

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, §22A-1-15, and §22A-1-21  
15 of said code be amended and reenacted; that said code be amended by  
16 adding thereto a new article, designated §22A-1A-1, §22A-1A-2 and  
17 §22A-1A-3; 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) Share information regarding any discharge of any person  
16 employed at a mine, as defined in article one-a of this chapter,  
17 and suspension or revocation of a certificate for violation of the  
18 substance abuse provisions of article one-a of this chapter with  
19 other states that subject miners to disciplinary action for  
20 violation of a substance abuse policy.

21 ~~(11)~~ (12) Perform all other duties which are expressly imposed  
22 upon him or her by the provisions of this chapter.

23 ~~(12)~~ (13) Impose reasonable fees upon applicants taking tests  
24 administered pursuant to the requirements of this chapter.

25 ~~(13)~~ (14) Impose reasonable fees for the issuance of

1 certifications required under this chapter.

2       ~~(14)~~ (15) Prepare study guides and other forms of publications  
3 relating to mine safety and charge a reasonable fee for the sale of  
4 the publications.

5       ~~(15)~~ (16) Make all records of the office open for inspection  
6 of interested persons and the public.

7       (c) The Director of the Office of Miners' Health, Safety and  
8 Training, or his or her designee, upon receipt of the list of  
9 approved innovative mine safety technologies from the Mine Safety  
10 Technology Task force, has thirty days to approve or amend the list  
11 as provided in section four, article thirteen-bb, chapter eleven of  
12 this code. At the expiration of the time period, the director  
13 shall publish the list of approved innovative mine safety  
14 technologies as provided in section four, article thirteen-bb,  
15 chapter eleven of this code.

16 **§22A-1-13a. Study of mine inspector qualification, compensation,**  
17 **training and inspection programs.**

18       The Office of Miners' Health, Safety and Training is directed  
19 to conduct a study of the minimum qualifications for mine  
20 inspectors, the minimum compensation paid to mine inspectors and  
21 the overall training program established for mine inspectors. The  
22 study shall identify ways to attract and retain new, qualified mine  
23 inspectors to minimize the effect of the anticipated retirement of  
24 a significant number of current inspectors. Additionally, the  
25 study shall examine ways to improve the training programs for mine

1 inspectors by focusing on technological advances in coal mining  
2 techniques, best practices used in modern coal mines and proper  
3 mine ventilation. Further the office shall perform an assessment  
4 of the resources and qualification of inspectors necessary to  
5 approve mine ventilation plans. By December 31, 2012, the Office of  
6 Miners' Health, Safety and Training shall report to the  
7 Legislature's Joint Committee on Government and Finance with  
8 recommendations regarding the implementation of its findings.

9 **§22A-1-14. Director and inspectors authorized to enter mines;**  
10 **duties of inspectors to examine mines; no advance**  
11 **notice of an inspection; reports after fatal**  
12 **accidents.**

13 (a) The director, or his or her authorized representative, has  
14 authority to visit, enter, and examine any mine, whether  
15 underground or on the surface, and may call for the assistance of  
16 any district mine inspector or inspectors whenever ~~such~~ assistance  
17 is necessary in the examination of any mine. The operator of every  
18 coal mine shall furnish the director or his or her authorized  
19 representative proper facilities for entering ~~such~~ the mine and  
20 making examination or obtaining information.

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

1        (c) Mine inspectors shall devote their full-time and undivided  
2 attention to the performance of their duties, and they shall  
3 examine all of the mines in their respective districts at least  
4 four times annually, and as often, in addition thereto, as the  
5 director may direct, or the necessities of the case or the  
6 condition of the mine or mines may require, with no advance notice  
7 of inspection provided to any person, and they shall make a  
8 personal examination of each working face and all entrances to  
9 abandoned parts of the mine where gas is known to liberate, for the  
10 purpose of determining whether an imminent danger, referred to in  
11 section fifteen of this article, exists in ~~any such~~ the mine, or  
12 whether any provision of article two of this chapter is being  
13 violated or has been violated within the past forty-eight hours in  
14 ~~any such~~ the mine. No other person shall, with the intent of  
15 undermining the integrity of an unannounced mine inspection,  
16 provide advance notice of any inspection or of an inspector's  
17 presence at a mine to any person at that mine. Any person who, with  
18 the requisite intent, knowingly causes or conspires to provide  
19 advance notice of any inspection or of an inspector's presence at  
20 a mine is guilty of a felony and, upon conviction thereof, shall be  
21 fined not more than \$15,000 or imprisoned in a state correctional  
22 facility not less than one year and not more than five years, or  
23 both fined and imprisoned.

24        (d) In addition to the other duties imposed by this article  
25 and article two of this chapter, it is the duty of each inspector

1 to note each violation he or she finds and issue a finding, order,  
2 or notice, as appropriate for each violation so noted. During the  
3 investigation of any accident, any violation may be noted whether  
4 or not the inspector actually observes the violation and whether or  
5 not the violation exists at the time the inspector notes the  
6 violation, so long as the inspector has clear and convincing  
7 evidence the violation has occurred or is occurring.

8 (e) On or after July 1, 2012, an inspector shall require the  
9 operator or other employer to investigate all complaints received  
10 by the Office of Miners' Health, Safety and training involving  
11 person's substance abuse or alcohol related impairment at a mine.  
12 Within thirty days following notification by the Office of Miners'  
13 Health, Safety and Training to the operator or other employer of  
14 the complaint, the operator or other employer shall file with the  
15 Director a summary of its investigation into the alleged substance  
16 abuse or alcohol related impairment.

