than that for which he or she is applying by the Office of
7 Miners' Health, Safety and Training and the applicant is currently
8 employed in the coal industry, the applicant's employer shall
9 reimburse the applicant for the cost of one drug and alcohol test
10 required by sections two, three, four and five of this article.

11 (e) The fee charged to an applicant for the drug and alcohol
12 tests offered by the Office of Miners' Health, Safety and Training
13 shall not exceed the actual cost of collection, analysis, and
14 medical review.

15 (f) The Office of Miners' Health, Safety and Training shall
16 provide, at each site of examinations for the certifications, a
17 breath alcohol testing device and a person certified in the
18 operation of the breath alcohol testing device. The breath alcohol
19 test shall be administered prior to examination to determine the
20 applicant's alcohol free status. The Office of Miners' Health,
21 Safety and Training may satisfy the requirement to furnish an
22 alcohol testing device and certified personnel by:

23 (1) The use of equipment and appropriately certified personnel
24 of the Office of Miners' Health, Safety and Training;

1 (2) A memorandum of agreement with state or local police
2 agencies for the provision of equipment and appropriately trained
3 personnel at the examination site; or

4 (3) Inclusion of breath alcohol testing as part of the contract
5 to provide drug testing and collection services set out in
6 subsection (1) of section three of this article.

7 (g) A breath alcohol concentration of four-tenths of a percent
8 (.04) shall be the maximum acceptable level of concentration for
9 participation in the examination and subsequent certification.

10 (h) Except for an alternative testing protocol provided for
11 post-accident victims, the minimum testing protocol acceptable for
12 the establishment of drug free status for certification shall be an
13 eleven panel urine test that shall include testing for the following
14 substances:

- 15 (1) Amphetamines;
- 16 (2) Cannabanoids/THC;
- 17 (3) Cocaine;
- 18 (4) Opiates;
- 19 (5) Phencyclidine (PCP);
- 20 (6) Benzodiazepines;
- 21 (7) Propoxyphene;
- 22 (8) Methaqualone;
- 23 (9) Methadone;
- 24 (10) Barbiturates; and

1 (11) Synthetic narcotics.

2 **§22A-7A-3. Drug and alcohol free testing standards.**

3 (a) The Office of Miners' Health, Safety and Training may
4 contract with qualified companies to provide the collection of
5 samples and administer the required drug and alcohol tests. The
6 contract may provide that the collection of samples or testing be
7 subcontracted, except that the contract shall require:

8 (1) The contractor, and any subcontractors, to follow all
9 standards, procedures, and protocols set forth by the United States
10 Department of Health and Human Services' Substance Abuse and Mental
11 Health Services Administration (SAMHSA) for the collection and
12 testing required by section two and this section of this article;

13 (2) The contractor's or subcontractor's drug testing protocol
14 shall be an eleven panel test; and

15 (3) The contractor or the subcontractor shall provide a medical
16 review officer who shall:

17 (A) Possess the ability and medical training necessary to
18 verify positive confirmed test results and evaluate those results
19 in relation to an applicant's medical history or other biomedical
20 information; and

21 (B) Follow all procedures outlined in the SAMHSA Medical Review
22 Officer Manual.

23 (b) The executive director of the office of miners' health,
24 safety and training may accept proof of drug and alcohol free status

1 from other sources whose tests conform to the requirements set forth
2 in this article under the following conditions:

3 (1) An applicant shall submit a request for acceptance of his
4 or her drug and alcohol free status to the director accompanied by
5 pass/fail results of a drug and alcohol test taken within thirty
6 days prior to the request; and

7 (2) The test results shall have been performed by laboratories
8 certified in accordance with the National Laboratory Certification
9 Program (NLCP) by the United States Department of Health and Human
10 Services Administration's SAMHSA and in accordance with subsection
11 (1) of this section.

12 (3) The Office of Miners' Health, Safety and Training shall
13 maintain and publish annually a list of certified specimen
14 collection services and testing laboratories from which it will
15 accept data.

