

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4351**

4
5 (By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

6 [By Request of the Executive]

7 (Originating in the Committee on the Judiciary)

8 [February 16, 2012]

9
10 A BILL to amend and reenact §15-5B-3 of the Code of West Virginia,
11 1931, as amended; to amend said code by adding thereto a new
12 section, designated §15-5B-6; to amend said code by adding
13 thereto two new sections, designated §22A-1-13a and 22A-1-40;
14 to amend and reenact §22A-1-4, §22A-1-14, §22A-1-15 and
15 §22A-1-21 of said code; to amend said code by adding thereto
16 a new article, designated §22A-1A-1, §22A-1A-2 and §22A-1A-3;
17 to amend said code by adding thereto a new section, designated
18 §22A-2-43a; to amend and reenact §22A-2-2, §22A-2-12,
19 §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and
20 §22A-2-66 of said code; to amend said code by adding thereto
21 two new sections, designated §22A-6-13 and §22A-6-14; to
22 amend and reenact §22A-6-4 of said code; to amend said code by
23 adding thereto a new section, designated §22A-7-5a; to amend
24 and reenact §22A-7-5 of said code; and to amend said code by
25 adding thereto a new section, designated §22A-12-1, all

1 relating to mine safety, generally; requiring coal mine
2 operators to provide reports to and notify certain entities in
3 the event of an emergency; establishing a mine safety
4 anonymous tip hotline; exempting information provided to the
5 hotline from the Freedom of Information Act; permitting the
6 Director of the Office of Miners' Health, Safety and Training
7 to share information regarding certification suspensions or
8 revocations with other states and to promulgate certain
9 legislative rules; requiring a study be conducted regarding
10 mine inspector qualifications, compensation, training and
11 inspections; creating a criminal offense and establishing
12 criminal penalties for providing advance notice of an
13 inspection or an inspector's presence at a mine; increasing
14 civil penalty; requiring operators to conduct substance abuse
15 testing during inspections or investigations upon reasonable
16 suspicion; providing for suspension of mining certificates if
17 substance abuse testing refused; providing for rule-making
18 prior to suspension of mining certificates is authorized;
19 requiring coal mining operators to implement substance abuse
20 screening policy and program for certain persons; providing
21 procedures and minimum requirements of substance abuse
22 screening policy and program; requiring substance abuse
23 screening upon preemployment, rehiring or transfer of miner;
24 requiring coal mine operators to notify the Director of the
25 Office of Miners' Health, Safety and Training of failed

1 screening tests and certain screening policy violations;
2 requiring immediate suspension of miner certificates as a
3 result of suspensions or revocations for substance abuse in
4 other jurisdictions and reciprocity; providing procedure for
5 board of appeals hearings on certification suspensions and
6 judicial review of board decisions; providing exemptions from
7 and exceptions to the disclosure of substance abuse screening
8 results; providing procedure for approval, review, comment and
9 enforcement of mine ventilation plans; expanding payments to
10 idled miners in certain circumstances; increasing the number
11 of days an apprentice must work within sight and sound of mine
12 foreman or experienced miner; requiring methane detectors be
13 maintained in accordance with manufacture specifications and
14 establishing other requirements; expanding scope of preshift
15 examinations and requiring supplemental examinations in
16 certain instances; revising mine ventilation requirements;
17 requiring mine supervisor to verify certain documents;
18 increasing the percentage of rock dust to be maintained in
19 coal mines and providing certain information upon request;
20 prescribing actions required to detect and respond to excess
21 methane gas levels in coal mines; prescribing requirements for
22 persons to operate or repair mining machinery; providing for
23 increased training regarding the use of self-contained
24 self-rescue devices; providing for family of miner
25 participation in investigations in certain circumstances, and

1 limitations thereto; providing additional notification by coal
2 mine operators in the event of an accident; requiring study of
3 and report on the safety of working or traveling in bleeder or
4 gob areas of certain coal mines; requiring study of mandatory
5 substance abuse program; requiring study of and report on
6 education, training and examination associated with certifying
7 miners; updating terms; and requiring a study on enforcement
8 procedures.

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

10 That §15-5B-3 of the Code of West Virginia, 1931, as amended,
11 be amended and reenacted; that said code be amended by adding
12 thereto a new section, designated §15-5B-6; that said code be
13 amended by adding thereto two new sections, designated §22A-1-13a
14 and §22A-1-40; that §22A-1-4, §22A-1-14, and §22A-1-21 of said code
15 be amended and reenacted; that said code be amended by adding
16 thereto a new article, designated §22A-1A-1, §22A-1A-2, §22A-1A-3
17 and §22A-1A-4; that said code be amended by adding thereto a new
18 section, designated §22A-2-43a; that §22A-2-2, §22A-2-12,
19 §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66
20 of said code be amended and reenacted; that said code be amended by
21 adding thereto two new sections, designated §22A-6-13 and
22 §22A-6-14; that §22A-6-4 of said code be amended and reenacted;
23 that said code be amended by adding thereto a new section,
24 designated §22A-7-5a; that §22A-7-5 of said code be amended and
25 reenacted; and that said code be amended by adding thereto a new

1 section, designated §22A-12-1, all to read as follows:

2 **CHAPTER 15. PUBLIC SAFETY.**

3 **ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.**

4 **§15-5B-3. Emergency mine response.**

5 (a) To assist the Division of Homeland Security and Emergency
6 Management in implementing and operating the Mine and Industrial
7 Accident Rapid Response System, the Office of Miners' Health,
8 Safety and Training shall, on a quarterly basis, provide the
9 emergency operations center with a mine emergency contact list. In
10 the event of any change in the information contained in the mine
11 emergency contact list, ~~such~~ the changes shall be provided
12 immediately to the emergency operations center. The mine emergency
13 contact list shall include the following information:

14 (1) The names and telephone numbers of the Director of the
15 Office of Miners' Health, Safety and Training, or his or her
16 designee, including at least one telephone number at which the
17 director or designee may be reached at any time;

18 (2) The names and telephone numbers of all district mine
19 inspectors, including at least one telephone number for each
20 inspector at which each inspector may be reached at any time;

21 (3) A current listing of all regional offices or districts of
22 the Office of Miners' Health, Safety and Training, including a
23 detailed description of the geographical areas served by each
24 regional office or district; and

1 (4) The names, locations and telephone numbers of all mine
2 rescue stations, including at least one telephone number for each
3 station that may be called twenty-four hours a day and a listing of
4 all mines that each mine rescue station serves in accordance with
5 the provisions of section thirty-five, article one, chapter
6 twenty-two-a of this code.

7 (b) Upon the receipt of an emergency call regarding any
8 accident, as defined in section sixty-six, article two, chapter
9 twenty-two-a of this code, in or about any mine, the emergency
10 operations center shall immediately notify:

11 (1) The Director of the Office of Miners' Health, Safety and
12 Training or his or her designee;

13 (2) The district mine inspector assigned to the district or
14 region in which the accident occurred; and

15 (3) Local emergency service personnel in the area in which the
16 accident occurred.

17 (c) The director or his or her designee shall determine the
18 necessity for and contact all mine rescue stations that provide
19 rescue coverage to the mine in question.

20 (d) In the event that an emergency call regarding any
21 accident, as defined in section sixty-six, article two, chapter
22 twenty-two-a of this code, in or about any mine, is initially
23 received by a county answering point, as defined in article six,
24 chapter twenty-four of this code, the call shall be immediately
25 forwarded to the Mine and Industrial Accident Emergency Operations

1 Center.

2 (e) Nothing in this section shall be construed to relieve an
3 operator, as defined in section two, article one, chapter
4 twenty-two-a of this code, from any reporting or notification
5 obligation under section sixty-six, article two, chapter
6 twenty-two-a of this code and under federal law.

7 (f) The Mine and Industrial Accident Rapid Response System and
8 the emergency operations center are designed and intended to
9 provide communications assistance to emergency responders and other
10 responsible persons. Nothing in this section shall be construed to
11 conflict with the responsibility and authority of an operator to
12 provide mine rescue coverage in accordance with the provisions of
13 section thirty-five, article one, chapter twenty-two-a of this code
14 or the authority of the Director of the Office of Miners' Health,
15 Safety and Training to assign mine rescue teams under the
16 provisions of subsection (d) of said section or to exercise any
17 other authority provided in chapter twenty-two-a of this code.

18 **§15-5B-6. Mine Safety Anonymous Tip Hotline.**

19 The Director of the Division of Homeland Security and
20 Emergency Management shall maintain a toll free number that allows
21 callers to report mine safety violations and hazardous coal mining
22 conditions and practices. The information collected shall be
23 provided to the Office of Miners' Health, Safety and Training. No
24 information may be submitted to the Office of Miners' Health,
25 Safety and Training that would allow identification of the person

1 placing the call. The calls are confidential and any documentation
2 thereof or related thereto is not subject to release and is exempt
3 from the provisions of article one, chapter twenty-nine-b of this
4 code. The director shall distribute printed information to all
5 state mining operations alerting miners to the existence of the
6 toll free line. Each mining operation shall post this notice at
7 the location used to post notices pursuant to section eighteen,
8 article one, chapter twenty-two-a of this code.

9 **CHAPTER 22A. MINER HEALTH, SAFETY AND TRAINING.**

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

12 **§22A-1-4. Powers and duties of the Director of the Office of**
13 **Miners' Health, Safety and Training**

14 (a) The Director of the Office of Miners' Health, Safety and
15 Training is hereby empowered and it is his or her duty to
16 administer and enforce ~~such~~ the provisions of this chapter relating
17 to health and safety inspections and enforcement and training in
18 ~~surface and underground~~ coal mines, underground clay mines, open
19 pit mines, cement manufacturing plants and underground limestone
20 and sandstone mines.

21 (b) The Director of the Office of Miners' Health, Safety and
22 Training has full charge of the division. The director has the
23 power and duty to:

24 (1) Supervise and direct the execution and enforcement of the

1 provisions of this article.

2 (2) Employ such assistants, clerks, stenographers and other
3 employees as may be necessary to fully and effectively carry out
4 his or her responsibilities and fix their compensation, except as
5 otherwise provided in this article.