17 (f) The mine inspector shall visit the scene of each fatal  
18 accident occurring in any mine within his or her district and shall  
19 make an examination into the particular facts of ~~such~~ the accident;  
20 make a report to the director, setting forth the results of ~~such~~  
21 the examination, including the condition of the mine and the cause  
22 or causes of ~~such~~ the fatal accident, if known, and all ~~such~~ the  
23 reports shall be made available to the interested parties, upon  
24 written requests.

25 (g) At the commencement of any inspection of a coal mine by an

1 authorized representative of the director, the authorized  
2 representative of the miners at the mine at the time of ~~such~~ the  
3 inspection shall be given an opportunity to accompany the  
4 authorized representative of the director on ~~such~~ the inspection.

5 **§22A-1-15. Findings, orders and notices.**

6 (a) If upon any inspection of a coal mine an authorized  
7 representative of the director finds that an imminent danger  
8 exists, the representative shall determine the area throughout  
9 which the danger exists and shall immediately issue an order  
10 requiring the operator of the mine or the operator's agent to cause  
11 immediately all persons, except those referred to in subdivisions  
12 (1), (2), (3) and (4), subsection (e) of this section, to be  
13 withdrawn from and to be prohibited from entering the area until an  
14 authorized representative of the director determines that the  
15 imminent danger no longer exists.

16 (b) If upon any inspection of a coal mine an authorized  
17 representative of the director finds that there has been a  
18 violation of the law, but the violation has not created an imminent  
19 danger, he or she shall issue a notice to the operator or the  
20 operator's agent fixing a reasonable time for the abatement of the  
21 violation. If upon the expiration of the period of time, as  
22 originally fixed or subsequently extended, an authorized  
23 representative of the director finds that the violation has not  
24 been totally abated, and if the director also finds that the period  
25 of time should not be further extended, the director shall find the



1 extent of the area affected by the violation and shall promptly  
2 issue an order requiring the operator of the mine or the operator's  
3 agent to cause immediately all persons, except those referred to in  
4 subdivisions (1), (2), (3) and (4), subsection (e) of this section,  
5 to be withdrawn from and to be prohibited from entering the area  
6 until an authorized representative of the director determines that  
7 the violation has been abated.

8 (c) If upon any inspection of a coal mine an authorized  
9 representative of the director finds that an imminent danger exists  
10 in an area of the mine, in addition to issuing an order pursuant to  
11 subsection (a) of this section, the director shall review the  
12 compliance record of the mine.

13 (1) A review of the compliance record conducted in accordance  
14 with this subsection shall, at a minimum, include a review of the  
15 following:

16 (A) Any closure order issued pursuant to subsection (a) of  
17 this section;

18 (B) Any closure order issued pursuant to subsection (b) of  
19 this section;

20 (C) Any enforcement measures taken pursuant to this chapter,  
21 other than those authorized under subsections (a) and (b) of this  
22 section;

23 (D) Any evidence of the operator's lack of good faith in  
24 abating violations at the mine;

25 (E) Any accident, injury or illness record that demonstrates

1 a serious safety or health management problem at the mine;

2 (F) The number of employees at the mine, the size, layout and  
3 physical features of the mine and the length of time the mine has  
4 been in operation; and

5 (G) Any mitigating circumstances.

6 (2) If, after review of the mine's compliance record, the  
7 director determines that the mine has a history of repeated  
8 significant and substantial violations of a particular standard  
9 caused by unwarrantable failure to comply or a history of repeated  
10 significant and substantial violations of standards related to the  
11 same hazard caused by unwarrantable failure to comply and the  
12 history or histories demonstrate the operator's disregard for the  
13 health and safety of miners, the director shall issue a closure  
14 order for the entire mine and shall immediately issue an order  
15 requiring the operator of the mine or the operator's agent to cause  
16 immediately all persons, except those referred to in subdivisions  
17 (1), (2), (3) and (4), subsection (e) of this section, to be  
18 withdrawn from and to be prohibited from entering the mine until a  
19 thorough inspection of the mine has been conducted by the office  
20 and the director determines that the operator has abated all  
21 violations related to the imminent danger and any violations  
22 unearthed in the course of the inspection.

23 (d) All employees on the inside and outside of a mine who are  
24 idled as a result of the posting of a withdrawal order by a mine  
25 inspector shall be compensated by the operator at their regular

1 rates of pay for the period they are idled ~~but not more than the~~  
2 ~~balance of the shift~~ during the balance of that shift. If the  
3 order is not terminated prior to the next working shift, all the  
4 employees on that shift who are idled by the order are entitled to  
5 full compensation by the operator at their regular rates of pay for  
6 the period they are idled ~~but for not more than four hours of the~~  
7 ~~shift~~ during that shift and the eight hours of the next working  
8 shift. If the operator refuses to comply or abate the hazard or  
9 condition causing the withdrawal order, employees on the inside and  
10 outside of a mine who are idled as a result of the posting of a  
11 withdrawal order are entitled to full compensation by the operator  
12 at their regular rates of pay for the period they are idled, up to  
13 ten days.

14 (e) The following persons are not required to be withdrawn  
15 from or prohibited from entering any area of the coal mine subject  
16 to an order issued under this section:

17 (1) Any person whose presence in the area is necessary, in the  
18 judgment of the operator or an authorized representative of the  
19 director, to eliminate the condition described in the order;

20 (2) Any public official whose official duties require him or  
21 her to enter the area;

22 (3) Any representative of the miners in the mine who is, in  
23 the judgment of the operator or an authorized representative of the  
24 director, qualified to make coal mine examinations or who is  
25 accompanied by such a person and whose presence in the area is

1 necessary for the investigation of the conditions described in the  
2 order; and

3 (4) Any consultant to any of the persons set forth in this  
4 subsection.

