

**Senate Bill No. 534**

(By Senators Hall and Wells)

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[Introduced February 17, 2011; referred to the Committee on  
Labor; and then to the Judiciary.]  
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**FISCAL  
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §22A-8-10, relating  
12 to mandatory drug testing of coal miners; establishing the  
13 date when the required testing programs must be in place;  
14 setting forth the consequences if a miner has had his or her  
15 mining certificate revoked by another state; identifying the  
16 minimum drugs to be tested for; testing to be done at the  
17 state's expense; requirements for recordkeeping; and authority  
18 for rulemaking.

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

20 That the Code of West Virginia, 1931, as amended, be amended  
21 by adding thereto a new section, designated §22A-8-10, to read as  
22 follows:

23 **ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.**

24 **§22A-8-10. Mandatory drug testing program for miners; situations**  
25 **resulting in testing; record keeping; promulgation**  
26 **of rules.**

1 (a) As part of the state regulatory program for mine safety,  
2 the director shall establish a mandatory drug testing program for  
3 miners, apprenticeship miners and applicants for a position as a  
4 miner. Coal miners are considered to be in the performance of  
5 safety-sensitive work in which impairment from drugs would threaten  
6 the health or safety of the impaired miner, other miners or other  
7 employees at the mine, and further finding that the Legislature  
8 considers drug testing of miners not an invasion of privacy.

9 (b) The mandatory drug program shall, at a minimum, screen for  
10 concentrations of the following controlled substances:

- 11 (1) Marijuana metabolites;
- 12 (2) Cocaine metabolites;
- 13 (3) Phencyclidine;
- 14 (4) Amphetamines; and
- 15 (5) Opiate metabolites.

16 (c) The mandatory drug testing program shall require all  
17 miners and applicants for a position as a miner to submit to split  
18 sampled drug testing under the following situations:

- 19 (1) Preemployment testing as a condition of employment;
- 20 (2) Post-accident testing of miners in the immediate vicinity  
21 of an accident at a coal mine;
- 22 (3) Return-to-work from an extended absence;
- 23 (4) If a reasonable suspicion exists that the miner is  
24 impaired from drugs; and
- 25 (5) During random testing done pursuant to the rules  
26 promulgated according to this section.

1 (d) The director may not issue a certificate of competency and  
2 qualification to any miner or a permit of apprenticeship to any  
3 person who does not participate in the mandatory drug testing  
4 program or who tests positive in any drug test.

5 (e) All drug testing shall be at the expense of the state. An  
6 operator shall notify the director of the results of all positive  
7 drug tests within five working days. The operator shall also notify  
8 the director of the reason for the drug test and the resulting  
9 employment action taken.

10 (f) An operator shall provide new and current miners with  
11 information and training about the mandatory drug split sample  
12 testing program before the implementation of the program. Each  
13 operator shall inform miners of their rights and responsibilities  
14 under the program and that refusal to comply with testing shall  
15 result in immediate termination of employment.

16 (g) An operator shall immediately remove and may terminate a  
17 miner or apprenticeship miner who tests positive for any of the  
18 controlled substances listed in subsection (b) of this section. An  
19 operator may not hire any applicant to be a miner who tests  
20 positive for any of the controlled substances listed in subsection  
21 (b) of this section.

22 (h) An operator shall not allow an employee who tests positive  
23 for drugs to resume responsibilities as a miner or apprenticeship  
24 miner.

25 (i) The operator shall maintain records of drug tests for  
26 individual miners which shall be kept confidential, except that the

1 records shall be open to inspection by the director or his or her  
2 representative or when compelled by a court of competent  
3 jurisdiction.

4 (j) Drug test records are not subject to inspection by the  
5 public pursuant to the West Virginia Freedom of Information Act.  
6 Operators shall maintain records for a minimum of five years of  
7 verified positive drug tests, miner refusals to take mandatory  
8 tests, and fitness for duty evaluations.

9 (k) No operator or miner shall alter or disregard the results  
10 of a drug test or alter a specimen obtained for the purposes of  
11 drug and testing.

12 (l) An operator shall require miners to sign forms consenting  
13 to the mandatory drug testing requirements as a condition of  
14 employment and shall terminate any miner or apprenticeship miner  
15 who refuses to take a mandated drug test.

16 (m) Any miner that is aggrieved by an action of the operator  
17 or the director as a result of testing positive for drugs under the  
18 mandatory drug testing program may:

19 (1) Have the split sample retested of the test that revealed  
20 the positive result; and

21 (2) Should the second test on the split sample reveal that the  
22 first test was a false positive, the miner shall be put in the  
23 position he or she was in before the false positive test. Should  
24 the second test on the split sample reveal that the first test was  
25 accurate, the operator shall terminate his or her employment as a  
26 miner or apprenticeship miner.

1           (n) The Board of Coal Mine Health and Safety shall promulgate  
2 rules to establish impermissible concentrations for drugs and shall  
3 compile a list of laboratories certified by the National Laboratory  
4 Certification Program of the United States Department of Health and  
5 Human Services that perform drug testing services that shall be  
6 available to operators. Operators may contract with these  
7 certified laboratories to collect samples, perform analysis and  
8 medical reviews of the laboratory results in conformance with this  
9 section and any rules promulgated pursuant to this section.

10           (o) Within one hundred twenty days following the effective  
11 date of this section, all surface and underground mines shall have  
12 a mandatory drug testing program that is administered in a  
13 nondiscriminating manner to all employees who work in safety  
14 sensitive areas.

15           (p) Any miner who tests positive for personal drug use that  
16 results in a revocation of his or her mining certificate from  
17 another mining state, upon the date of having his or her mining  
18 certificate revoked, forfeits all applicable mining certificates  
19 issued by the State of West Virginia and is not eligible for  
20 reinstatement until such time the certificate revoked from the  
21 other state has been reissued.

NOTE: The purpose of this bill is to require mandatory drug testing of coal miners. The bill identifies the minimum drugs to be tested for. The bill requires testing to be done at the state's expense. The bill establishes the date when the required testing programs must be in place. The bill sets forth the consequences if a miner has had his or her mining certificate revoked by another state. The bill provides that no person who tests positive may be

employed as a coal miner. The bill also establishes requirements for record keeping. The bill further provides authority for rulemaking.

This section is new; therefore, strike-throughs and underscoring have been omitted.