16 **§22A-7A-4. Effect of test results on certification.**

17 (a) The results of any testing performed by the Office of
18 Miners' Health, Safety and Training shall be given to the applicant
19 at the time of his or her notification of the granting or denial of
20 certification.

21 (b) Certification of an applicant shall be denied if any one
22 or more of the following occur:

1 (1) The applicant's positive drug test results for any of the
2 eleven substances listed in section two of this article are deemed
3 to fail by a medical review officer;

4 (2) The applicant's blood alcohol level is above four-tenths
5 of one percent concentration at the time of testing;

6 (3) The applicant's test results demonstrate the submission of
7 an adulterated specimen; or

8 (4) The applicant refuses to submit to a drug or alcohol test
9 as required by section two of this article.

10 (c) Any applicant who is denied certification due to the
11 results of the drug and alcohol testing required by section two of
12 this article may be retested again, at his or her expense, within
13 ten days of notification of the results of the initial test.

14 (d) If an applicant fails a drug and alcohol retest as provided
15 in subsection (c) of this section and the applicant is denied
16 certification, the applicant may reapply for certification only
17 after an evaluation by a medical professional trained in substance
18 abuse treatment and the successful completion of prescribed
19 treatment and an acceptable result from a drug and alcohol test as
20 required by section two of this article. Proof of the evaluation
21 and the successful completion of the prescribed treatment shall be
22 shown at the time of application.

23 (e) Any applicant who is denied certification due to the
24 results of the drug and alcohol testing required by section two of

1 this article, may file an appeal of the denial with the board of
2 appeals within thirty days of the notification of the results of the
3 test.

4 **§22A-7A-5. Confidentiality of drug and alcohol test results.**

5 (a) Records of drug or alcohol test results, written or
6 otherwise, received by the Office of Miners' Health, Safety and
7 Training, its contractors, subcontractors, or other employees are
8 confidential communications and exempt from disclosure under the
9 provisions of article one, chapter twenty-nine-b, except as follows:

10 (1) Where release of the information is authorized solely
11 pursuant to a written consent form signed voluntarily by the person
12 tested. The consent form shall contain the following:

13 (A) The name of the person who is authorized to obtain the
14 information;

15 (B) The purpose of the disclosure;

16 (C) The precise information to be disclosed;

17 (D) The duration of the consent; and

18 (E) The signature of the person authorizing the release of the
19 information;

20 (2) Where release of the information is compelled by a hearing
21 officer or court of competent jurisdiction pursuant to an appeal;

22 (3) Where release of the information is relevant to a legal
23 claim asserted by the applicant;

1 (4) Where the information is used by the entity conducting drug
2 or alcohol testing when consulting with legal counsel or in its
3 defense of civil or administrative actions related to the testing
4 or results; or

5 (5) Where release of the information is deemed appropriate by
6 the director of the Office of Miners' Health, Safety and Training
7 or a court of competent jurisdiction in disciplinary proceeding.

8 (b) Information on drug and alcohol test results for tests
9 administered pursuant to this article shall not be released or used
10 in any criminal proceeding against the applicant.

11 **§22A-7A-6. Legislative findings.**

12 (a) The highest priority and concern of the Legislature is with
13 the health and safety of the coal industry's most valuable resource,
14 the miner.

15 (b) The continued prosperity of the coal industry is of primary
16 importance to the state.

17 (c) A high priority must be given to increasing the
18 productivity and competitiveness of the mines in this state.

19 (d) An inordinate number of miners are killed or injured during
20 the first few months of their experience in a mine and upon
21 acquiring new work assignments in a mine.

22 (e) These injuries result in the loss of life and serious
23 injury to miners and are an impediment to the future growth of the
24 state's coal industry.

1 (f) Mining is a technical occupation with various specialties
2 requiring individualized training and education.

3 (g) Injuries can be reduced through proper miner training,
4 education and certification.