5 (f) Notices and orders issued pursuant to this section shall  
6 contain a detailed description of the conditions or practices which  
7 cause and constitute an imminent danger or a violation of any  
8 mandatory health or safety standard and, where appropriate, a  
9 description of the area of the coal mine from which persons must be  
10 withdrawn and prohibited from entering.

11 (g) Each notice or order issued under this section shall be  
12 given promptly to the operator of the coal mine or the operator's  
13 agent by an authorized representative of the director issuing the  
14 notice or order and all the notices and orders shall be in writing  
15 and shall be signed by the representative and posted on the  
16 bulletin board at the mine.

17 (h) A notice or order issued pursuant to this section may be  
18 modified or terminated by an authorized representative of the  
19 director.

20 (I) Each finding, order and notice made under this section  
21 shall promptly be given to the operator of the mine to which it  
22 pertains by the person making the finding, order or notice.

23 (j) *Definitions.* -- For the purposes of this section only, the  
24 following terms have the following meanings:

25 (1) "Unwarrantable failure" means aggravated conduct,

1 constituting more than ordinary negligence, by a mine operator in  
2 relation to a violation of this chapter of the code; and

3 (2) "Significant and substantial violation" ~~shall have~~ has the  
4 same meaning as that established in 6 FMSHRC 1 (1984).

5 **§22A-1-21. Penalties.**

6 (a) (1) Any operator of a coal mine in which a violation  
7 ~~occurs~~ of any health or safety rule occurs or who violates any  
8 other provisions of this chapter shall be assessed a civil penalty  
9 by the director under subdivision (3) of this subsection, which  
10 shall be not more than ~~\$3,000~~ \$5,000, for each violation, unless  
11 the director determines that it is appropriate to impose a special  
12 assessment for ~~said~~ the violation, pursuant to the provisions of  
13 subdivision (2), subsection (b) of this section. Each violation  
14 constitutes a separate offense. In determining the amount of the  
15 penalty, the director shall consider the operator's history of  
16 previous violations, whether the operator was negligent, the  
17 appropriateness of the penalty to the size of the business of the  
18 operator charged, the gravity of the violation and the demonstrated  
19 good faith of the operator charged in attempting to achieve rapid  
20 compliance after notification of a violation.

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

24 (3) Any miner who knowingly violates any health or safety  
25 provision of this chapter or health or safety rule promulgated

1 pursuant to this chapter is subject to a civil penalty assessed by  
2 the director under subdivision (4) of this subsection which shall  
3 not be more than \$250 for each occurrence of the violation.

4       (4) A civil penalty under subdivision (1) or (2) of subsection  
5 (a) of this section or subdivision (1) or (2) of subsection (b) of  
6 this section shall be assessed by the director only after the  
7 person charged with a violation under this chapter or rule  
8 promulgated pursuant to this chapter has been given an opportunity  
9 for a public hearing and the director has determined, by a decision  
10 incorporating the director's findings of fact in the decision, that  
11 a violation did occur and the amount of the penalty which is  
12 warranted and incorporating, when appropriate, an order in the  
13 decision requiring that the penalty be paid. Any hearing under this  
14 section shall be of record.

15       (5) If the person against whom a civil penalty is assessed  
16 fails to pay the penalty within the time prescribed in the order,  
17 the director may file a petition for enforcement of the order in  
18 any appropriate circuit court. The petition shall designate the  
19 person against whom the order is sought to be enforced as the  
20 respondent. A copy of the petition shall immediately be sent by  
21 certified mail, return receipt requested, to the respondent and to  
22 the representative of the miners at the affected mine or the  
23 operator, as the case may be. The director shall certify and file  
24 in the court the record upon which the order sought to be enforced  
25 was issued. The court has jurisdiction to enter a judgment

1 enforcing, modifying and enforcing as modified, or setting aside,  
2 in whole or in part, the order and decision of the director or it  
3 may remand the proceedings to the director for any further action  
4 it may direct. The court shall consider and determine de novo all  
5 relevant issues, except issues of fact which were or could have  
6 been litigated in review proceedings before a circuit court under  
7 section twenty of this article and, upon the request of the  
8 respondent, those issues of fact which are in dispute shall be  
9 submitted to a jury. On the basis of the jury's findings the court  
10 shall determine the amount of the penalty to be imposed. Subject to  
11 the direction and control of the Attorney General, attorneys  
12 appointed for the director may appear for and represent the  
13 director in any action to enforce an order assessing civil  
14 penalties under this subdivision.

15       (b) (1) Any operator who knowingly violates a health or safety  
16 provision of this chapter or health or safety rule promulgated  
17 pursuant to this chapter, or knowingly violates or fails or refuses  
18 to comply with any order issued under section fifteen of this  
19 article, or any order incorporated in a final decision issued under  
20 this article, except an order incorporated in a decision under  
21 subsection (a) of this section or subsection (b), section  
22 twenty-two of this article, shall be assessed a civil penalty by  
23 the director under subdivision (5), subsection (a) of this section  
24 of not more than \$5,000 and for a second or subsequent violation  
25 assessed a civil penalty of not more than \$10,000, unless the

1 director determines that it is appropriate to impose a special  
2 assessment for ~~said~~ the violation, pursuant to the provisions of  
3 subdivision (2) of this subsection.

