

H. B. 2371

(By Delegate Paxton)

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

A BILL to repeal §21-3A-10, §21-3A-11, §21-3A-12, §21-3A-18 and
§21-3A-19 of the Code of West Virginia, 1931 as amended; to
amend and reenact §5B-1-2 of said code; and to amend and
reenact §21-3A-2, §21-3A-5, §21-3A-6, §21-3A-7 and §21-3A-8 of
said code, all relating to the West Virginia Occupational
Safety and Health Act; repealing the West Virginia OSHA
Commission; transferring the rule-making authority and duties
of the commission to the Commissioner of Labor; adding
definitions; clarifying employer and employee duties;
requiring the promulgation of legislative rules by date
certain; requiring education programs; authorizing emergency
rules by date certain; requiring reporting; adopting federal
standards by a date certain; authorizing inspections;
requiring inspection reports; specifying penalty for
noncompliance; and providing appeals.

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

2 That §21-3A-10, §21-3A-11, §21-3A-12, §21-3A-18 and §21-3A-19
3 of the Code of West Virginia, 1931 as amended, be repealed; that
4 §5B-1-2 of said code be amended and reenacted; that §21-3A-2,
5 §21-3A-5, §21-3A-6, §21-3A-7 and §21-3A-8 of said code be amended
6 and reenacted, all to read as follows:

7 **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

8 **ARTICLE 1. DEPARTMENT OF COMMERCE.**

9 **§5B-1-2. Agencies, boards, commissions, divisions and offices**
10 **comprising the Department of Commerce.**

11 The Department of Commerce consists of the following agencies,
12 boards, commissions, divisions and offices, including all of the
13 allied, advisory, affiliated or related entities, which are
14 incorporated in and administered as part of the Department of Commerce:

15 (1) Division of Labor provided in article one, chapter
16 twenty-one of this code, which includes

17 ~~(A) Occupational Safety and Health Review Commission provided~~
18 ~~in article three-a, chapter twenty-one of this code; and~~

19 ~~(B) the Board of Manufactured Housing Construction and Safety~~
20 ~~provided in article nine, chapter twenty-one of this code;~~

21 (2) Office of Miners' Health, Safety and Training provided in
22 article one, chapter twenty-two-a of this code. The following
23 boards are transferred to the Office of Miners' Health, Safety and

1 Training for purposes of administrative support and liaison with
2 the Office of the Governor:

3 (A) Board of Coal Mine Health and Safety and Coal Mine Safety
4 and Technical Review Committee provided in article six, chapter
5 twenty-two-a of this code;

6 (B) Board of Miner Training, Education and Certification
7 provided in article seven, chapter twenty-two-a of this code; and

8 (C) Mine Inspectors' Examining Board provided in article nine,
9 chapter twenty-two-a of this code;

10 (3) The West Virginia Development Office, which includes the
11 Division of Tourism and the Tourism Commission, provided in article
12 two, chapter five-b of this code;

13 (4) Division of Natural Resources and Natural Resources
14 Commission provided in article one, chapter twenty of this code;

15 (5) Division of Forestry provided in article one-a, chapter
16 nineteen of this code;

17 (6) Geological and Economic Survey provided in article two,
18 chapter twenty-nine of this code;

19 (7) Workforce West Virginia provided in chapter twenty-one-a
20 of this code, which includes:

21 (A) Division of Unemployment Compensation;

22 (B) Division of Employment Service;

23 (C) Division of Workforce Development; and

24 (D) Division of Research, Information and Analysis; and

1 (8) Division of Energy provided in article one, chapter five-h
2 of this code.

3 **CHAPTER 21. LABOR.**

4 **ARTICLE 3A. OCCUPATIONAL SAFETY AND HEALTH ACT.**

5 **§21-3A-2. Definitions.**

6 As used in this chapter, unless the context clearly indicates
7 otherwise:

8 ~~(a) "Commission" means the occupational safety and health~~
9 ~~review commission established under this article;~~

10 ~~(b)~~ (a) "Commissioner" means the Labor Commissioner or ~~his~~ a
11 designated agent;

12 ~~(c)~~ (b) "Employee" means any public employee of the state, or
13 any state agency;