6 (3) Assign mine inspectors to divisions or districts in
7 accordance with the provisions of section eight of this article as
8 may be necessary to fully and effectively carry out the provisions
9 of this law, including the training of inspectors for the
10 specialized requirements of surface mining, shaft and slope sinking
11 and surface installations and to supervise and direct ~~such~~ the mine
12 inspectors in the performance of their duties.

13 (4) Suspend, for good cause, any ~~such~~ mine inspector without
14 compensation for a period not exceeding thirty days in any calendar
15 year.

16 (5) Prepare report forms to be used by mine inspectors in
17 making their findings, orders and notices, upon inspections made in
18 accordance with this article.

19 (6) Hear and determine applications made by mine operators for
20 the annulment or revision of orders made by mine inspectors, and to
21 make inspections of mines, in accordance with the provisions of
22 this article.

23 (7) Cause a properly indexed permanent and public record to be
24 kept of all inspections made by himself or by mine inspectors.

25 (8) Make annually a full and complete written report of the

1 administration of the office to the Governor and the Legislature of
2 the state for the year ending June 30. The report shall include
3 the number of visits and inspections of mines in the state by mine
4 inspectors, the quantity of coal, coke and other minerals
5 (excluding oil and gas) produced in the state, the number of
6 individuals employed, number of mines in operation, statistics with
7 regard to health and safety of persons working in the mines
8 including the causes of injuries and deaths, improvements made,
9 prosecutions, the total funds of the office from all sources
10 identifying each source of ~~such~~ the funds, the expenditures of the
11 office, the surplus or deficit of the office at the beginning and
12 end of the year, the amount of fines collected, the amount of fines
13 imposed, the value of fines pending, the number and type of
14 violations found, the amount of fines imposed, levied and turned
15 over for collection, the total amount of fines levied but not paid
16 during the prior year, the titles and salaries of all inspectors
17 and other officials of the office, the number of inspections made
18 by each inspector, the number and type of violations found by each
19 inspector. However, no inspector may be identified by name in this
20 report. Such reports shall be filed with the Governor and the
21 Legislature on or before December 31 of the same year for which it
22 was made, and shall upon proper authority be printed and
23 distributed to interested persons.

24 (9) Call or subpoena witnesses, for the purpose of conducting
25 hearings into mine fires, mine explosions or any mine accident; to

1 administer oaths and to require production of any books, papers,
2 records or other documents relevant or material to any hearing,
3 investigation or examination of any mine permitted by this chapter.
4 Any witness so called or subpoenaed shall receive \$40 per diem and
5 shall receive mileage at the rate of \$.15 for each mile actually
6 traveled, which shall be paid out of the State Treasury upon a
7 requisition upon the State Auditor, properly certified by ~~such~~ the
8 witness.

9 (10) Institute civil actions for relief, including permanent
10 or temporary injunctions, restraining orders, or any other
11 appropriate action in the appropriate federal or state court
12 whenever any operator or the operator's agent violates or fails or
13 refuses to comply with any lawful order, notice or decision issued
14 by the director or his or her representative.

15 (11) Beginning the first day of January, two thousand
16 thirteen, the director shall share information regarding suspension
17 or revocation of a certificate of a certified person, as defined in
18 article one of this chapter, for violation of the substance abuse
19 provisions of article one-a of this chapter with other states that
20 subject similar persons to disciplinary action for violation of a
21 substance abuse policy.

22 (12) The director shall propose for legislative promulgation
23 pursuant to article three, chapter twenty-nine-a of this code, a
24 rule establishing a program for the sharing of information between
25 employers who employ certified persons regarding the discharge of

1 persons in safety sensitive positions as defined in section one,
2 article one-a of this chapter for violation of an employers'
3 substance abuse policy.

4 ~~(11)~~ (13) Perform all other duties which are expressly imposed
5 upon him or her by the provisions of this chapter.

6 ~~(12)~~ (14) Impose reasonable fees upon applicants taking tests
7 administered pursuant to the requirements of this chapter.

8 ~~(13)~~ (15) Impose reasonable fees for the issuance of
9 certifications required under this chapter.

10 ~~(14)~~ (16) Prepare study guides and other forms of publications
11 relating to mine safety and charge a reasonable fee for the sale of
12 the publications.

13 ~~(15)~~ (17) Make all records of the office open for inspection
14 of interested persons and the public.

15 (c) The Director of the Office of Miners' Health, Safety and
16 Training, or his or her designee, upon receipt of the list of
17 approved innovative mine safety technologies from the Mine Safety
18 Technology Task Force, has thirty days to approve or amend the list
19 as provided in section four, article thirteen-bb, chapter eleven of
20 this code. At the expiration of the time period, the director
21 shall publish the list of approved innovative mine safety
22 technologies as provided in section four, article thirteen-bb,
23 chapter eleven of this code.

24 **§22A-1-13a. Study of mine inspector qualification, compensation,**
25 **training and inspection programs.**

1 The director is directed to conduct a study of the minimum
2 qualifications for mine inspectors, the minimum compensation paid
3 to mine inspectors and the overall training program established for
4 mine inspectors. The study shall identify ways to attract and
5 retain new, qualified mine inspectors to minimize the effect of the
6 anticipated retirement of a significant number of current
7 inspectors. Additionally, the study shall examine ways to improve
8 the training programs for mine inspectors by focusing on
9 technological advances in coal mining techniques, best practices
10 used in modern coal mines and proper mine ventilation. Further,
11 the office shall perform an assessment of the resources and
12 qualification of inspectors necessary to approve mine ventilation
13 plans. Finally, the study shall make recommendations on how to
14 reassess mine inspection priorities to ensure that mines having a
15 history of numerous safety violations are inspected more frequently
16 than mines having a history of comparatively few safety violations
17 while preserving the minimum number of inspections required by the
18 code. By December 31, 2012, the Office of Miners' Health, Safety
19 and Training shall report to the Legislature's Joint Committee on
20 Government and Finance with recommendations regarding the
21 implementation of its findings.

22 **§22A-1-14. Director and inspectors authorized to enter mines;**
23 **duties of inspectors to examine mines; no advance**
24 **notice of an inspection; reports after fatal**

1 **accidents.**

2 (a) The director, or his or her authorized representative, has
3 authority to visit, enter, and examine any mine, whether
4 underground or on the surface, and may call for the assistance of
5 any district mine inspector or inspectors whenever ~~such~~ assistance
6 is necessary in the examination of any mine. The operator of every
7 coal mine shall furnish the director or his or her authorized
8 representative proper facilities for entering ~~such~~ the mine and
9 making examination or obtaining information.

10 (b) If miners or one of their authorized representatives, have
11 reason to believe, at any time, that dangerous conditions are
12 existing or that the law is not being complied with, they may
13 request the director to have an immediate investigation made.

14 (c) Mine inspectors shall devote their full-time and undivided
15 attention to the performance of their duties, and they shall
16 examine all of the mines in their respective districts at least
17 four times annually, and as often, in addition thereto, as the
18 director may direct, or the necessities of the case or the
19 condition of the mine or mines may require, with no advance notice
20 of inspection provided to any person, and they shall make a
21 personal examination of each working face and all entrances to
22 abandoned parts of the mine where gas is known to liberate, for the
23 purpose of determining whether an imminent danger, referred to in
24 section fifteen of this article, exists in ~~any such~~ the mine, or
25 whether any provision of article two of this chapter is being

1 violated or has been violated within the past forty-eight hours in
2 ~~any such~~ the mine. No other person shall, with the intent of
3 undermining the integrity of an unannounced mine inspection,
4 provide advance notice of any inspection or of an inspector's
5 presence at a mine to any person at that mine. Any person who, with
6 the requisite intent, knowingly causes or conspires to provide
7 advance notice of any inspection or of an inspector's presence at
8 a mine is guilty of a felony and, upon conviction thereof, shall be
9 fined not more than \$15,000 or imprisoned in a state correctional
10 facility not less than one year and not more than five years, or
11 both fined and imprisoned.

12 (d) In addition to the other duties imposed by this article
13 and article two of this chapter, it is the duty of each inspector
14 to note each violation he or she finds and issue a finding, order,
15 or notice, as appropriate for each violation so noted. During the
16 investigation of any accident, any violation may be noted whether
17 or not the inspector actually observes the violation and whether or
18 not the violation exists at the time the inspector notes the
19 violation, so long as the inspector has clear and convincing
20 evidence the violation has occurred or is occurring.

21 (e) On or after July 1, 2012, an inspector shall require the
22 operator or other employer to investigate all complaints received
23 by the Office of Miners' Health, Safety and Training involving a
24 certified person's substance abuse or alcohol related impairment at
25 a mine. Within thirty days following notification by the Office of

1 Miners' Health, Safety and Training to the operator or other
2 employer of the complaint, the operator or other employer shall
3 file with the Director a summary of its investigation into the
4 alleged substance abuse or alcohol related impairment of a
5 certified person.

6 (f) The mine inspector shall visit the scene of each fatal
7 accident occurring in any mine within his or her district and shall
8 make an examination into the particular facts of ~~such~~ the accident;
9 make a report to the director, setting forth the results of ~~such~~
10 the examination, including the condition of the mine and the cause
11 or causes of ~~such~~ the fatal accident, if known, and all ~~such~~ the
12 reports shall be made available to the interested parties, upon
13 written requests.

14 (g) At the commencement of any inspection of a coal mine by an
15 authorized representative of the director, the authorized
16 representative of the miners at the mine at the time of ~~such~~ the
17 inspection shall be given an opportunity to accompany the
18 authorized representative of the director on ~~such~~ the inspection.

19 **§22A-1-21. Penalties.**

20 (a) (1) Any operator of a coal mine in which a violation
21 ~~occurs~~ of any health or safety rule occurs or who violates any
22 other provisions of this chapter shall be assessed a civil penalty
23 by the director under subdivision (3) of this subsection, which
24 shall be not more than ~~\$3,000~~ \$5,000, for each violation, unless
25 the director determines that it is appropriate to impose a special

1 assessment for ~~said~~ the violation, pursuant to the provisions of
2 subdivision (2), subsection (b) of this section. Each violation
3 constitutes a separate offense. In determining the amount of the
4 penalty, the director shall consider the operator's history of
5 previous violations, whether the operator was negligent, the
6 appropriateness of the penalty to the size of the business of the
7 operator charged, the gravity of the violation and the demonstrated
8 good faith of the operator charged in attempting to achieve rapid
9 compliance after notification of a violation.