4 (2) In lieu of imposing a civil penalty pursuant to the  
5 provisions of subsection (a) of this section or subdivision (1) of  
6 this subsection, the director may impose a special assessment if an  
7 operator violates a health or safety provision of this chapter or  
8 health or safety rule promulgated pursuant to this chapter and the  
9 violation is of serious nature and involves one or more of the  
10 following by the operator:

11 (A) Violations involving fatalities and serious injuries;

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

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

15 (D) Violations involving an imminent danger;

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

18 (F) A discrimination violation under section twenty-two of  
19 this article.

20 In situations in which the director determines that there are  
21 factors present which would make it appropriate to impose a special  
22 assessment, the director shall assess a civil penalty of at least  
23 \$5,000 and not more than \$10,000.

24 (c) Whenever a corporate operator knowingly violates a health  
25 or safety provision of this chapter or health or safety rules



1 promulgated pursuant to this chapter, or knowingly violates or  
2 fails or refuses to comply with any order issued under this law or  
3 any order incorporated in a final decision issued under this law,  
4 except an order incorporated in a decision issued under subsection  
5 (a) of this section or subsection (b), section twenty-two of this  
6 article, any director, officer or agent of the corporation who  
7 knowingly authorized, ordered or carried out the violation, failure  
8 or refusal is subject to the same civil penalties that may be  
9 imposed upon a person under subsections (a) and (b) of this  
10 section.

11 (d) Whoever knowingly makes any false statement,  
12 representation or certification in any application, record, report,  
13 plan or other document filed or required to be maintained pursuant  
14 to this law or any order or decision issued under this law is  
15 guilty of a misdemeanor and, upon conviction thereof, shall be  
16 fined not more than ~~\$5,000~~ \$10,000 or ~~imprisoned~~ confined in ~~the~~  
17 jail not more than ~~six months~~ one year, or both fined and  
18 ~~imprisoned~~ confined. The conviction of any person under this  
19 subsection shall result in the revocation of any certifications  
20 held by the person under this chapter which certified or authorized  
21 the person to direct other persons in coal mining by operation of  
22 law and bars that person from being issued any license under this  
23 chapter, except a miner's certification, for a period of not less  
24 than one year or for a longer period as may be determined by the  
25 director.

1 (e) Whoever willfully distributes, sells, offers for sale,  
2 introduces or delivers in commerce any equipment for use in a coal  
3 mine, including, but not limited to, components and accessories of  
4 the equipment, who willfully misrepresents the equipment as  
5 complying with the provisions of this law, or with any  
6 specification or rule of the director applicable to the equipment,  
7 and which does not comply with the law, specification or rule, is  
8 guilty of a misdemeanor and, upon conviction thereof, is subject to  
9 the same fine and ~~imprisonment~~ confinement that may be imposed upon  
10 a person under subsection (d) of this section.

11 (f) Any person who willfully violates any safety standard  
12 pursuant to this chapter or a rule promulgated thereunder or who  
13 willfully authorizes, orders or carries out such violation is  
14 guilty of a felony and, upon conviction thereof, shall be fined not  
15 more than \$10,000 or confined in a state correctional facility not  
16 less than one year and not more than five years, or both fined and  
17 imprisoned.

18 ~~(f)~~ (g) There is continued in the treasury of the State of  
19 West Virginia a Special Health, Safety and Training Fund. All  
20 civil penalty assessments collected under this section shall be  
21 collected by the director and deposited with the Treasurer of the  
22 State of West Virginia to the credit of the Special Health, Safety  
23 and Training Fund. The fund shall be used by the director who is  
24 authorized to expend the moneys in the fund for the administration  
25 of this chapter.

1 §22A-1-40. Reporting violations, accident investigations; witness  
2 interviews.

3 (a) To the extent permitted by law, any person meeting with,  
4 or providing a statement to, the director may request to do so on  
5 a confidential basis without the consent, presence, involvement or  
6 knowledge of any third party. Upon such a request, the director  
7 shall keep the identity of any individual providing such a  
8 statement and the statement itself confidential, to the extent  
9 permitted by law, and not subject to release pursuant to article  
10 one, chapter twenty-nine-b of this code. Nothing in this section  
11 precludes a person from being represented when speaking with the  
12 director. Further, nothing in this section precludes a person  
13 under subpoena or who is voluntarily speaking with the director  
14 from authorizing any other person from participation in such  
15 meeting or statement.

16 (b) If any miner is entrapped, fatally injured or otherwise  
17 unable, as the result of an accident, to designate a representative  
18 to observe witness interviews and investigatory hearings conducted  
19 in an accident investigation, the miner's closest relative may  
20 designate one representative who may, subject to subsection (a) of  
21 this section, attend witness interviews and investigatory hearings  
22 regarding the accident for the purpose of observing such interviews  
23 and hearings: Provided, That the right of a designated  
24 representative to observe witness interviews and investigatory

1 hearings pursuant to this subsection shall be subject to subsection  
2 (a) and shall not extend to interviews or investigatory hearings of  
3 a criminal nature conducted by state or federal inspectors or other  
4 state or federal law enforcement officers. No more than five  
5 representatives designated pursuant this section may attend witness  
6 interviews and investigatory hearings for the purpose of observing  
7 such interviews and hearings.

8 (c) The Director shall, in consultation with the Board of Coal  
9 Mine Health and Safety, develop a list of persons skilled in the  
10 fields of grief and crisis management, communications and family  
11 support. Following any mining accident involving entrapped miners  
12 or fatal injuries, the Director shall promptly provide the list of  
13 such individuals to the families of the accident victim or victims.  
14 The individuals contained on the list developed by the Director  
15 shall be available as a resource to families of accident victims  
16 who seek their assistance. The list shall also contain a reference  
17 to this code section and a statement that the family has the right  
18 to designate a representative of their choosing regardless of  
19 whether that person is not named on the list.