14 ~~(d)~~ (c) "Employer" means public employer and ~~shall include~~
15 includes the state or any department, division, bureau, board,
16 council, agency or authority of the state, including county and
17 municipal offices, but ~~shall~~ does not include the Department of
18 Corrections ~~the department of health~~ and the Legislature;

19 ~~(e)~~ (d) "Occupational safety and health standard" means a
20 standard for health or safety which requires the adoption or use of
21 one or more practices, means, methods, operations or processes
22 reasonably necessary or appropriate to provide safe and healthful
23 employment in places of employment;

24 ~~(f)~~ (e) "Person" means one or more individuals;

1 (f) "Potential hazard" means:

2 (1) A hazard reasonably anticipated or known to be associated
 3 with a working condition, a work related product or byproduct;

4 (2) Any emergency or unusual situation a reasonable person
 5 would avoid if made aware of, regardless if it is mechanical,
 6 industrial, chemical, water based or airborne;

7 ~~(h)~~ (g) "Temporary variance" means a written authorization by
 8 the commissioner to grant an exemption from a recognized
 9 occupational health and safety standard established pursuant to
 10 this article and applicable federal law. A temporary variance may
 11 not be issued in excess of seven working days: *Provided*, That a
 12 variance may not be issued where an employer or employee has a duty
 13 to correct a violation of this article: *Provided, however*, That a
 14 variance may not be issued that endangers an employee or the
 15 general public; and

16 ~~(i)~~ (h) "Workplace" means a place where public employees are
 17 assigned to work but ~~shall~~ does not include any place where public
 18 employees are assigned to work that is inspected and regulated in
 19 accordance with federal occupational safety and health standards or
 20 mine safety and health administration standards, or facilities
 21 under the authority of the ~~Department~~ Division of Corrections, the
 22 Department of Health and Human Resources or the Legislature.

23 **§21-3A-5. Duties of employer and employee.**

24 (a) Each employer shall furnish to each ~~of his employees~~

1 ~~employment and~~ employee a place of employment which ~~are~~ is free
2 from recognized hazards causing or likely to cause death or serious
3 physical harm or serious illness to ~~his employees~~ any employee of
4 the employer or the general public.

5 (b) Each employer shall, upon the written request of any
6 employee, furnish the employee with a written statement listing the
7 substances which the employee uses or with which the employee comes
8 into contact, which substances have been identified as toxic and
9 hazardous by occupational safety and health standards, under Title
10 29 CFR 1910.1000 "Air Contaminant Code of Federal Regulations"
11 through 1910.1046, or listed in the most recent National Institute
12 for Occupational Safety and Health Registry of the Toxic Effects of
13 Chemical Substances (RTECS).

14 (c) Each employer shall comply with occupational safety and
15 health standards promulgated under this article.

16 (d) Each employer shall submit, on or before June 1, 2011, an
17 employee training and education plan to the commissioner for
18 approval to reduce and eliminate the inherent risk of all
19 applicable job titles or classifications for each employee of the
20 employer. Each employer plan shall identify the known risks and
21 the appropriate training for each job title or classification
22 necessary to comply with the intent of this article.

23 (e) Each employer shall provide each employee with access to
24 reasonable use of the employers office equipment, computers,

1 copiers and communication equipment and each employee shall have
2 use of the office equipment to prepare or copy any report,
3 investigation or inspection provided in this article.

4 ~~(d)~~ (f) Each employee shall comply with occupational safety
5 and health standards and all regulations and orders issued pursuant
6 to this article which are applicable to his or her actions and
7 conduct.

8 (g) Each employee shall report any potential hazard in writing
9 to the employer as soon as the reporting is practical: *Provided,*
10 That where a potential hazard, emergency or unusual situation can
11 be reasonably considered life threatening, reporting may be
12 conducted telephonically, electronically, or in person. Where an
13 employee reports a potential hazard other than in writing the
14 employee shall have seven work days to submit a written statement
15 reporting the incident to the employer.

16 (h) Each employee shall report any failure to comply with this
17 article, or any on going violation of this article, to the
18 commissioner. An employee, who in good faith dutifully reports a
19 violation or suspected violation of this article to the
20 commissioner, is immune from any civil liability.

21 (i) Each employee shall and any employer may report any
22 potential hazard to the commissioner regardless of whether it is
23 life threatening or not.