10 (2) Revisions to the assessment of civil penalties shall be
11 proposed as legislative rules in accordance with the provisions of
12 article three, chapter twenty-nine-a of this code.

13 (3) Any miner who knowingly violates any health or safety
14 provision of this chapter or health or safety rule promulgated
15 pursuant to this chapter is subject to a civil penalty assessed by
16 the director under subdivision (4) of this subsection which shall
17 not be more than \$250 for each occurrence of the violation.

18 (4) A civil penalty under subdivision (1) or (2) of subsection
19 (a) of this section or subdivision (1) or (2) of subsection (b) of
20 this section shall be assessed by the director only after the
21 person charged with a violation under this chapter or rule
22 promulgated pursuant to this chapter has been given an opportunity
23 for a public hearing and the director has determined, by a decision
24 incorporating the director's findings of fact in the decision, that
25 a violation did occur and the amount of the penalty which is

1 warranted and incorporating, when appropriate, an order in the
2 decision requiring that the penalty be paid. Any hearing under this
3 section shall be of record.

4 (5) If the person against whom a civil penalty is assessed
5 fails to pay the penalty within the time prescribed in the order,
6 the director may file a petition for enforcement of the order in
7 any appropriate circuit court. The petition shall designate the
8 person against whom the order is sought to be enforced as the
9 respondent. A copy of the petition shall immediately be sent by
10 certified mail, return receipt requested, to the respondent and to
11 the representative of the miners at the affected mine or the
12 operator, as the case may be. The director shall certify and file
13 in the court the record upon which the order sought to be enforced
14 was issued. The court has jurisdiction to enter a judgment
15 enforcing, modifying and enforcing as modified, or setting aside,
16 in whole or in part, the order and decision of the director or it
17 may remand the proceedings to the director for any further action
18 it may direct. The court shall consider and determine de novo all
19 relevant issues, except issues of fact which were or could have
20 been litigated in review proceedings before a circuit court under
21 section twenty of this article and, upon the request of the
22 respondent, those issues of fact which are in dispute shall be
23 submitted to a jury. On the basis of the jury's findings the court
24 shall determine the amount of the penalty to be imposed. Subject to
25 the direction and control of the Attorney General, attorneys

1 appointed for the director may appear for and represent the
2 director in any action to enforce an order assessing civil
3 penalties under this subdivision.

4 (b) (1) Any operator who knowingly violates a health or safety
5 provision of this chapter or health or safety rule promulgated
6 pursuant to this chapter, or knowingly violates or fails or refuses
7 to comply with any order issued under section fifteen of this
8 article, or any order incorporated in a final decision issued under
9 this article, except an order incorporated in a decision under
10 subsection (a) of this section or subsection (b), section
11 twenty-two of this article, shall be assessed a civil penalty by
12 the director under subdivision (5), subsection (a) of this section
13 of not more than \$5,000 and for a second or subsequent violation
14 assessed a civil penalty of not more than \$10,000, unless the
15 director determines that it is appropriate to impose a special
16 assessment for ~~said~~ the violation, pursuant to the provisions of
17 subdivision (2) of this subsection.

18 (2) In lieu of imposing a civil penalty pursuant to the
19 provisions of subsection (a) of this section or subdivision (1) of
20 this subsection, the director may impose a special assessment if an
21 operator violates a health or safety provision of this chapter or
22 health or safety rule promulgated pursuant to this chapter and the
23 violation is of serious nature and involves one or more of the
24 following by the operator:

25 (A) Violations involving fatalities and serious injuries;

1 (B) Failure or refusal to comply with any order issued under
2 section fifteen of this article;

3 (C) Operation of a mine in the face of a closure order;

4 (D) Violations involving an imminent danger;

5 (E) Violations involving an extraordinarily high degree of
6 negligence or gravity or other unique aggravating circumstances; or

7 (F) A discrimination violation under section twenty-two of
8 this article.

9 In situations in which the director determines that there are
10 factors present which would make it appropriate to impose a special
11 assessment, the director shall assess a civil penalty of at least
12 \$5,000 and not more than \$10,000.

13 (c) Whenever a corporate operator knowingly violates a health
14 or safety provision of this chapter or health or safety rules
15 promulgated pursuant to this chapter, or knowingly violates or
16 fails or refuses to comply with any order issued under this law or
17 any order incorporated in a final decision issued under this law,
18 except an order incorporated in a decision issued under subsection
19 (a) of this section or subsection (b), section twenty-two of this
20 article, any director, officer or agent of the corporation who
21 knowingly authorized, ordered or carried out the violation, failure
22 or refusal is subject to the same civil penalties that may be
23 imposed upon a person under subsections (a) and (b) of this
24 section.

25 (d) Whoever knowingly makes any false statement,

1 representation or certification in any application, record, report,
2 plan or other document filed or required to be maintained pursuant
3 to this law or any order or decision issued under this law is
4 guilty of a misdemeanor and, upon conviction thereof, shall be
5 fined not more than ~~\$5,000~~ \$10,000 or ~~imprisoned~~ confined in ~~the~~
6 jail not more than ~~six months~~ one year, or both fined and
7 ~~imprisoned~~ confined. The conviction of any person under this
8 subsection shall result in the revocation of any certifications
9 held by the person under this chapter which certified or authorized
10 the person to direct other persons in coal mining by operation of
11 law and bars that person from being issued any license under this
12 chapter, except a miner's certification, for a period of not less
13 than one year or for a longer period as may be determined by the
14 director.

15 (e) Whoever willfully distributes, sells, offers for sale,
16 introduces or delivers in commerce any equipment for use in a coal
17 mine, including, but not limited to, components and accessories of
18 the equipment, who willfully misrepresents the equipment as
19 complying with the provisions of this law, or with any
20 specification or rule of the director applicable to the equipment,
21 and which does not comply with the law, specification or rule, is
22 guilty of a misdemeanor and, upon conviction thereof, is subject to
23 the same fine and ~~imprisonment~~ confinement that may be imposed upon
24 a person under subsection (d) of this section.

25 (f) Any person who willfully violates any safety standard

1 pursuant to this chapter or a rule promulgated thereunder that
2 causes a fatality or who willfully orders or carries out such
3 violation that causes a fatality is guilty of a felony and, upon
4 conviction thereof, shall be fined not more than \$10,000 or
5 confined in a state correctional facility not less than one year
6 and not more than five years, or both fined and imprisoned.

7 ~~(f)~~ (g) There is continued in the Treasury of the State of
8 West Virginia a Special Health, Safety and Training Fund. All
9 civil penalty assessments collected under this section shall be
10 collected by the director and deposited with the Treasurer of the
11 State of West Virginia to the credit of the Special Health, Safety
12 and Training Fund. The fund shall be used by the director who is
13 authorized to expend the moneys in the fund for the administration
14 of this chapter.

15 **§22A-1-40. Reporting violations, accident investigations; witness**
16 **interviews.**

17 (a) To the extent permitted by law, any person meeting with,
18 or providing a statement to, the director may request to do so on
19 a confidential basis without the consent, presence, involvement or
20 knowledge of any third party. Upon such a request, the director
21 shall keep the identity of any individual providing such a
22 statement and the statement itself confidential, to the extent
23 permitted by law, and the statement shall be exempt from disclosure
24 under article one, chapter twenty-nine-b of this code. Nothing in
25 this section precludes a person from being represented when

1 speaking with the director. Further, nothing in this section
2 precludes a person under subpoena or who is voluntarily speaking
3 with the director from authorizing any other person from
4 participation in such meeting or statement.

5 (b) If any miner is entrapped, fatally injured or otherwise
6 unable, as the result of an accident, to designate a representative
7 to observe witness interviews and investigatory hearings conducted
8 in an accident investigation, the miner's closest relative may
9 designate one representative who may, subject to subsection (a) of
10 this section, attend witness interviews and investigatory hearings
11 regarding the accident for the sole purpose of observing such
12 interviews and hearings and conveying information to the accident
13 victim's families: *Provided*, That the right of a designated
14 representative to observe witness interviews and investigatory
15 hearings pursuant to this subsection shall be subject to subsection
16 (a) and shall not extend to interviews or investigatory hearings of
17 a criminal nature conducted by state or federal inspectors or other
18 state or federal law enforcement officers. No more than five
19 representatives designated pursuant to this section may attend
20 witness interviews and investigatory hearings for the purpose of
21 observing such interviews and hearings and conveying information to
22 accident victims' family.

23 (c) The Director shall, in consultation with the Board of Coal
24 Mine Health and Safety, develop a list of persons skilled in the
25 fields of grief and crisis management, communications and family

1 support. Following any mining accident involving entrapped miners
2 or fatal injuries, the Director shall promptly provide the list of
3 such individuals to the families of the accident victim or victims.
4 The individuals contained on the list developed by the Director
5 shall be available as a resource to families of accident victims
6 who seek their assistance. The list shall also contain a reference
7 to this code section and a statement that the family has the right
8 to designate a representative of their choosing regardless of
9 whether that person is named on the list.

10 **ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;**
11 **ADMINISTRATION; SUBSTANCE ABUSE.**

12 **§22A-1A-1. Substance abuse screening; minimum requirements;**
13 **standards and procedures for screening.**

14 (a) Every employer of certified persons, as defined in section
15 two, article one of this chapter, shall implement a substance abuse
16 screening policy and program that shall, at a minimum, include:

17 (1) A preemployment, ten-panel urine test for the following
18 and any other substances as set out in rules adopted by the Office
19 of Miners' Health, Safety and Training:

20 A. Amphetamines,

21 B. Cannabinoids/THC,

22 C. Cocaine,

23 D. Opiates,

24 E. Phencyclidine (PCP),

- 1 F. Benzodiazepines,
- 2 G. Propoxyphene,
- 3 H. Methadone,
- 4 I. Barbiturates, and
- 5 J. Synthetic narcotics.