20 **ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;**

21 **ADMINISTRATION; SUBSTANCE ABUSE.**

22 **§22A-1A-1. Substance abuse screening; minimum requirements;**

23 **standards and procedures for screening.**

24 (a) Beginning January 1, 2013, every employer of certified

1 persons shall perform drug tests for persons who work as a miner,  
2 as defined in section two, article one of this chapter, shall  
3 implement a substance abuse screening policy and program that  
4 shall, at a minimum, include:

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

8 A. Amphetamines,

9 B. Cannabinoids/THC,

10 C. Cocaine,

11 D. Opiates,

12 E. Phencyclidine (PCP),

13 F. Benzodiazepines,

14 G. Propoxyphene,

15 H. Methadone,

16 I. Barbiturates, and

17 J. Synthetic narcotics.

18 Split samples shall be collected by providers who are  
19 certified as complying with standards and procedures set out in the  
20 United States Department of Transportation's rule, 49 CFR Part 40,  
21 which may be amended from time to time by legislative rule of the  
22 Office. Collected samples shall be tested by laboratories  
23 certified by the United States Department of Health and Human  
24 Services, Substance Abuse and Mental Health Services Administration  
25 (SAMHSA) for collection and testing. Persons tested shall be

1 provided upon his or her request, to be provided one of the  
2 collected split samples. Notwithstanding the provisions of this  
3 subdivision, the mine operator may implement a more stringent  
4 substance abuse screening policy and program;

5 (2) A random substance abuse testing program covering the  
6 substances referenced in subdivision (1) of this subsection.

7 "Random testing" means that each person subject to testing has a  
8 statistically equal chance of being selected for testing at random  
9 and at unscheduled times. The selection of persons for random  
10 testing shall be made by a scientifically valid method, such as a  
11 random number table or a computer-based random number generator  
12 that is matched with the persons' social security numbers, payroll  
13 identification numbers, or other comparable identifying numbers;  
14 and

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

18 (b) The provisions of this section providing for revocation or  
19 suspension of a certification or certifications shall not be  
20 implemented or effective until the Board of Coal Miners Safety  
21 promulgates a rule establishing certifications subject to  
22 suspension or revocation pursuant to study and implementation to  
23 section fourteen, article six of this chapter.

24 (c) For purposes of this subsection, preemployment testing  
25 shall be required upon hiring by a new employer, rehiring by a

1 former employer following a termination of the employer/employee  
2 relationship, or transferring to a West Virginia mine from an  
3 employer's out-of-state mine to the extent that any substance abuse  
4 test required by the employer in the other jurisdiction does not  
5 comply with the minimum standards for substance abuse testing  
6 required by this article. Furthermore, the provisions of this  
7 section apply to all employers that employ certified persons who  
8 work in mines, regardless of whether that employer is an operator,  
9 contractor, subcontractor or otherwise. all employees of the  
10 employer employed at a mine are subject to testing.

11 (d) The employer or his or her agent shall notify the director  
12 at least quarterly, on a form prescribed by the director, of the  
13 number of pre-employment substance abuse screening tests  
14 administered during the prior calendar quarter and the number of  
15 positive test results associated with the substance abuse screening  
16 tests administered.

17 (e) The employer or his or her agent shall notify the  
18 director, on a form prescribed by the director, within seven days  
19 following completion of an arbitration conducted pursuant to a  
20 collective bargaining agreement applicable to the certified person,  
21 if any, of discharging a certified person for violation of the  
22 employer's substance abuse screening policy and program. The  
23 notification shall be accompanied by a record of the test showing  
24 positive results or other violation. Notice shall result in the  
25 immediate temporary suspension of all certificates held by the

1 certified person who failed the screening, pending a hearing before  
2 the board of appeals pursuant to section two of this article.

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

10 (g) The provisions of this article shall not be construed to  
11 preclude an employer from developing or maintaining a drug and  
12 alcohol abuse policy, testing program or substance abuse program  
13 that exceeds the minimum requirements set forth in this section.  
14 The provisions of this article shall also not be construed to  
15 require an employer to alter, amend, revise or otherwise change, in  
16 any respect, a previously established substance abuse screening  
17 policy and program that meets or exceeds the minimum requirements  
18 set forth in this section. The provisions of this article shall  
19 require an employer to administer pre-employment and random  
20 substance abuse tests to all of its employees who as part of their  
21 employment are regularly present at a mine: *Provided*, That each  
22 employer shall retain the discretion to establish the parameters of  
23 its substance abuse screening policy and program so long as it  
24 meets the minimum requirements of this article.

25 **§22A-1A-2. Board of appeals hearing procedures.**



1       (a) Any hearing conducted after the temporary suspension of a  
2 employee pursuant to this article, shall be conducted within sixty  
3 days of the temporary suspension. The board of appeals shall make  
4 every effort to hold the hearing within forty days of the temporary  
5 suspension.

6       (b) All hearings of the board of appeals pursuant to this  
7 section shall be conducted in accordance with the provisions of  
8 subsection (c), section thirty-one, article one of this chapter.  
9 The board of appeals may suspend the certificate or certificates of  
10 a certified person for violation of this article or for any other  
11 violation of this chapter pertaining to substance abuse. The board  
12 of appeals may impose further disciplinary actions for repeat  
13 violations. The director shall have the authority to propose  
14 legislative rules for promulgation in accordance with article  
15 three, chapter twenty-nine-a of this code to establish the  
16 disciplinary actions referenced in this section following the  
17 receipt of recommendations from the Board of Coal Mine Health and  
18 Safety following completion of the study required pursuant to  
19 section fourteen, article six of this chapter. The legislative  
20 rules authorized by this subsection shall not, however, include any  
21 provisions requiring an employer to take or refrain from taking any  
22 specific personnel action or mandating any employer to establish or  
23 maintain an employer-funded substance abuse rehabilitation program.