24 (j) An employer may not retaliate against an employee who

1 reports in good faith a potential hazard, an emergency or unusual
2 situation or a violation of this article. An employer who violates
3 this section is guilty of insubordination and may be disciplined up
4 to and including termination.

5 **§21-3A-6. Rules.**

6 ~~In the rules adopted under the authority of this article, the~~
7 ~~commissioner shall:~~

8 (a) On or before June 30, 2011, the commissioner shall propose
9 legislative rules pursuant to article three, chapter twenty-nine-a
10 of this code to:

11 ~~(a)~~ (1) Provide for the preparation, adoption, amendment or
12 repeal of rules necessary to effectuate the health and safety
13 purposes of this article;

14 ~~(b)~~ (2) Provide or specify the form and content of the employer
15 educational programs to be provided by or submitted to the
16 commissioner for approval, in a manner determined by the
17 commissioner. Educational programs shall be detailed and task
18 specific to encourage employers and employees in their efforts to
19 reduce the number of safety and health hazards and to stimulate
20 employers and employees to institute new programs, and to perfect
21 existing programs to provide for safe and healthful working
22 conditions: *Provided, That if an employer does not submit an*
23 educational program plan by December 31, 2011, the commissioner
24 shall determine an appropriate plan to be implemented by the

1 employer by July 1, 2012;

2 ~~(c)~~ (3) Provide standard procedures for appropriate reporting
3 ~~procedures~~ by employers with respect to information relating to
4 conditions of employment which will assist in achieving the
5 objectives of this article;

6 ~~(d)~~ (4) Provide for the frequency, method and manner of making
7 inspections of workplaces without advance notice: *Provided*, That
8 in the event of an emergency or unusual situation, the commissioner
9 may not be required to give advance notice;

10 ~~(e)~~ (5) Provide for the publication and dissemination to
11 employers, employees and labor organizations and the posting, where
12 appropriate, by employers of informational, educational or training
13 materials calculated to aid and assist in achieving the objectives
14 of this article; and

15 ~~(f)~~ (6) Provide for the establishment of new programs, and the
16 perfection and expansion of existing programs for occupational
17 safety and health education for employers and employees and
18 institute methods and procedures to establish a program for
19 voluntary compliance by employers and employees with the
20 requirements of this article and all applicable safety and health
21 standards and ~~regulations~~ rules promulgated pursuant to the
22 authority of this article.

23 (7) Provide the minimum standards for employer education and
24 training programs, adequate to protect the health, safety and

1 welfare of each employee of the employer.

2 (8) Establish criteria for each employer to adopt education and
3 training programs that allow employee participation in the
4 development of the educational training programs specific to the
5 employee job description and classification title.

6 (9) Provide for the use of labels or other appropriate forms
7 of warning necessary to ensure that employees are apprised of all
8 hazards to which they are exposed, relevant symptoms and appropriate
9 emergency treatment and, where appropriate, proper conditions and
10 precautions of safe use or exposure.

11 (10) Provide standards for suitable protective equipment and
12 control procedures for use in connection with such hazards and shall
13 provide for measuring employee exposure in the manner necessary for
14 the protection of employees.

15 (11) Provide guidelines for the type and frequency of medical
16 examinations or other tests which shall be made available to
17 employees exposed to such hazards in order to determine any adverse
18 effect from that exposure.

19 (12) Establish a complaint process to allow an employee to
20 report potential hazards, emergency or unusual situations and
21 violations of this article. The complaint process shall include:

22 (A) The form in which a request can be made for inspections and
23 investigations;

24 (B) Required notice of inspections and investigations, to allow

1 participation by the employee or party of complainants, employee
2 representatives and the employer;

3 (C) Required reporting of any findings of the investigation
4 including any recommendations, to provide a copy of all reports to
5 the employee or party of complainants, employee representatives and
6 the employer; and

7 (D) An appeal process for any party adversely impacted by an
8 inspection, investigation or finding by the commissioner or lack
9 thereof.

10 (13) Provide a process for an employer to request a variance
11 or temporary order from compliance with any rule or standard
12 pursuant to this article. A request for variance or temporary order
13 shall be in writing and shall specify the reasons for the request.
14 A copy of the request for a variance or temporary order shall be
15 provided to each employee of the employer requesting the variance
16 or temporary order. The commissioner shall allow each employee not
17 less than twenty work days to comment on the request before
18 consideration of the request.