5 (h) Mine safety can be improved by the imposition and
6 enforcement of sanctions against licensed premises and certified and
7 noncertified personnel whose willful and repeated violations of mine
8 safety laws place miners in imminent danger of serious injury or
9 death.

10 (i) Abuse of illicit substances and alcohol in the mining
11 industry represents a serious threat to the health and safety of all
12 miners. Substance and alcohol abuse adversely affect the health and
13 safety of miners. Mine safety can be significantly improved by
14 establishing as a condition of certification that miners remain drug
15 and alcohol free.

16 **§22A-7A-7. Proof of drug and alcohol free status for certification**
17 **and required training.**

18 (a) No person shall be assigned mining duties by a coal mine
19 operator as a laborer or supervisor unless the person holds a valid
20 certificate of competency and qualification or a valid permit as
21 trainee issued in accordance with this section.

22 (b) The Office of Miners' Health, Safety and Training shall
23 require that all applicants for certified miner and initial
24 applicants for other mining certifications pursuant to this chapter

1 shall submit proof that he or she is drug and alcohol free. The
2 proof shall be submitted in accordance with sections two and three
3 of this article.

4 (c) A permit as trainee miner shall be issued by the director
5 to any person who has submitted proof that he or she is drug and
6 alcohol free in accordance with sections two and three of this
7 article and has completed a program of education as provided in this
8 chapter to include a requirement for a permit as a trainee miner
9 shall be one hour of classroom training dedicated to alcohol and
10 substance abuse education.

11 **§22A-7A-8. Mine Inspector drug and alcohol training.**

12 (a) Not later than July 1, 2011, the director of the Office of
13 Miners' Health Safety and Training shall implement a training
14 program for mine inspectors to include the following:

15 (1) Common symptoms of alcohol and drug abuse;

16 (2) The identification of drugs and drug paraphernalia;

17 (3) Proper procedures for handling and processing evidence of
18 suspected use of illegal drugs or alcohol; and

19 (4) Training in drug and alcohol abuse education for mine
20 operators and miners.

21 (b) A mine inspector shall annually provide proof of drug and
22 alcohol free status as provided in this article for certification of
23 miners. A mine inspector failing or refusing to provide proof of
24 drug and alcohol free status shall be terminated.

1§22A-7A-9. Database of miners failing drug or alcohol free
2status.

3 (a) The director of miners' health, safety and training shall
4develop and maintain a database of the names of miners who have
5failed to provide proof of drug and alcohol free status or who have
6been removed from the mines as a result of having been found to use
7drugs and alcohol while employed in the mines.

8 (b) Any person listed in the database shall enter and
9successfully finish a drug and alcohol abuse rehabilitation program,
10successfully pass a drug and alcohol test and shall be required to
11participate in additional training concerning mine safety before
12being permitted to work in a mine.

13 (c) It is a misdemeanor offense for any person listed on the
14database to apply for employment as a miner and it is a misdemeanor
15offense for a miner to test positive for drug or alcohol abuse for
16a second time. Any person violating the provisions of this
17subsection is guilty of a misdemeanor and, upon conviction thereof,
18shall be fined not more than \$500 or confined in jail not more than
19one year, or both fined and confined.

20 (d) It is a misdemeanor offense for a mine operator to
21disregard the names of persons listed on the database and hire any
22person on the database in a mine. Any coal operator or responsible
23employee of the coal operator who violated the provisions of this
24subsection is guilty of a misdemeanor and, upon conviction thereof,

1shall be fined not more than \$500 or confined in jail not more than
2one year, or both fined and confined.

NOTE: The purpose of this bill is to provide for a comprehensive drug and alcohol free program for miners. Mine operators are eligible for a credit on their workers' compensation premiums if they have established a drug and alcohol free mine workplace as provided in the bill. The bill requires proof of drug and alcohol free status in order for miners to be certified. Mine inspectors are required to receive training in drug and alcohol abuse and a statewide database of miners failing to provide proof of alcohol and drug free status is established. Criminal penalties are also provided in the bill for violations.

This article is new; therefore, it has been completely underscored.