24       (c) No person whose certification is suspended or revoked  
25 under this section may perform any duties under any other

1 certification issued under this chapter, during the period of the  
2 suspension imposed by the board of appeals.

3 (d) Any party adversely affected by a final order or decision  
4 issued by the board of appeals hereunder is entitled to judicial  
5 review thereof pursuant to section four, article five, chapter  
6 twenty-nine-a of this code.

7 **§22A-1A-3. Disclosure of records exempt; exceptions.**

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

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

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

18 (2) The purpose of the disclosure;

19 (3) The precise information to be disclosed;

20 (4) The duration of the consent; and

21 (5) The signature of the person authorizing the release of the  
22 information;

23 (b) Where the release of the information is compelled by the  
24 board of appeals or a court of competent jurisdiction;

25 (c) Where the release of the information is relevant to a

1 legal claim asserted by the person tested;

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

6 (e) Where release of the information is deemed appropriate by  
7 the board of appeals or a court of competent jurisdiction in a  
8 disciplinary proceeding.

9 **ARTICLE 2. UNDERGROUND MINES.**

10 **§22A-2-2. Submittal of detailed ventilation plan to director.**

11 (a) A mine operator shall submit a detailed ventilation plan  
12 and any addendums to the director for review and comment. The mine  
13 operator shall review the plan with the director and address  
14 concerns to the extent practicable. The operator shall deliver to  
15 the miners' representative employed by the operator at the mine a  
16 copy of the operator's proposed annual ventilation plan at least  
17 ten days prior to the date of submission. The miners'  
18 representative shall be afforded the opportunity to submit written  
19 comments to the operator prior to such submission; in addition the  
20 miners' representative may submit written comments to the director.

21 The director shall submit any concern that is not addressed to  
22 the United States Department of Labor - Mine Safety and Health  
23 Administration through comments to the plan. The mine operator  
24 shall provide a copy of the plan to the director and the miners'  
25 representative, if any, employed by the operator at the mine ten

1 days prior to the submittal of the plan to MSHA.

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

5 (c) In the event of an unforeseen situation requiring  
6 immediate action on a plan revision, the operator shall submit the  
7 proposed revision to the director and the miners' representative,  
8 if any, employed by the operator at the mine when the proposed  
9 revision is submitted to MSHA. The director shall work with the  
10 operator to review and comment on the proposed plan revision to  
11 MSHA as quickly as possible.

12 (d) Upon approval by MSHA, the plan is enforceable by the  
13 director. The approved plan and all revisions and addendums  
14 thereto shall be posted on the mine bulletin board and made  
15 available for inspection by the miners at that mine for the period  
16 of time that they are in effect.

17 **§22A-2-12. Instruction of employees and supervision of**  
18 **apprentices; annual examination of persons using**  
19 **approved methane detecting devices; records of**  
20 **examination; maintenance of methane detectors,**  
21 **etc.**

22 (a) The Office of Miners' Health, Safety and Training shall  
23 prescribe and establish a course of instruction in mine safety and  
24 particularly in dangers incident to ~~such~~ employment in mines and in

1 mining laws and rules, which course of instruction shall be  
2 successfully completed within twelve weeks after any person is  
3 first employed as a miner. It is further the duty and  
4 responsibility of the Office of Miners' Health, Safety and Training  
5 to see that ~~such~~ the course is given to all persons as above  
6 provided after their first being employed in any mine in this  
7 state. In addition to other enforcement actions available to the  
8 director, upon a finding by the director of the existence of a  
9 pattern of conduct creating a hazardous condition at a mine, the  
10 director shall notify the Board of Miners' Training, Education and  
11 Certification, which shall cause additional training to occur at  
12 the mine addressing such safety issue or issues identified by the  
13 director, pursuant to article seven of this chapter.

14       (b) It is the duty of the mine foreman or the assistant mine  
15 foreman of every coal mine in this state to see that every person  
16 employed to work in ~~such~~ the mine is, before beginning work  
17 therein, instructed in the particular danger incident to his or her  
18 work in ~~such~~ the mine, and furnished a copy of the mining laws and  
19 rules of ~~such~~ the mine. It is the duty of every mine operator who  
20 employs apprentices, as that term is used in sections three and  
21 four, article eight of this chapter to ensure that the apprentices  
22 are effectively supervised with regard to safety practices and to  
23 instruct apprentices in safe mining practices. Every apprentice  
24 shall work under the direction of the mine foreman or his or her  
25 assistant mine foreman and they are responsible for his or her

1 safety. The mine foreman or assistant mine foreman may delegate  
2 the supervision of an apprentice to an experienced miner, but the  
3 foreman and his or her assistant mine foreman remain responsible  
4 for the apprentice. During the first ~~ninety~~ one hundred twenty  
5 days of employment in a mine, the apprentice shall work within  
6 sight and sound of the mine foreman, assistant mine foreman, or an  
7 experienced miner, and in ~~such~~ a location that the mine foreman,  
8 assistant mine foreman or experienced miner can effectively respond  
9 to cries for help of the apprentice. ~~Such~~ The location shall be on  
10 the same side of any belt, conveyor or mining equipment.