19 (14) Provide the manner in which reports shall be developed,
20 the schedule for the production of inspection and investigation
21 reports and provide that the reports shall be made available to the
22 public, the employers, employees and any employee representatives:
23 Provided, That the name or names of the person or group of people
24 who file a complaint, request for inspection or investigation

1 pursuant to this article shall be redacted from all public records.

2 (16) Provide an appeals process for an employer or employee who
 3 may be adversely impacted by any action taken pursuant to this
 4 article: *Provided*, That the commissioner shall also provide an
 5 appeals process as a remedy for the inaction of any employer,
 6 employee or the commissioner.

7 (b) The commissioner may promulgate rules pursuant to this
 8 article as emergency rules: *Provided*, That any rule promulgated as
 9 an emergency rule shall be submitted for approval by the Legislature
 10 no later than December 31, 2011.

11 **§21-3A-7. Adoption of federal and state standards; variances**
 12 **emergency situation reports; and appeals.**

13 (a) The commissioner, on or before July 1, ~~1987~~ 2011, shall
 14 provide at the minimum, for the adoption of all occupational safety
 15 and health standards, amendments or changes adopted or recognized
 16 by the United States Secretary of Labor under the authority of the
 17 Occupational Safety and Health Act of 1970, which are in effect on
 18 the effective date of this section. Where no federal standards are
 19 applicable, or where standards more stringent than the federal
 20 standards are deemed advisable, the commissioner shall provide for
 21 the development of ~~such~~ state standards ~~as will~~ that comport with
 22 the purposes of this act. Standards applicable to the
 23 implementation and enforcement of this article shall be adopted
 24 ~~through state administrative procedures~~ pursuant to article three,

1 chapter twenty-nine-a of this code.

2 (b) (1) ~~In the event of~~ If there are emergency or unusual
3 situations, the commissioner shall provide for an emergency
4 temporary standard to take effect immediately if he determines:
5 inspection by appropriate staff, emergency response personnel or
6 other persons designated by the commissioner who are qualified to
7 identify potential hazards, emergency situations and life
8 threatening conditions. The commissioner or an appropriate designee
9 may recommend corrective action to any employer or employee covered
10 by this article to mitigate a perceived risk to the employer, any
11 employee or to the general public.

12 (2) The commissioner or a designee shall produce a report in
13 writing within ten work days to summarize the status of the
14 emergency or unusual situation, including any subsequent inspection
15 or investigation conducted pursuant to this section. All inspection
16 reports shall detail the location of the emergency or unusual
17 situation, the conditions that caused the emergency or unusual
18 situation to the extent practical that a cause has been determined
19 and shall detail the actions taken or recommendations considered
20 necessary to correct or mitigate the emergency or unusual situation
21 and shall include any recommendations to prevent future emergencies
22 or unusual situations specific to the incident.

23 (c) Any employer or employee, or the commissioner, adversely
24 affected or aggrieved by any action taken pursuant to this article,

1 after all administrative remedies provided by this article have been
2 exhausted, is entitled to judicial review pursuant to section four,
3 article five, chapter twenty-nine-a of this code.

4 ~~(1) Employees are exposed to grave danger from exposure to~~
5 ~~substances or agents determined to be toxic or physically harmful~~
6 ~~or from new hazards; and~~

7 ~~(2) The emergency standard is necessary to protect employees~~
8 ~~from such danger.~~

9 ~~The emergency standard may be in effect not longer than one~~
10 ~~hundred eighty days or, if renewed in compliance with the laws of~~
11 ~~this state governing the adoption or extension of rules, not longer~~
12 ~~than sixty additional days. On or before the expiration date of the~~
13 ~~emergency standard or renewal thereof, the commissioner shall~~
14 ~~develop a permanent standard to replace the emergency standard.~~

15 ~~(c) Any standard promulgated shall prescribe the use of labels~~
16 ~~or other appropriate forms of warning necessary to ensure that~~
17 ~~employees are apprised of all hazards to which they are exposed,~~
18 ~~relevant symptoms and appropriate emergency treatment and, where~~
19 ~~appropriate, proper conditions and precautions of safe use or~~
20 ~~exposure. The standard shall also prescribe suitable protective~~
21 ~~equipment and control procedures for use in connection with such~~
22 ~~hazards and shall provide for measuring employee exposure in the~~
23 ~~manner necessary for the protection of employees. In addition,~~
24 ~~where appropriate, the standard shall prescribe the type and~~