6 Split samples shall be collected by providers who are
7 certified as complying with standards and procedures set out in the
8 United States Department of Transportation's rule, 49 CFR Part 40,
9 which may be amended from time to time by legislative rule of the
10 Office of Miners' Health, Safety and Training. Collected samples
11 shall be tested by laboratories certified by the United States
12 Department of Health and Human Services, Substance Abuse and Mental
13 Health Services Administration (SAMHSA) for collection and testing.
14 Notwithstanding the provisions of this subdivision, the mine
15 operator may implement a more stringent substance abuse screening
16 policy and program;

17 (2) A random substance abuse testing program covering the
18 substances referenced in subdivision (1) of this subsection.
19 "Random testing" means that each person subject to testing has a
20 statistically equal chance of being selected for testing at random
21 and at unscheduled times. The selection of persons for random
22 testing shall be made by a scientifically valid method, such as a
23 random number table or a computer-based random number generator
24 that is matched with the persons' social security numbers, payroll
25 identification numbers, or other comparable identifying numbers;

1 and

2 (3) Review of the substance abuse screening program with all
3 persons required to be tested at the time of employment, upon a
4 change in the program and annually thereafter.

5 (b) For purposes of this subsection, preemployment testing
6 shall be required upon hiring by a new employer, rehiring by a
7 former employer following a termination of the employer/employee
8 relationship, or transferring to a West Virginia mine from an
9 employer's out-of-state mine to the extent that any substance abuse
10 test required by the employer in the other jurisdiction does not
11 comply with the minimum standards for substance abuse testing
12 required by this article. Furthermore, the provisions of this
13 section apply to all employers that employ certified persons who
14 work in mines, regardless of whether that employer is an operator,
15 contractor, subcontractor or otherwise.

16 (c) The employer or his or her agent shall notify the director
17 at least quarterly, on a form prescribed by the director, of the
18 number of pre-employment substance abuse screening tests
19 administered during the prior calendar quarter and the number of
20 positive test results associated with the substance abuse screening
21 tests administered.

22 (d) The employer or his or her agent shall notify the
23 director, on a form prescribed by the director, within seven days
24 following completion of an arbitration conducted pursuant to a
25 collective bargaining agreement applicable to the certified person,

1 if any, of discharging a certified person for violation of the
2 employer's substance abuse screening policy and program. The
3 notification shall be accompanied by a record of the test showing
4 positive results or other violation. Notice shall result in the
5 immediate temporary suspension of all certificates held by the
6 certified person who failed the screening, pending a hearing before
7 the board of appeals pursuant to section two of this article.

8 (e) Suspension or revocation of a certified person's
9 certificate as a miner or other miner specialty in another
10 jurisdiction by the applicable regulatory or licensing authority
11 for substance abuse-related matters shall result in the director
12 immediately and temporarily suspending the certified person's West
13 Virginia certificate until such time as the certified person's
14 certification is reinstated in the other jurisdiction.

15 (f) The provisions of this article shall not be construed to
16 preclude an employer from developing or maintaining a drug and
17 alcohol abuse policy, testing program or substance abuse program
18 that exceeds the minimum requirements set forth in this section.
19 The provisions of this article shall also not be construed to
20 require an employer to alter, amend, revise or otherwise change, in
21 any respect, a previously established substance abuse screening
22 policy and program that meets or exceeds the minimum requirements
23 set forth in this section. The provisions of this article shall
24 require an employer to subject its employees who as part of their
25 employment are regularly present at a mine and who are employed in

1 a safety-sensitive position to preemployment and random substance
2 abuse tests: *Provided*, That each employer shall retain the
3 discretion to establish the parameters of its substance abuse
4 screening policy and program so long as it meets the minimum
5 requirements of this article. For purposes of this section, a
6 "safety-sensitive position" means an employment position where the
7 employee's job responsibilities include duties and activities that
8 involve the personal safety of the employee or others working at a
9 mine.

10 **§22A-1A-2. Board of Appeals hearing procedures.**

11 (a) Any hearing conducted after the temporary suspension of a
12 certified person's certificate pursuant to this article, shall be
13 conducted within sixty days of the temporary suspension. The Board
14 of Appeals shall make every effort to hold the hearing within forty
15 days of the temporary suspension.

16 (b) All hearings of the Board of Appeals pursuant to this
17 section shall be conducted in accordance with the provisions of
18 subsection (c), section thirty-one, article one of this chapter.
19 The Board of Appeals may suspend the certificate or certificates of
20 a certified person for violation of this article or for any other
21 violation of this chapter pertaining to substance abuse. The Board
22 of Appeals may impose further disciplinary actions for repeat
23 violations. The director shall have the authority to propose
24 legislative rules for promulgation in accordance with article
25 three, chapter twenty-nine-a of this code to establish the

1 disciplinary actions referenced in this section following the
2 receipt of recommendations from the Board of Coal Mine Health and
3 Safety following completion of the study required pursuant to
4 section fourteen, article six of this chapter. The legislative
5 rules authorized by this subsection shall not, however, include any
6 provisions requiring an employer to take or refrain from taking any
7 specific personnel action or mandating any employer to establish or
8 maintain an employer-funded substance abuse rehabilitation program.

9 (c) No person whose certification is suspended or revoked
10 under this section may perform any duties under any other
11 certification issued under this chapter, during the period of the
12 suspension imposed by the Board of Appeals.

13 (d) Any party adversely affected by a final order or decision
14 issued by the Board of Appeals hereunder is entitled to judicial
15 review thereof pursuant to section four, article five, chapter
16 twenty-nine-a of this code.

17 **§22A-1A-3. Disclosure of records exempt; exceptions.**

18 Records of substance abuse and alcohol screening tests,
19 written or otherwise, received by the Office of Miners' Health,
20 Safety and Training, its employees, agents and representatives are
21 confidential communications and are exempt from disclosure under
22 article one, chapter twenty-nine-b of the code, except as follows:

23 (a) Where release of the information is authorized solely
24 pursuant to a written consent form signed voluntarily by the person
25 tested. The consent form shall contain the following:

1 (1) The name of the person who is authorized to obtain the
2 information;

3 (2) The purpose of the disclosure;

4 (3) The precise information to be disclosed;

5 (4) The duration of the consent; and

6 (5) The signature of the person authorizing the release of the
7 information;

8 (b) Where the release of the information is compelled by the
9 Board of Appeals or a court of competent jurisdiction;

10 (c) Where the release of the information is relevant to a
11 legal claim asserted by the person tested;

12 (d) Where the information is used by the entity conducting the
13 substance abuse or alcohol screening test in defense of a civil or
14 administrative action related to the testing or results, or to
15 consult with its legal counsel; or

16 (e) Where release of the information is deemed appropriate by
17 the Board of Appeals or a court of competent jurisdiction in a
18 disciplinary proceeding.

19 **§22A-1A-4. Effective date.**

20 The provisions of this article are effective beginning the
21 first day of January, two thousand and thirteen.

22 **ARTICLE 2. UNDERGROUND MINES.**

23 **§22A-2-2. Submittal of detailed ventilation plan to director.**

24 (a) A mine operator shall submit a detailed ventilation plan

1 and any addendums to the director for review and comment. The mine
2 operator shall review the plan with the director and address
3 concerns to the extent practicable. The operator shall deliver to
4 the miners' representative employed by the operator at the mine, if
5 any, a copy of the operator's proposed annual ventilation plan at
6 least ten days prior to the date of submission. The miners'
7 representative, if any, shall be afforded the opportunity to submit
8 written comments to the operator prior to such submission; in
9 addition the miners' representative, if any, may submit written
10 comments to the director. The director shall submit any concern
11 that is not addressed to the United States Department of Labor -
12 Mine Safety and Health Administration [MSHA] through comments to
13 the plan. The mine operator shall provide a copy of the plan to
14 the director ten days prior to the submittal of the plan to MSHA.

15 (b) The operator shall give the director a copy of the
16 MSHA-approved plan and any addendums as soon as the operator
17 receives the approval.

18 (c) In the event of an unforeseen situation requiring
19 immediate action on a plan revision, the operator shall submit the
20 proposed revision to the director and the miners' representative,
21 if any, employed by the operator at the mine when the proposed
22 revision is submitted to MSHA. The director shall work with the
23 operator to review and comment on the proposed plan revision to
24 MSHA as quickly as possible.

25 (d) Upon approval by MSHA, the plan is enforceable by the

1 director. The approved plan and all revisions and addendums
2 thereto shall be posted on the mine bulletin board and made
3 available for inspection by the miners at that mine for the period
4 of time that they are in effect.

5 **§22A-2-12. Instruction of employees and supervision of**
6 **apprentices; annual examination of persons using**
7 **approved methane detecting devices; records of**
8 **examination; maintenance of methane detectors,**
9 **etc.**

10 (a) The Office of Miners' Health, Safety and Training shall
11 prescribe and establish a course of instruction in mine safety and
12 particularly in dangers incident to ~~such~~ employment in mines and in
13 mining laws and rules, which course of instruction shall be
14 successfully completed within twelve weeks after any person is
15 first employed as a miner. It is further the duty and
16 responsibility of the Office of Miners' Health, Safety and Training
17 to see that ~~such~~ the course is given to all persons as above
18 provided after their first being employed in any mine in this
19 state. In addition to other enforcement actions available to the
20 director, upon a finding by the director of the existence of a
21 pattern of conduct creating a hazardous condition at a mine, the
22 director shall notify the Board of Miners' Training, Education and
23 Certification, which shall cause additional training to occur at
24 the mine addressing such safety issue or issues identified by the

1 director, pursuant to article seven of this chapter.

2 **(b)** It is the duty of the mine foreman or the assistant mine
3 foreman of every coal mine in this state to see that every person
4 employed to work in ~~such~~ the mine is, before beginning work
5 therein, instructed in the particular danger incident to his or her
6 work in ~~such~~ the mine, and furnished a copy of the mining laws and
7 rules of ~~such~~ the mine. It is the duty of every mine operator who
8 employs apprentices, as that term is used in sections three and
9 four, article eight of this chapter to ensure that the apprentices
10 are effectively supervised with regard to safety practices and to
11 instruct apprentices in safe mining practices. Every apprentice
12 shall work under the direction of the mine foreman or his or her
13 assistant mine foreman and they are responsible for his or her
14 safety. The mine foreman or assistant mine foreman may delegate
15 the supervision of an apprentice to an experienced miner, but the
16 foreman and his or her assistant mine foreman remain responsible
17 for the apprentice. During the first ~~ninety~~ one hundred twenty
18 days of employment in a mine, the apprentice shall work within
19 sight and sound of the mine foreman, assistant mine foreman, or an
20 experienced miner, and in ~~such~~ a location that the mine foreman,
21 assistant mine foreman or experienced miner can effectively respond
22 to cries for help of the apprentice. ~~Such~~ The location shall be on
23 the same side of any belt, conveyor or mining equipment.