11 (c) Persons whose duties require them to use a ~~flame safety~~  
12 ~~lamp~~ approved methane detecting device or other approved methane  
13 detectors shall be examined at least annually as to their  
14 competence by a qualified official from the Office of Miners'  
15 Health, Safety and Training and a record of ~~such~~ the examination  
16 shall be kept by the operator and the office. ~~Flame safety lamps~~  
17 approved methane detecting devices and other approved methane  
18 detectors shall be given proper maintenance and shall be tested  
19 before each working shift. Each operator shall provide for the  
20 proper maintenance and care of the permissible ~~flame safety lamp~~  
21 approved methane detecting device or any other approved device for  
22 detecting methane and oxygen deficiency by a person trained in ~~such~~  
23 the maintenance, and, before each shift, care shall be taken to  
24 ensure that ~~such~~ the ~~lamp~~ approved methane detecting device or  
25 other device is in a permissible condition and maintained according

1 to manufacturer's specifications.

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

3 The mine foreman and the superintendent or owner-operator of  
4 the mine shall, ~~also~~ each day, read carefully and countersign with  
5 ink or indelible pencil all reports entered in the record book of  
6 the fire bosses. ~~and he~~ The mine foreman shall supervise the fire  
7 boss or fire bosses, except as ~~hereinafter~~ provided in section  
8 twenty-one of this article.

9 **§22A-2-20. Preparation of danger signal by fire boss or certified**

10 **person acting as such prior to examination; report;**  
11 **records open for inspection.**

12 (a) It ~~shall be~~ is the duty of the fire boss, or a certified  
13 person acting as such, to prepare a danger signal (a separate  
14 signal for each shift) with red color at the mine entrance at the  
15 beginning of his or her shift or prior to his or her entering the  
16 mine to make his or her examination and, except for those persons  
17 already on assigned duty, no person except the mine owner, operator  
18 or agent, and only then in the case of necessity, shall pass beyond  
19 this danger signal until the mine has been examined by the fire  
20 boss or other certified person and the mine or certain parts  
21 thereof reported by him or her to be safe. When reported by him or  
22 her to be safe, the danger sign or color thereof shall be changed  
23 to indicate that the mine is safe in order that employees going on  
24 shift may begin work. Each person designated to make ~~such~~ the fire

1 boss examinations shall be assigned a definite underground area of  
2 ~~such~~ the mine, and, in making his or her examination shall examine  
3 all active working places in the assigned area and make tests with  
4 an approved device for accumulations of methane and oxygen  
5 deficiency; examine seals and doors; examine and test the roof,  
6 face and ribs in the working places and on active roadways and  
7 travelways, approaches to abandoned workings, ~~and~~ accessible falls  
8 in active sections and areas where any person is scheduled or  
9 assigned to work or travel underground. He or she shall place his  
10 or her initials and the date at or near the face of each place he  
11 or she examines. Should he or she find a condition which he or she  
12 considers dangerous to persons entering ~~such~~ the areas, he or she  
13 shall place a conspicuous danger sign at all entrances to ~~such~~ the  
14 place or places. Only persons authorized by the mine management may  
15 enter ~~such~~ the places while the sign is posted and only for the  
16 purpose of eliminating the dangerous condition. Upon completing  
17 his or her examination he or she shall report by suitable  
18 communication system or in person the results of this examination  
19 to a certified person designated by mine management to receive and  
20 record ~~such~~ the report, at a designated station on the surface of  
21 the premises of the mine or underground, before other persons enter  
22 the mine to work in ~~such~~ coal-producing shifts. He or she shall  
23 also record the results of his or her examination with ink or  
24 indelible pencil in a book prescribed by the director, kept for  
25 ~~such~~ the purpose at a place on the surface of the mine designated



1 by mine management. All records of daily and weekly reports, as  
2 prescribed herein, shall be open for inspection by interested  
3 persons.

4 (b) Supplemental Examination. -- When it becomes necessary to  
5 have workers enter areas of the mine not covered during the  
6 preshift examination, a supplemental examination shall be performed  
7 by a fire boss or certified person acting as such within three  
8 hours before any person enters the area. The fire boss or  
9 certified person acting as such shall examine the area for  
10 hazardous conditions, determine if air is traveling in its proper  
11 direction and test for oxygen deficiency and methane.

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

14 (d) Upon completing his or her examination he or she shall  
15 report by suitable communication system or in person the results of  
16 this examination to a certified person designated by mine  
17 management to receive and record such the report, at a designated  
18 station on the surface of the premises of the mine or underground,  
19 before other persons enter the mine to work in coal-producing  
20 shifts. The results of the examination shall be recorded with ink  
21 or indelible pencil by the examiner in the book referenced in  
22 subsection (a) of this section before he or she leaves the mine on  
23 that shift.

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

25 (a) In all mines, dangerous accumulations of fine, dry coal

1 and coal dust shall be removed from the mine, and all dry and dusty  
2 operating sections and haulageways and conveyors and back entries  
3 shall be rock dusted or dust allayed by ~~such~~ other methods as may  
4 be approved by the director.

5 (b) All mines or locations in mines that are too wet or too  
6 high in incombustible content for a coal dust explosion to initiate  
7 or propagate are not required to be rock dusted during the time any  
8 of these conditions prevail. Coal dust and other dust in  
9 suspension in unusual quantities shall be allayed by sprinkling or  
10 other dust allaying devices.

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

23 (d) Rock dust shall not contain more than five percent by  
24 volume of quartz or free silica particles and shall be pulverized  
25 so that one hundred percent will pass through a twenty mesh screen

1 and seventy percent or more will pass through a two hundred mesh  
2 screen.