~~1 frequency of medical examinations or other tests which shall be made
2 available to employees exposed to such hazards in order to determine
3 any adverse effect from that exposure.~~

~~4 (d) Any employer may apply to the commissioner for a temporary
5 order granting a variance from a standard, or any provision thereof,
6 promulgated under this section. A temporary order shall be granted
7 if the employer files an application which meets the requirements
8 of subsection (e) of this section and establishes that:~~

~~9 (1) He is unable to comply with a standard by its effective
10 date because of unavailability of professional or technical
11 personnel or of materials and equipment needed to come into
12 compliance with the standard or because necessary construction or
13 alteration of facilities cannot be completed by the effective date;~~

~~14 (2) He is taking all available steps to safeguard employees
15 against the hazards covered by the standard; and~~

~~16 (3) He has an effective program for coming into compliance with
17 the standard as quickly as practicable.~~

~~18 Any temporary order issued under this subsection shall
19 prescribe the practices, means, methods, operations and processes
20 which the employer must adopt and use while the order is in effect
21 and state in detail his program for coming into compliance with the
22 standard. A temporary order may be granted only after notice by the
23 commissioner to employees and an opportunity for a hearing before
24 the commissioner: *Provided*, That the commissioner may issue one~~

~~1 interim order to be effective until a decision is made on the basis
2 of the hearing. No temporary order may be in effect for longer than
3 the period needed by the employer to achieve compliance with the
4 standard or one year, whichever is shorter: *Provided, however,* That
5 an order may be renewed if the requirements of this subsection are
6 met and if an application for renewal is filed at least ninety days
7 prior to the expiration date of the order. No interim renewal of
8 an order may remain in effect longer than one hundred eighty days.~~

~~9 (e) An application for a temporary variance order shall
10 contain:~~

~~11 (1) A specification of the standard or portion thereof from
12 which the employer seeks a variance;~~

~~13 (2) A representation by the employer, supported by
14 representations from qualified persons who have firsthand knowledge
15 of the facts represented, that he is unable to comply with the
16 standard or portion thereof and a detailed statement of the reasons
17 therefor;~~

~~18 (3) A statement of the steps he has taken and will take, with
19 specific dates, to protect employees against the hazard covered by
20 the standards;~~

~~21 (4) A statement of when he expects to comply with the standard
22 and what steps he has taken and what steps he will take, with dates
23 specified, to come into compliance with the standard; and~~

~~24 (5) A certification that he has informed his employees of the~~

~~1 application by giving a copy thereof to their authorized
2 representative, posting a statement giving a summary of the
3 application and specifying where a copy may be examined at the place
4 or places where notices to employees are normally posted and by
5 other appropriate means. A description of how employees have been
6 informed shall be contained in the certification. The information
7 to employees shall inform them of their right to petition the
8 commissioner for a hearing. The commissioner is authorized to grant
9 a variance from any standard or portion thereof whenever he
10 determines that a variance is necessary to permit an employer to
11 participate in an experiment, approved by the commissioner, designed
12 to demonstrate or validate new and improved techniques to safeguard
13 the health or safety of workers.~~

~~14 (f) Any affected employer may apply to the commissioner for an
15 order granting a variance from a standard promulgated under this
16 section. Affected employees shall be given notice of each such
17 application and an opportunity to participate in a hearing before
18 the commissioner. The commissioner shall issue such order if he or
19 she determines on the record, after opportunity for an inspection
20 where appropriate and a hearing, that the proponent of the variance
21 has demonstrated by a preponderance of the evidence that the
22 conditions, practices, means, methods, operations or processes used
23 or proposed to be used by an employer will provide employment and
24 places of employment which are as safe and healthful as those which~~

~~1 would prevail if he complied with the standard. The order issued
2 shall prescribe the conditions the employer must maintain and the
3 practices, means, methods, operations and processes which he must
4 adopt and utilize to the extent they differ from the standard in
5 question. The order may be modified or revoked upon application by
6 an employer or employees, or by the commissioner on his own motion,
7 in the manner prescribed for its issuance under this subsection at
8 any time after six months from its issuance.~~