24 **(c)** Persons whose duties require them to use a ~~flame safety~~
25 ~~lamp~~ approved methane detecting device or other approved methane

1 detectors shall be examined at least annually as to their
2 competence by a qualified official from the Office of Miners'
3 Health, Safety and Training and a record of ~~such~~ the examination
4 shall be kept by the operator and the office. ~~Flame safety lamps~~
5 Approved methane detecting devices and other approved methane
6 detectors shall be given proper maintenance and shall be tested
7 before each working shift. Each operator shall provide for the
8 proper maintenance and care of the permissible ~~flame safety lamp~~
9 approved methane detecting device or any other approved device for
10 detecting methane and oxygen deficiency by a person trained in ~~such~~
11 the maintenance, and, before each shift, care shall be taken to
12 ensure that ~~such~~ the ~~lamp~~ approved methane detecting device or
13 other device is in a permissible condition and maintained according
14 to manufacturer's specifications.

15 **§22A-2-16. Examinations of reports of fire bosses.**

16 The mine foreman shall, ~~also~~ each day, read carefully and
17 countersign with ink or indelible pencil all reports entered in the
18 record book of the fire bosses. ~~and he~~ The mine foreman shall
19 supervise the fire boss or fire bosses, except as ~~hereinafter~~
20 provided in section twenty-one of this article. No less frequently
21 than bi-weekly, the superintendent or, if there is no
22 superintendent, the senior person at the mine shall obtain complete
23 copies of the books of the fire bosses, and acknowledge that he or
24 she has reviewed such copies and acted accordingly. This
25 acknowledgment shall be made by signing a book prescribed by the

1 director for that purpose.

2 **§22A-2-20. Preparation of danger signal by fire boss or certified**
3 **person acting as such prior to examination; report; records**
4 **open for inspection.**

5 (a) It ~~shall be~~ is the duty of the fire boss, or a certified
6 person acting as such, to prepare a danger signal (a separate
7 signal for each shift) with red color at the mine entrance at the
8 beginning of his or her shift or prior to his or her entering the
9 mine to make his or her examination and, except for those persons
10 already on assigned duty, no person except the mine owner, operator
11 or agent, and only then in the case of necessity, shall pass beyond
12 this danger signal until the mine has been examined by the fire
13 boss or other certified person and the mine or certain parts
14 thereof reported by him or her to be safe. When reported by him or
15 her to be safe, the danger sign or color thereof shall be changed
16 to indicate that the mine is safe in order that employees going on
17 shift may begin work. Each person designated to make ~~such~~ the fire
18 boss examinations shall be assigned a definite underground area of
19 ~~such~~ the mine, and, in making his or her examination shall examine
20 all active working places in the assigned area and make tests with
21 an approved device for accumulations of methane and oxygen
22 deficiency; examine seals and doors; examine and test the roof,
23 face and ribs in the working places and on active roadways and
24 travelways, approaches to abandoned workings, ~~and~~ accessible falls

1 in active sections and areas where any person is scheduled to work
2 or travel underground. He or she shall place his or her initials
3 and the date at or near the face of each place he or she examines.
4 Should he or she find a condition which he or she considers
5 dangerous to persons entering ~~such~~ the areas, he or she shall place
6 a conspicuous danger sign at all entrances to ~~such~~ the place or
7 places. Only persons authorized by the mine management may enter
8 ~~such~~ the places while the sign is posted and only for the purpose
9 of eliminating the dangerous condition. Upon completing his or her
10 examination he or she shall report by suitable communication system
11 or in person the results of this examination to a certified person
12 designated by mine management to receive and record ~~such~~ the
13 report, at a designated station on the surface of the premises of
14 the mine or underground, before other persons enter the mine to
15 work in ~~such~~ coal-producing shifts. He or she shall also record the
16 results of his or her examination with ink or indelible pencil in
17 a book prescribed by the director, kept for ~~such~~ the purpose at a
18 place on the surface of the mine designated by mine management. All
19 records of daily and weekly reports, as prescribed herein, shall be
20 open for inspection by interested persons.

21 (b) Supplemental examination. -- When it becomes necessary to
22 have workers enter areas of the mine not covered during the
23 preshift examination, a supplemental examination shall be performed
24 by a fire boss or certified person acting as such within three
25 hours before any person enters the area. The fire boss or

1 certified person acting as such shall examine the area for
2 hazardous conditions, determine if air is traveling in its proper
3 direction and test for oxygen deficiency and methane.

4 (c) Each examined area shall be certified by date, time and
5 the initials of the examiner.

6 (d) Upon completing his or her examination he or she shall
7 report by suitable communication system or in person the results of
8 this examination to a certified person designated by mine
9 management to receive and record the report, at a designated
10 station on the surface of the premises of the mine or underground,
11 before other persons enter the area of the mine subject to the
12 supplemental examination. The results of the examination shall be
13 recorded with ink or indelible pencil by the examiner in the book
14 referenced in subsection (a) of this section before he or she
15 leaves the mine on that shift.

16 **§22A-2-24. Control of coal dust; rock dusting.**

17 (a) In all mines, dangerous accumulations of fine, dry coal
18 and coal dust shall be removed from the mine, and all dry and dusty
19 operating sections and haulageways and conveyors and back entries
20 shall be rock dusted or dust allayed by ~~such~~ other methods as may
21 be approved by the director.

22 (b) All mines or locations in mines that are too wet or too
23 high in incombustible content for a coal dust explosion to initiate
24 or propagate are not required to be rock dusted during the time any
25 of these conditions prevail. Coal dust and other dust in

1 suspension in unusual quantities shall be allayed by sprinkling or
2 other dust allaying devices.

3 (c) In all dry and dusty mines or sections thereof, rock dust
4 shall be applied and maintained upon the roof, floor and sides of
5 all operating sections, haulageways and parallel entries connected
6 thereto by open crosscuts. Back entries shall be rock dusted.
7 Rock dust shall be so applied to include the last open crosscut of
8 rooms and entries, and to within forty feet of faces. Rock dust
9 shall be maintained in ~~such a~~ a quantity that the incombustible
10 content of the mine dust that could initiate or propagate an
11 explosion shall not be less than ~~sixty-five~~ eighty percent. ~~but the~~
12 ~~incombustible content in return entries shall not be less than~~
13 ~~eighty percent.~~ The incombustible content of mine dust in return
14 entries shall also be equal to or greater than eighty percent.

15 (d) Rock dust shall not contain more than five percent by
16 volume of quartz or free silica particles and shall be pulverized
17 so that one hundred percent will pass through a twenty mesh screen
18 and seventy percent or more will pass through a two hundred mesh
19 screen.

20 (e) If requested by the director, an operator shall provide
21 records establishing the quantity of bulk and bag rock dust
22 purchased for a period not to exceed the immediately preceding six
23 months.

24 **§22A-2-43. Actions to detect and respond to excess methane.**

25 The following actions are required to detect and respond to

1 excess methane:

2 (a) Hand Held Testing required. -- In any mine, no electrical
3 equipment or permissible diesel powered equipment may be brought
4 inby the last open crosscut until a qualified person tests for
5 methane. If one percent or more methane is present, the equipment
6 may not be taken into the area until the methane concentration is
7 reduced to less than one percent. Thereafter, subsequent methane
8 examinations shall be made at least every twenty minutes while any
9 electrical or diesel powered equipment is present and energized.

10 (b) Location of tests. -- Tests for methane concentrations
11 under this section shall be made at least twelve inches from the
12 roof, face, ribs and floor.

13 (c) Working places and intake air courses. --

14 (1) When one percent or more methane is present in a working
15 place or an intake air course, including an air course in which a
16 belt conveyor is located or in an area where mechanized mining
17 equipment is being installed or removed:

18 (A) Except intrinsically safe atmospheric monitoring systems
19 (AMS), electrically powered equipment in the affected area shall be
20 de-energized and other mechanized equipment shall be shut off.

21 (B) Changes or adjustments shall be made at once to the
22 ventilation system to reduce the concentration of methane to less
23 than one percent.

24 (C) No other work shall be permitted in the affected area
25 until the methane concentration is less than one percent.

1 (2) When one and five-tenths percent or more methane is
2 present in a working place or an intake air course, including an
3 air course in which a belt conveyor is located or in an area where
4 mechanized mining equipment is being installed or removed:

5 (A) Except for the mine foreman, assistant mine foreman, or
6 individuals authorized by the mine foreman or assistant mine
7 foreman, all individuals shall be withdrawn from the affected area.
8 If a federal or state mine inspector is present in the area of the
9 mine where one and five-tenths percent or more of methane is
10 detected, the federal or state mine inspector and the miners'
11 representative, if any, may remain in the area with the mine
12 foreman, assistant mine foreman or other individuals authorized by
13 the mine foreman or assistant mine foreman.

14 (B) Except for intrinsically safe AMS, electrically powered
15 equipment in the affected area shall be disconnected at the power
16 source.

17 (d) Return air split.--

18 (1) When one percent or more methane is present in a return
19 air split between the last working place on a working section and
20 where that split of air meets another split of air or the location
21 at which the split is used to ventilate seals or worked-out areas,
22 changes or adjustments shall be made at once to the ventilation
23 system to reduce the concentration of methane in the return air to
24 less than one percent.

25 (2) When one and five-tenths percent or more methane is

1 present in a return air split between the last working place on a
2 working section and where that split of air meets another split of
3 air or the location where the split is used to ventilate seals or
4 worked-out areas, except for the mine foreman, assistant mine
5 foreman or individuals authorized by the mine or assistant mine
6 foreman, all individuals shall be withdrawn from the affected area.
7 If a federal or state mine inspector is present in the area of the
8 mine where one and five-tenths percent or more of methane is
9 detected, the federal or state mine inspector and the miners'
10 representative, if any, may remain in the area with the mine
11 foreman, assistant mine foreman or other individuals authorized by
12 the mine foreman or assistant mine foreman.

