

H. B. 2888

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

[Introduced January 27, 2011; referred to the Committee on the Judiciary.]

A BILL to amend and reenact §22A-1-22 of the Code of West Virginia, 1931, as amended, relating to the strengthening of protections for whistleblowers of unsafe working conditions in mines.

Be it enacted by the Legislature of West Virginia:

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

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

§22A-1-22. Discrimination.

(a) No person shall discharge or in any other way discriminate against, or cause to be discharged or discriminated against or otherwise interfere with the exercise of the statutory rights of any miner, or any authorized representative of miners, or applicant for employment in any coal or other mine because by reason of the fact that the person believes or knows that such miner, or representative or applicant for employment: (1) Has notified the director, his or her authorized representative, representative of

1 miners or an operator, directly or indirectly, of any alleged
2 violation or danger; (2) has filed, instituted or caused to be
3 filed or instituted any proceeding under or related to this law;
4 (3) has testified or is about to testify in any proceeding
5 resulting from the administration or enforcement of the provisions
6 of this law or any related law; or (4) has refused to work in an
7 area or under conditions which he or she believes to be unsafe; or
8 (5) has exercised on behalf of himself or herself or others any
9 right afforded under or related to this law. ~~No miner or~~
10 ~~representative shall be discharged or in any other way~~
11 ~~discriminated against or caused to be discriminated against because~~
12 ~~a miner or representative has done (1), (2), or (3) above.~~

13 (b) Any miner, ~~or~~ a representative of miners, or applicant for
14 employment who believes that he or she has been discharged,
15 interfered with or otherwise discriminated against, or any miner
16 who has not been compensated by an operator for lost time due to
17 the posting of a withdrawal order, may, within ~~thirty~~ sixty days
18 after such violation occurs, ~~apply to~~ file a complaint with the
19 appeals board for a review of such alleged discharge,
20 discrimination or failure to compensate. ~~A~~ The appeals board shall
21 forward a copy of the application ~~shall be sent to such person who~~
22 ~~shall be~~ to the respondent. Upon receipt of such application, the
23 appeals board shall cause such investigation to be made as it deems
24 appropriate. The investigation will commence within fifteen days
25 of the appeals board's receipt of the complaint, and if those

1 conducting the investigation find that such complaint was not
2 frivolously brought, the appeals board, on an expedited bases shall
3 order immediate reinstatement of the miner pending final order on
4 the complaint. ~~Such~~ The investigation shall provide an opportunity
5 for a public hearing at the request of any party to enable the
6 parties to present information relating to such violation. The
7 parties shall be given written notice of the time and place of the
8 hearing at least five days prior to the hearing. Mailing of the
9 notice of hearing to the charged party at the party's last address
10 of record as reflected in the records of the office is adequate
11 notice to the charged party. Such notice shall be by certified
12 mail, return receipt requested. Any such hearing shall be of
13 record. Upon receiving the report of such investigation, the
14 board shall make findings of fact. If it finds that such violation
15 did occur, it shall issue a decision within forty-five days,
16 incorporating an order therein, requiring the person committing
17 such violation to take such affirmative action to abate the
18 violation as the board deems appropriate, including, but not
19 limited to, the rehiring or reinstatement of the miner or
20 representative of miners to his or her former position with back
21 pay with interest, and also pay compensation for the idle time as
22 a result of a withdrawal order. If it finds that there was no such
23 violation, it shall issue an order denying the application. Such
24 order shall incorporate the board's finding therein. ~~If the~~
25 ~~proceedings under this section relative to discharge are not~~

~~1 completed within forty-five days of the date of discharge due to
2 delay caused by the operator, the miner shall be automatically
3 reinstated until the final determination. If such proceedings are
4 not completed within forty-five days of the date of discharge due
5 to delay caused by the board, then the board may, at its option,
6 reinstate the miner until the final determination. If such
7 proceedings are not completed within forty-five days of the date of
8 discharge due to delay caused by the miner the board shall not
9 reinstate the miner until the final determination.~~

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

NOTE: The purpose of this bill is to further protect whistleblowers for reporting the unsafe working conditions in mines.

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