9 ~~(g) Any employee who may be adversely affected by a standard
10 or variance or regulation issued under this section may challenge
11 the validity or applicability of a standard or variance or
12 regulation by bringing an action for a declaratory judgment.~~

13 ~~(h) It is the expressed intent of the Legislature that an
14 unlimited number of variances may be granted, if the conditions of
15 this section are met.~~

16 **§21-3A-8. Inspections and investigations; records.**

17 (a) In order to carry out the purposes of this article, the
18 commissioner or ~~his agent~~ a designee, upon presenting appropriate
19 credentials to the employer, is authorized:

20 (1) To enter without advance notice, ~~except as provided in~~
21 ~~subsection (d) of section six,~~ and at reasonable times may enter any
22 workplace or environment where work is performed by an employee of
23 an employer; and

24 (2) To inspect and investigate, during regular working hours

1 and at other reasonable times and within reasonable limits and in
2 a reasonable manner, any place of employment and all pertinent
3 conditions, structures, machines, apparatus, devices, equipment and
4 the materials therein, and to question privately any employer or
5 employee. No public employer may refuse to allow a representative
6 of the commissioner to inspect a place of employment. If an
7 employer attempts to prevent a representative of the department from
8 conducting an inspection, the commissioner may obtain an inspection
9 warrant from the circuit court of Kanawha County or the circuit
10 court of the county wherein the employer is located.

11 (b) In making ~~his~~ inspections and investigations under this
12 ~~entire~~ article the commissioner may require the attendance and
13 testimony of witnesses and the production of evidence under oath.
14 Witnesses shall be paid the same fees and mileage that are paid
15 witnesses in the courts of this state. In case of contumacy or
16 failure or refusal of any person to obey ~~such~~ an order to appear,
17 testify or produce evidence, the circuit court for the judicial
18 circuit wherein the person resides, is found or transacts business
19 has jurisdiction to issue to the person an order requiring the
20 person to appear, to produce evidence if asked and, when so ordered,
21 to give testimony relating to the matter under investigation or in
22 question. Any failure to obey ~~such~~ an order of the court may be
23 punished by the court as a contempt thereof.

24 (c) (1) Each employer shall make, keep, preserve and make

1 available to the commissioner and the United States secretary of
2 labor records regarding his or her activities relating to this
3 entire article as the commissioner may prescribe by rule as
4 necessary or appropriate for the enforcement of this article or for
5 developing information regarding the causes and prevention of
6 occupational accidents and illnesses. In order to carry out the
7 provisions of this subdivision, these rules may include provisions
8 requiring employers to conduct periodic inspections. The
9 commissioner shall also issue rules requiring that employers,
10 through posting of notices or other appropriate means, keep their
11 employees informed of their protections and obligations under this
12 entire article, including the provisions of applicable standards.

13 (2) The commissioner shall prescribe rules requiring employers
14 to maintain accurate records of and to make periodic reports on
15 work-related deaths, injuries and illnesses other than minor
16 injuries requiring only first-aid treatment and not involving
17 medical treatment, loss of consciousness, restriction of work or
18 motion or transfer to another job.

19 (3) The commissioner shall issue rules requiring employers to
20 maintain accurate records of employee exposures to potentially toxic
21 materials or harmful physical agents which are required to be
22 monitored or measured under any occupational safety and health
23 standard adopted under this entire chapter. These regulations shall
24 provide employees or their representatives an opportunity to observe

1 the monitoring or measuring and to have access to the records. The
2 regulations shall also make appropriate provisions for each employee
3 or former employee to have ~~such~~ access to the records ~~as will~~
4 ~~indicate~~ that indicates his or her own exposure to toxic materials
5 or harmful physical agents. Each employer shall promptly notify any
6 employee who has been or is being exposed to toxic materials or
7 harmful physical agents in concentrations or at levels which exceed
8 those prescribed by an applicable occupational safety and health
9 standard promulgated under section six of this article and shall
10 inform any employee who is being thus exposed of the corrective
11 action being taken.