13 (3) Other than intrinsically safe AMS, equipment in the
14 affected area shall be de-energized, electric power shall be
15 disconnected at the power source and other mechanized equipment
16 shall be shut off.

17 (4) No other work shall be permitted in the affected area
18 until the methane concentration in the return air is less than one
19 percent.

20 (e) Return air split alternative. --

21 (1) The provisions of this paragraph may apply if:

22 (A) The quantity of air in the split ventilating the active
23 workings is at least twenty seven thousand cubic feet per minute in
24 the last open crosscut or the quantity specified in the approved
25 ventilation plan, whichever is greater.

1 (B) The methane content of the air in the split is
2 continuously monitored during mining operations by an AMS that
3 gives a visual and audible signal on the working section when the
4 methane in the return air reaches one and five-tenths percent and
5 the methane content is monitored as specified in the approved
6 ventilation plan.

7 (C) Rock dust is continuously applied with a mechanical duster
8 to the return air course during coal production at a location in
9 the air course immediately outby the most inby monitoring point.

10 (2) When one and five-tenths percent or more methane is
11 present in a return air split between a point in the return
12 opposite the section loading point and where that split of air
13 meets another split of air or where the split of air is used to
14 ventilate seals or worked-out areas:

15 (A) Changes or adjustments shall be made at once to the
16 ventilation system to reduce the concentration of methane in the
17 return air below one and five-tenths percent.

18 (B) Except for the mine foreman, assistant mine foreman or
19 individuals authorized by the mine foreman or assistant mine
20 foreman, all individuals shall be withdrawn from the affected area.
21 If a federal or state mine inspector is present in the area of the
22 mine where one and five-tenths percent or more of methane is
23 detected, the federal or state mine inspector and the miners'
24 representative, if any, may remain in the area with the mine
25 foreman, assistant mine foreman or other individuals authorized by

1 the mine foreman or assistant mine foreman.

2 (C) Except for intrinsically safe AMS, equipment in the
3 affected area shall be de-energized, electric power shall be
4 disconnected at the power source and other mechanized equipment
5 shall be shut off.

6 (D) No other work shall be permitted in the affected area
7 until the methane concentration in the return air is less than one
8 and five-tenths percent.

9 (f) Bleeders and other return air courses.--

10 The concentration of methane in a bleeder split of air
11 immediately before the air in the split joins another split of air,
12 or in a return air course other than as described in subsections
13 (d) and (e) of this section, shall not exceed two percent.

14 (g) Machine mounted methane monitors. --

15 (1) Approved methane monitors shall be installed and
16 maintained on all face cutting machines, continuous miners,
17 longwall face equipment and other mechanized equipment used to
18 extract coal or load coal within the working place.

19 (2) The sensing device for methane monitors on longwall
20 shearing machines shall be installed at the return air end of the
21 longwall face. An additional sensing device also shall be
22 installed on the longwall shearing machine, downwind and as close
23 to the cutting head as practicable. An alternative location or
24 locations for the sensing device required on the longwall shearing
25 machine may be approved in the ventilation plan.

1 (3) The sensing devices of methane monitors shall be installed
2 as close to the working face as practicable.

3 (4) Methane monitors shall be maintained in permissible and
4 proper operating condition and shall be calibrated with a known
5 air-methane mixture at least once every fifteen days and a record
6 of the calibration shall be recorded with ink or indelible pencil
7 by the person performing the calibration in a book prescribed by
8 the director and maintained on the surface. Calibration records
9 shall be retained for inspection for at least one year from the
10 date of the test. To assure that methane monitors are properly
11 maintained and calibrated, the operator shall use persons properly
12 trained in the maintenance, calibration, and permissibility of
13 methane monitors to calibrate and maintain the devices.

14 (h) Automatic de-energization of extraction apparatus. --
15 When the methane concentration at any machine-mounted methane
16 monitor reaches one percent, the monitor shall give a warning
17 signal. The warning signal device of the methane monitor shall be
18 visible to a person operating the equipment on which the monitor is
19 mounted. The methane monitor shall automatically de-energize the
20 extraction apparatus on the machine on which it is mounted, but not
21 the machine as a whole to facilitate proper mining procedures,
22 when:

23 (1) The methane concentration at any machine-mounted methane
24 monitor reaches one and twenty-five one hundredths percent for a
25 sustained period; or

1 (2) The monitor is not operating properly.

2 The machine's extraction apparatus may not again be started in
3 that place until the methane concentration measured by the methane
4 monitor is less than one percent.

5 (i) Compliance schedule for machine refit.--

6 Within one hundred twenty days of the effective date of the
7 amendments to this section, the Board of Coal Mine Health and
8 Safety shall promulgate legislative rules pursuant to article
9 three, chapter twenty-nine-a of this code establishing calibration
10 procedures, defining the term "sustained period" for purposes of
11 implementing this section, and establishing a compliance schedule
12 setting forth the time frame in which all new and existing face
13 cutting machines, continuous miners, longwall face equipment and
14 other mechanized equipment used to extract coal or load coal within
15 the working place shall be refitted with methane monitors.
16 Enforcement of subsections (g) and (h) of this section shall not
17 commence until after the time frame is established rule.

18 **§22A-2-43a. Operation of cutting and mining machines; repair and**
19 **maintenance of same.**

20 (a) Qualified person to operate cutting machine. -- No person
21 shall be placed in charge of a coal-cutting machine in any mine who
22 is not a qualified person, capable of determining the safety of the
23 roof and sides of the working places and of detecting the presence
24 of explosive gas, unless they are accompanied by a certified or
25 qualified person who has passed such an examination.

1 (b) Operation of mining machines. -- Machine operators and
2 helpers shall use care while operating mining machines. They shall
3 examine the roof of the working place to see that it is safe before
4 starting to operate the machine. They shall not move the machine
5 while the cutter chain is in motion. Additionally, no person
6 shall operate the cutterhead on any continuous miner while the
7 machine is moving from place to place underground: Provided, That
8 a cutterhead may be operated during clean up or when the machine
9 is extracting coal.

10 (c) Repair and maintenance of mining machines. -- (1) Repairs
11 or maintenance shall not be performed on mining machines until the
12 power is off and locked and tagged, if required by law, and the
13 machinery is blocked against motion, except where machinery motion
14 is necessary to make adjustments. For purposes of this subsection,
15 the following terms shall have the following meanings:

16 (A) "Maintenance" means the labor of keeping machinery in good
17 working order and includes cleaning, clearing jammed material or
18 conducting examinations on or in close proximity to machinery; and

19 (B) "Repair" means to fix, mend, or restore to good working
20 order.

21 (d) Methods to comply with the standard to prevent inadvertent
22 or unexpected motion include:

23 (A) Opening the circuit breaker for the affected machinery,
24 provided no energized parts or conductors are exposed, and placing
25 the run selector switch for startup of the machinery in the "off"

1 position. On longwall machinery, this would include placing the
2 lockout switch in the lockout position in the area where the repair
3 or maintenance is being performed. A qualified electrician is
4 required to de-energize a circuit breaker if there are exposed
5 energized parts or conductors; or

6 (B) Opening the circuit breaker at the power center that
7 supplies power for the affected machinery and disengaging the power
8 cable coupler that supplies power to the machinery; or

9 (C) Opening a manual visible disconnect switch, either within
10 the circuit or onboard the machinery, and securing the switch
11 against reenergization, as required by law. A control circuit
12 start-stop switch does not constitute a manual disconnect; or

13 (D) In cases such as steeply inclined belt conveyors and
14 suspended loads, when removing the power alone will not ensure
15 against unintentional or inadvertent movement, the machinery shall
16 be physically blocked, in addition to removing the power by one of
17 the three methods described above. Physical blocking may be
18 achieved by the use of such devices as bars, chocks or clamps.

19 **§22A-2-55. Protective equipment and clothing.**

20 (a) Welders and helpers shall use proper shields or goggles to
21 protect their eyes. All employees shall have approved goggles or
22 shields and use the same where there is a hazard from flying
23 particles or other eye hazards.

24 (b) Employees engaged in haulage operations and all other
25 persons employed around moving equipment on the surface and

1 underground shall wear snug-fitting clothing.

2 (c) Protective gloves shall be worn when material which may
3 injure hands is handled, but gloves with gauntleted cuffs shall not
4 be worn around moving equipment.

5 (d) Safety hats and safety-toed shoes shall be worn by all
6 persons while in or around a mine: *Provided*, That metatarsal guards
7 are not required to be worn by persons when working in those areas
8 of underground mine workings which average less than forty-eight
9 inches in height as measured from the floor to the roof of the
10 underground mine workings.

11 (e) Approved eye protection shall be worn by all persons while
12 being transported in open-type man trips.

13 (f) (1) A self-contained self-rescue device approved by the
14 director shall be worn by each person underground or kept within
15 his or her immediate reach and the device shall be provided by the
16 operator. The self-contained self-rescue device shall be adequate
17 to protect a miner for one hour or longer. Each operator shall
18 train each miner in the use of ~~such~~ the device and refresher
19 training courses for all underground employees shall be held ~~during~~
20 ~~each calendar year~~ once each quarter. Quarters shall be based on
21 a calendar year.

22 (2) In addition to the requirements of subdivision (1) of this
23 subsection, the operator shall also provide caches of additional
24 self-contained self-rescue devices throughout the mine in
25 accordance with a plan approved by the director. Each additional

1 self-contained self-rescue device shall be adequate to protect a
2 miner for one hour or longer. The total number of additional
3 self-contained self-rescue devices, the total number of storage
4 caches and the placement of each cache throughout the mine shall be
5 established by rule pursuant to subsection (i) of this section. A
6 luminescent sign with the words "**SELF-CONTAINED SELF-RESCUER**" or
7 "**SELF-CONTAINED SELF-RESCUERS**" shall be conspicuously posted at
8 each cache and luminescent direction signs shall be posted leading
9 to each cache. Lifeline cords or other similar device, with
10 reflective material at twenty-five foot intervals, shall be
11 attached to each cache from the last open crosscut to the surface.
12 The operator shall conduct weekly inspections of each cache and
13 each lifeline cord or other similar device to ensure operability.

14 (3) Any person that, without the authorization of the operator
15 or the director, knowingly removes or attempts to remove any
16 self-contained self-rescue device or lifeline cord from the mine or
17 mine site with the intent to permanently deprive the operator of
18 the device or lifeline cord or knowingly tampers with or attempts
19 to tamper with ~~such~~ the device or lifeline cord shall be guilty of
20 a felony and, upon conviction thereof, shall be imprisoned in a
21 state correctional facility for not less than one year nor more
22 than ten years or fined not less than \$10,000 nor more than
23 \$100,000, or both.

24 (g) (1) A wireless emergency communication device approved by
25 the director and provided by the operator shall be worn by each

1 person underground. The wireless emergency communication device
2 shall, at a minimum, be capable of receiving emergency
3 communications from the surface at any location throughout the
4 mine. Each operator shall train each miner in the use of the device
5 and provide refresher training courses for all underground
6 employees during each calendar year. The operator shall install in
7 or around the mine any and all equipment necessary to transmit
8 emergency communications from the surface to each wireless
9 emergency communication device at any location throughout the mine.

10 (2) Any person that, without the authorization of the operator
11 or the director, knowingly removes or attempts to remove any
12 wireless emergency communication device or related equipment, from
13 the mine or mine site with the intent to permanently deprive the
14 operator of the device or equipment or knowingly tampers with or
15 attempts to tamper with the device or equipment shall be guilty of
16 a felony and, upon conviction thereof, shall be imprisoned in a
17 state correctional facility for not less than one year nor more
18 than ten years or fined not less than \$10,000 nor more than
19 \$100,000, or both.

20 (h) (1) A wireless tracking device approved by the director
21 and provided by the operator shall be worn by each person
22 underground. In the event of an accident or other emergency, the
23 tracking device shall, at a minimum, be capable of providing
24 real-time monitoring of the physical location of each person
25 underground: *Provided*, That no person shall discharge or

1 discriminate against any miner based on information gathered by a
2 wireless tracking device during nonemergency monitoring. Each
3 operator shall train each miner in the use of the device and
4 provide refresher training courses for all underground employees
5 during each calendar year. The operator shall install in or around
6 the mine all equipment necessary to provide real-time emergency
7 monitoring of the physical location of each person underground.

8 (2) Any person that, without the authorization of the operator
9 or the director, knowingly removes or attempts to remove any
10 wireless tracking device or related equipment, approved by the
11 director, from a mine or mine site with the intent to permanently
12 deprive the operator of the device or equipment or knowingly
13 tampers with or attempts to tamper with the device or equipment
14 shall be guilty of a felony and, upon conviction thereof, shall be
15 imprisoned in a state correctional facility for not less than one
16 year nor more than ten years or fined not less than \$10,000 nor
17 more than \$100,000, or both.

18 (i) The director may promulgate emergency and legislative
19 rules to implement and enforce this section pursuant to the
20 provisions of article three, chapter twenty-nine-a of this code.

21 **§22A-2-66. Accident; notice; investigation by Office of Miners'**
22 **Health, Safety and Training.**

23 (a) For the purposes of this section, the term "accident"
24 means:

25 (1) The death of an individual at a mine;

- 1 (2) An injury to an individual at a mine which has a
2 reasonable potential to cause death;
- 3 (3) The entrapment of an individual;
- 4 (4) The unplanned inundation of a mine by a liquid or gas;
- 5 (5) The unplanned ignition or explosion of gas or dust;
- 6 (6) The unplanned ignition or explosion of a blasting agent or
7 an explosive;
- 8 (7) An unplanned fire in or about a mine not extinguished
9 within five minutes of ignition;
- 10 (8) An unplanned roof fall at or above the anchorage zone in
11 active workings where roof bolts are in use or an unplanned roof or
12 rib fall in active workings that impairs ventilation or impedes
13 passage;
- 14 (9) A coal or rock outburst that causes withdrawal of miners
15 or which disrupts regular mining activity for more than one hour;
- 16 (10) An unstable condition at an impoundment, refuse pile or
17 culm bank which requires emergency action in order to prevent
18 failure, or which causes individuals to evacuate an area, or the
19 failure of an impoundment, refuse pile or culm bank;
- 20 (11) Damage to hoisting equipment in a shaft or slope which
21 endangers an individual or which interferes with use of the
22 equipment for more than thirty minutes; and
- 23 (12) An event at a mine which causes death or bodily injury to
24 an individual not at the mine at the time the event occurs.
- 25 (b) Whenever any accident occurs in or about any coal mine or

1 the machinery connected therewith, it is the duty of the operator
2 or the mine foreman in charge of the mine to give notice, within
3 fifteen minutes of ascertaining the occurrence of an accident, to
4 the Mine and Industrial Accident Emergency Operations Center at the
5 statewide telephone number established by the Director of the
6 Division of Homeland Security and Emergency Management pursuant to
7 the provisions of article five-b, chapter fifteen of this code
8 stating the particulars of the accident: *Provided*, That the
9 operator or the mine foreman in charge of the mine may comply with
10 this notice requirement by immediately providing notice to the
11 appropriate local organization for emergency services as defined in
12 section eight, article five of said chapter, or the appropriate
13 local emergency telephone system operator as defined in article
14 six, chapter twenty-four of this code: *Provided, however, That if,*
15 *immediately upon ascertaining the occurrence of an accident, the*
16 *operator or the mine foreman in charge of the mine provides notice*
17 *to the local organization for emergency services as defined in*
18 *section eight, article five, chapter fifteen of this code, or the*
19 *appropriate local emergency telephone system operator as defined in*
20 *article six, chapter twenty-four of this code, then, in order to*
21 *comply with this subsection, the operator or mine foreman in charge*
22 *of the mine shall also give notice to the Mine and Industrial*
23 *Accident Emergency Operations Center at the statewide number*
24 *identified in this subsection within fifteen minutes of completing*
25 *the telephone call to the local organization for emergency services*

1 or the appropriate local emergency telephone system operator, as
2 applicable: Provided, however further, That nothing in this
3 subsection shall be construed to relieve the operator from any
4 reporting or notification requirement under federal law.

5 (c) The Director of the Office of Miners' Health, Safety and
6 Training shall impose, pursuant to rules authorized in this
7 section, a civil administrative penalty of \$100,000 on the operator
8 if it is determined that the operator or the mine foremen in charge
9 of the mine failed to give immediate notice as required in this
10 section: *Provided,* That the director may waive imposition of the
11 civil administrative penalty at any time if he or she finds that
12 the failure to give immediate notice was caused by circumstances
13 wholly outside the control of the operator: *Provided, however, That*
14 the assessment of the civil administrative penalty set forth in
15 this subsection may be appealed to the Board of Appeals, and the
16 Board of Appeals may, by unanimous vote, reduce the amount of the
17 civil administrative penalty upon a finding of mitigating
18 circumstances warranting the imposition of a lesser amount.

19 (d) If anyone is ~~killed~~ fatally injured, the inspector shall
20 immediately go to the scene of the accident and make
21 recommendations and render assistance as he or she may deem
22 necessary for the future safety of the men and investigate the
23 cause of the explosion or accident and make a record. He or she
24 shall preserve the record with the other records in his or her
25 office. The cost of the investigation records shall be paid by the

1 Office of Miners' Health, Safety and Training. A copy shall be
2 furnished to the operator and other interested parties. To enable
3 him or her to make an investigation, he or she has the power to
4 compel the attendance of witnesses and to administer oaths or
5 affirmations. The director has the right to appear and testify and
6 to offer any testimony that may be relevant to the questions and to
7 cross-examine witnesses.

8 **ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.**

9 **§22A-6-4. Board powers and duties.**

10 (a) The board shall adopt as standard rules the "coal mine
11 health and safety provisions of this chapter". Such standard rules
12 and any other rules shall be adopted by the board without regard to
13 the provisions of chapter twenty-nine-a of this code. The Board of
14 Coal Mine Health and Safety shall devote its time toward
15 promulgating rules in those areas specifically directed by this
16 chapter and those necessary to prevent fatal accidents and
17 injuries.

18 (b) The board shall review such standard rules and, when
19 deemed appropriate to improve or enhance coal mine health and
20 safety, revise the same or develop and promulgate new rules dealing
21 with coal mine health and safety.

22 (c) The board shall develop, promulgate and revise, as may be
23 appropriate, rules as are necessary and proper to effectuate the
24 purposes of article two of this chapter and to prevent the

1 circumvention and evasion thereof, all without regard to the
2 provisions of chapter twenty-nine-a of this code:

3 (1) Upon consideration of the latest available scientific data
4 in the field, the technical feasibility of standards, and
5 experience gained under this and other safety statutes, such rules
6 may expand protections afforded by this chapter notwithstanding
7 specific language therein, and such rules may deal with subject
8 areas not covered by this chapter to the end of affording the
9 maximum possible protection to the health and safety of miners.

10 (2) No rules promulgated by the board shall reduce or
11 compromise the level of safety or protection afforded miners below
12 the level of safety or protection afforded by this chapter.

13 (3) Any miner or representative of any miner, or any coal
14 operator has the power to petition the circuit court of Kanawha
15 County for a determination as to whether any rule promulgated or
16 revised reduces the protection afforded miners below that provided
17 by this chapter, or is otherwise contrary to law: *Provided*, That
18 any rule properly promulgated by the board pursuant to the terms
19 and conditions of this chapter creates a rebuttable presumption
20 that said rule does not reduce the protection afforded miners below
21 that provided by this chapter.

22 (4) The director shall cause proposed rules and a notice
23 thereof to be posted as provided in section eighteen, article one
24 of this chapter. The director shall deliver a copy of such proposed

1 rules and accompanying notice to each operator affected. A copy of
2 such proposed rules shall be provided to any individual by the
3 director's request. The notice of proposed rules shall contain a
4 summary in plain language explaining the effect of the proposed
5 rules.

6 (5) The board shall afford interested persons a period of not
7 less than thirty days after releasing proposed rules to submit
8 written data or comments. The board may, upon the expiration of
9 such period and after consideration of all relevant matters
10 presented, promulgate such rules with such modifications as it may
11 deem appropriate.

12 (6) On or before the last day of any period fixed for the
13 submission of written data or comments under subdivision (5) of
14 this section, any interested person may file with the board written
15 objections to a proposed rule, stating the grounds therefor and
16 requesting a public hearing on such objections. As soon as
17 practicable after the period for filing such objections has
18 expired, the board shall release a notice specifying the proposed
19 rules to which objections have been filed and a hearing requested.