12 (d) Any information obtained by the commissioner under this
13 entire article shall be obtained with a minimum burden upon
14 employers. Unnecessary duplication of efforts in obtaining
15 information shall be eliminated to the maximum extent feasible: __
16 Provided, That an employer who obstructs an inspection or
17 investigation authorized pursuant to this article is guilty of
18 insubordination and is subject to disciplinary action up to and
19 including termination.

20 (e) Subject to rules issued by the commissioner, a
21 representative of the employer and a representative authorized by
22 the employees of the employer shall be given an opportunity to
23 accompany the commissioner or his or her authorized representative
24 during the physical inspection of any workplace for the purpose of

1 aiding the inspection. Where there is no authorized employee
2 representative, the commissioner or his or her authorized
3 representative shall consult with a reasonable number of employees
4 concerning matters of health and safety in the workplace.

5 (f) (1) Any employee or representative of employees who
6 believes that there is a violation of an occupational safety or
7 health standard or that there is an imminent danger of physical harm
8 may request an inspection by giving notice to the commissioner or
9 ~~his~~ an authorized representative of the violation or danger. The
10 notice may be in any form, but shall be reduced to writing, within
11 seven work days after the imminent danger was first reported and
12 shall set forth with reasonable particularity the grounds for the
13 notice and shall be signed by the employee, employees or ~~their~~ an
14 employee representative. A copy of the notice shall be provided the
15 employer or his or her agent no later than the time of the
16 inspection: *Provided,* That upon the request of the person giving
17 the notice, his or her name and the names of individual employees
18 referred to therein shall not appear in the copy or on any record
19 published, released or made available pursuant to subsection (g) of
20 this section. If, upon receipt of the notification, the
21 commissioner determines there are reasonable grounds to believe that
22 ~~such~~ the violation or danger exists, he or she shall make an
23 inspection in accordance with the provisions of this ~~section~~ article
24 as soon as practicable to determine if the violation or danger

1 exists.

2 (2) The commissioner shall maintain records of the results of
3 any such investigation, which shall be made available to any
4 employee, employee representatives, the employer and to the public
5 upon request.

6 (3) The authority of the commissioner to inspect any premises
7 for purposes of investigating an alleged violation of safety
8 standards ~~shall not be~~ is not limited to the alleged violation but
9 ~~shall extend~~ extends to any other area of the premises in which he
10 or she has reason to believe that a violation of the safety
11 standards promulgated under this act exists. If the commissioner
12 determines there are no reasonable grounds to believe that the
13 violation or danger exists, he or she shall notify the employer,
14 employee or representative of employees in writing of the
15 determination. The notification does not preclude future
16 enforcement action if conditions change.

17 ~~(2)~~ (4) ~~Prior to~~ Before or during any inspection of a
18 workplace, any employees or representative of employees employed in
19 the workplace may notify the commissioner, or any representative of
20 the commissioner responsible for conducting the inspection, in
21 writing of any violation of this entire article which they have
22 reason to believe exists in the workplace. The commissioner shall,
23 by rule, establish procedures for review of any refusal by a
24 representative of the commissioner to issue a citation with respect

1 to any alleged violation, and shall furnish the employer and the
2 employees or representative of employees requesting the review a
3 written statement of the reasons for the commissioner's final
4 disposition of the case. The notification does not preclude future
5 enforcement action if conditions change.

6 ~~(g) (1) The Commissioner is authorized to compile, analyze and~~
7 ~~publish in either summary or detail form all reports or information~~
8 ~~obtained under this section.~~

9 ~~(2) The Commissioner shall prescribe such rules as he considers~~
10 ~~necessary to carry out his responsibilities under this article,~~
11 ~~including rules dealing with the inspection of an employer's or~~
12 ~~owner's establishment.~~

13 (g) The commissioner shall produce an annual report on or
14 before December 31 of each year summarizing the number of complaints
15 received for the previous two calendar years, specifying the nature
16 of the complaints and summarizing the disposition of each complaint,
17 incident, inspection, investigation or violation of this article.

NOTE: The purpose of this bill is to require implementation of the 1987 WV Occupational Safety and Health Act by requiring the development of standards and legislative rules by June 30, 2011. The bill repeals the WV OSHA Commission. Rule-making authority of the commission is transferred to the Commissioner of Labor who shall enforce the provisions of the act.

Strike-throughs indicate language that would be stricken from the present law, underscoring indicates language that would be added.