20 (7) Promptly after any such notice is released by the board
21 under subdivision (6) of this section, the board shall issue notice
22 of, and hold a public hearing for the purpose of receiving relevant
23 evidence. Within sixty days after completion of the hearings, the
24 board shall make findings of fact which shall be public, and may

1 promulgate such rules with such modifications as it deems
2 appropriate. In the event the board determines that a proposed rule
3 should not be promulgated or should be modified, it shall within a
4 reasonable time publish the reasons for its determination.

5 (8) All rules promulgated by the board shall be published in
6 the State Register and continue in effect until modified or
7 superseded in accordance with the provisions of this chapter.

8 (d) To carry out its duties and responsibilities, the board is
9 authorized to employ such personnel, including legal counsel,
10 experts and consultants, as it deems necessary. In addition, the
11 board, within the appropriations provided for by the Legislature,
12 may conduct or contract for research and studies and is entitled to
13 the use of the services, facilities and personnel of any agency,
14 institution, school, college or university of this state.

15 (e) The director shall within sixty days of a coal mining
16 fatality or fatalities provide the board with all available reports
17 regarding such fatality or fatalities.

18 The board shall review all reports and any recommended rules
19 submitted by the director, receive any additional information it
20 requests, and may, on its own initiative, investigate the
21 circumstances surrounding a coal mining fatality or fatalities and
22 ascertain the cause or causes of such coal mining fatality or
23 fatalities. In order to investigate a coal mining fatality or
24 fatalities, a majority of the board must vote in favor of

1 commencing an investigation. Within ninety days of the receipt of
2 the Federal Mine Safety and Health Administration's fatal accident
3 report and the director's report and recommended rules, the board
4 shall review and consider the presentation of said report and rules
5 and the results of its own investigation, if any, and, if a
6 majority of all voting board members determines that additional
7 rules can assist in the prevention of the specific type of
8 fatality, the board shall either accept and promulgate the
9 director's recommended rules, amend the director's recommended
10 rules or draft new rules, as are necessary to prevent the
11 recurrence of such fatality. If the board chooses to amend the
12 director's recommended rules or draft its own rules, a vote is
13 required within one hundred twenty days as to whether to promulgate
14 the amended rule or the rule drafted by the board: *Provided*, That
15 the board may, by majority vote, find that exceptional
16 circumstances exist and the deadline cannot be met: *Provided*,
17 *however* That under no circumstances shall such deadline be extended
18 by more than a total of ninety days. A majority vote of the board
19 is required to promulgate any such rule.

20 The board shall annually, not later than July 1, review the
21 major causes of coal mining injuries during the previous calendar
22 year, reviewing the causes in detail, and shall promulgate such
23 rules as may be necessary to prevent the recurrence of such
24 injuries.

1 Further, the board shall, on or before January 10, of each
2 year, submit a report to the Governor, President of the Senate and
3 Speaker of the House, which report shall include, but is not
4 limited to:

5 (1) The number of fatalities during the previous calendar
6 year, the apparent reason for each fatality as determined by the
7 office of miners' health, safety and training and the action, if
8 any, taken by the board to prevent such fatality;

9 (2) Any rules promulgated by the board during the last year;

10 (3) What rules the board intends to promulgate during the
11 current calendar year;

12 (4) Any problem the board is having in its effort to
13 promulgate rules to enhance health and safety in the mining
14 industry;

15 (5) Recommendations, if any, for the enactment, repeal or
16 amendment of any statute which would cause the enhancement of
17 health and safety in the mining industry;

18 (6) Any other information the board deems appropriate;

19 (7) In addition to the report by the board, as herein
20 contained, each individual member of said board has right to submit
21 a separate report, setting forth any views contrary to the report
22 of the board, and the separate report, if any, shall be appended to
23 the report of the board and be considered a part thereof.

24 **§22A-6-13. Study of ingress and egress to bleeder and gob areas**
25 **of longwall panels and pillar sections.**

1 The Board of Coal Mine Health and Safety is directed to study
2 the safety of working or traveling in bleeder or gob areas of a
3 longwall panel or pillar section of a mine where only one
4 travelable entry in and out of the area exists. The study shall
5 consider what additional roof control or other measures, if any,
6 should be implemented to ensure that underground miners who work or
7 travel in bleeder or gob areas of a longwall panel or pillar
8 section having only one travelable entry in and out of the areas
9 are at least as safe as miners working in comparable areas with
10 multiple travelable entries in and out of the areas. By December
11 31, 2012, the board shall report to the Legislature's Joint
12 Committee on Government and Finance with recommendations regarding
13 implementation of the findings of this study.

14 **§22A-6-14. Study of mandatory substance abuse program.**

15 The Board of Coal Mine Health and Safety is directed to study
16 the mandatory substance abuse screening policy and program
17 requirements of article one-a of this chapter and make
18 recommendations to the director regarding (a) establishment of
19 guidelines to be employed by the Board of Appeals when
20 administering disciplinary actions to certified persons pursuant
21 to article one-a of this chapter, (b) requiring certification by
22 the Office of Miners' Health, Safety and Training of persons who
23 regularly work at mines who are not presently required to obtain
24 certification, and (c) establishment of additional minimum
25 requirements, parameters, methodologies and protocols to be

1 integrated into the substance abuse screening policy and program
2 requirements of article one-a of this chapter. By the thirty-first
3 day of August, two thousand and twelve, the board shall submit its
4 report to the director. The director is authorized to propose for
5 legislative promulgation, legislative rules pursuant to article
6 three, chapter twenty-nine-a of this code regarding the
7 implementation of the findings of this study. These rules shall be
8 initially promulgated as emergency rules by the director pursuant
9 to the provisions of section fifteen, article three, chapter
10 twenty-nine-a of the code by the thirty-first day of December, two
11 thousand and twelve, and shall include the establishment of
12 certification requirements recommended by the board for persons who
13 regularly work at mines that are not presently required to obtain
14 certification and establishment of guidelines to be employed by the
15 Board of Appeals when administering disciplinary actions to
16 certified persons pursuant to article one-a of this chapter.

17 **ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.**

18 **§22A-7-5. Board powers and duties.**

19 (a) The board shall establish criteria and standards for a
20 program of education, training and examination to be required of
21 all prospective miners and miners prior to their certification in
22 any of the various miner specialties requiring certification under
23 this article or any other provision of this code. The specialties
24 include, but are not limited to, underground miner, surface miner,

1 apprentice, underground mine foreman-fire boss, assistant
2 underground mine foreman-fire boss, shotfirer, mine electrician and
3 belt examiner. Notwithstanding the provisions of this section, the
4 director may by rule further subdivide the classifications for
5 certification.

6 (b) The board may require certification in other miner
7 occupational specialties: *Provided*, That no new specialty may be
8 created by the board unless certification in a new specialty is
9 made desirable by action of the federal government requiring
10 certification in a specialty not enumerated in this code.

11 (c) The board may establish criteria and standards for a
12 program of preemployment education and training to be required of
13 miners working on the surface at underground mines who are not
14 certified under the provisions of this article or any other
15 provision of this code.

16 (d) The board shall set minimum standards for a program of
17 continuing education and training of certified persons and other
18 miners on an annual basis: *Provided*, That the standards shall be
19 consistent with the provisions of section seven of this article.
20 Prior to issuing the standards, the board shall conduct public
21 hearings at which the parties who may be affected by its actions
22 may be heard. The education and training shall be provided in a
23 manner determined by the director to be sufficient to meet the
24 standards established by the board.

25 (e) The board may, in conjunction with any state, local or

1 federal agency or any other person or institution, provide for the
2 payment of a stipend to prospective miners enrolled in one or more
3 of the programs of miner education, training and certification
4 provided in this article or any other provision of this code.

5 (f) The board may also, from time to time, conduct any
6 hearings and other oversight activities required to ensure full
7 implementation of programs established by it.

8 (g) Nothing in this article empowers the board to revoke or
9 suspend any certificate issued by the Director of the Office of
10 Miners' Health, Safety and Training.

11 (h) The board may, upon its own motion or whenever requested
12 to do so by the director, consider two certificates issued by this
13 state to be of equal value or consider training provided or
14 required by federal agencies to be sufficient to meet training and
15 education requirements set by it, the director, or by the
16 provisions of this code.

17 (i) As part of the annual training required by this section,
18 the board shall include training of certified persons and other
19 miners, instruction on miners' rights as they relate to the
20 operation of unsafe equipment as provided in section seventy-one of
21 article two of this chapter, his or her right to withdrawal from
22 unsafe conditions as provided in section seventy-one-a of article
23 two of this chapter and his or her rights under section twenty-two,
24 article one of this chapter.

25 **§22A-7-5a. Study of miner training and education.**

1 The board is directed to conduct a study of the overall
2 program of education, training and examination associated with the
3 various miner specialties requiring certification under this
4 article or any other provision of this code. The study shall
5 identify ways to enhance miner education and training to adequately
6 reflect technological advances in coal mining techniques and best
7 practices used in modern coal mines, and improve supervision of
8 apprentice miners. Furthermore, the board shall place particular
9 emphasis in its study on ways to improve education and training in
10 the areas of proper mine ventilation, methane monitoring and
11 equipment de-energization, fire-boss procedures and overall core
12 mining competencies. By December 31, 2012, the board shall report
13 to the Legislature's Joint Committee on Government and Finance with
14 recommendations regarding the implementation of the findings of
15 this study.

16 **ARTICLE 12. UNDERGROUND ACCIDENT INVESTIGATIONS.**

17 **§22A-12-1. Report on enforcement procedures.**

18 The director shall, by December 31, 2013, report to the
19 Legislature and Governor on the need for revisions in the state's
20 underground mine safety enforcement procedures. The director shall
21 initiate the study using appropriate academic resources and mining
22 safety organizations to conduct a program review of state
23 enforcement procedures to evaluate what reforms will assure that
24 mining operations follow state mandated safety protocols. The
25 report shall include recommended legislation, rules and policies,

- 1 consider various options for improving inspections, accountability
- 2 and equitable and timely administrative procedures that cause
- 3 remediation of hazardous working conditions.