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

7 **§22A-2-43. Actions to detect and respond to excess methane.**

8 The following actions are required to detect and respond to  
9 excess methane:

10 (a) Testing required. -- In any mine, no electrical equipment  
11 or permissible diesel powered equipment may be brought in by the  
12 last open crosscut until a qualified person tests for methane. If  
13 one percent or more methane is present, the equipment may not be  
14 taken into the area until the methane concentration is reduced to  
15 less than one percent. Thereafter, subsequent methane examinations  
16 shall be made at least every twenty minutes while any electrical or  
17 diesel powered equipment is present and energized.

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

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

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

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

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

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

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

13 (A) Except for federal or state mine inspectors, the mine  
14 foreman, assistant mine foreman, miners representative or  
15 individuals authorized by the mine foreman or assistant mine  
16 foreman, all individuals shall be withdrawn from the affected area.

17 (B) Except for intrinsically safe AMS, electrically powered  
18 equipment in the affected area shall be disconnected at the power  
19 source.

20 (d) Return air split.--

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

1 system to reduce the concentration of methane in the return air to  
2 less than one percent.

3 (2) When one and five tenths percent or more methane is  
4 present in a return air split between the last working place on a  
5 working section and where that split of air meets another split of  
6 air or the location where the split is used to ventilate seals or  
7 worked-out areas, except for federal or state mine inspectors, the  
8 mine foreman, assistant mine foreman or individuals authorized by  
9 the mine foreman, miners representative, or assistant mine foreman,  
10 all individuals shall be withdrawn from the affected area.

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

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

18 (e) Return air split alternative. --

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

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

24 (B) The methane content of the air in the split is  
25 continuously monitored during mining operations by an AMS that

1 gives a visual and audible signal on the working section when the  
2 methane in the return air reaches one and five tenths percent and  
3 the methane content is monitored as specified in the approved  
4 ventilation plan.

5 (C) Rock dust is continuously applied with a mechanical duster  
6 to the return air course during coal production at a location in  
7 the air course immediately out by the most in by monitoring point.

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

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

16 (B) Except for federal or state mine inspectors, the mine  
17 foreman, assistant mine foreman, miners representative or  
18 individuals authorized by the mine foreman or assistant mine  
19 foreman, all individuals shall be withdrawn from the affected area.

20 (C) Except for intrinsically safe AMS, equipment in the  
21 affected area shall be de-energized, electric power shall be  
22 disconnected at the power source and other mechanized equipment  
23 shall be shut off.

24 (D) No other work shall be permitted in the affected area  
25 until the methane concentration in the return air is less than one

1 and five tenths percent.

2 (f) Methane monitors. --

3 (1) Approved methane monitors shall be installed and  
4 maintained on all face cutting machines, continuous miners,  
5 longwall face equipment, loading machines and other mechanized  
6 equipment used to extract coal or load coal within the working  
7 place.

8 (2) The sensing device for methane monitors on longwall  
9 shearing machines shall be installed at the return air end of the  
10 longwall face. An additional sensing device also shall be  
11 installed on the longwall shearing machine, downwind and as close  
12 to the cutting head as practicable. An alternative location or  
13 locations for the sensing device required on the longwall shearing  
14 machine may be approved in the ventilation plan.

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

17 (4) Methane monitors shall be maintained in permissible and  
18 proper operating condition and shall be calibrated with a known  
19 air-methane mixture at least once every fifteen days and a record  
20 of the calibration shall be recorded with ink or indelible pencil  
21 by the person performing the calibration in a book prescribed by  
22 the director and maintained on the surface. Calibration records  
23 shall be retained for inspection for at least one year from the  
24 date of the test. To assure that methane monitors are properly  
25 maintained and calibrated, the operator shall use persons properly

1 trained in the maintenance, calibration, and permissibility of  
2 methane monitors to calibrate and maintain the devices.

3 (g) Automatic de-energization of extraction apparatus. --

4 When the methane concentration at any machine-mounted methane  
5 monitor reaches one percent, the monitor shall give a warning  
6 signal. The warning signal device of the methane monitor shall be  
7 visible to a person operating the equipment on which the monitor is  
8 mounted. The methane monitor shall automatically de-energize the  
9 extraction apparatus on the machine on which it is mounted, but not  
10 the machine as a whole to facilitate proper mining procedures,  
11 when:

12 (1) The methane concentration at any machine-mounted methane  
13 monitor reaches one and twenty-five one hundredths percent; or

14 (2) The monitor is not operating properly.

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

18 (h) Compliance schedule for machine refit.--

19 Within one hundred twenty days of the effective date of the  
20 amendments to this section, the Board of Coal Mine Health and  
21 Safety shall promulgate legislative rules pursuant to article  
22 three, chapter twenty-nine-a of this code establishing a compliance  
23 schedule setting forth the time frame in which all new and existing  
24 face cutting machines, continuous miners, longwall face equipment,  
25 loading machines and other mechanized equipment used to extract



1 coal or load coal within the working place shall be refitted with  
2 methane monitors. Enforcement of subsections (f) and (g) of this  
3 section shall not commence until after the time frame is  
4 established rule.

5 **§22A-2-43a. Operation of cutting and mining machines; repair and**  
6 **maintenance of same.**

7 (a) Qualified person to operate cutting machine. -- No person  
8 shall be placed in charge of a coal-cutting machine in any mine who  
9 is not a properly trained person, capable of determining the safety  
10 of the roof and sides of the working places and of detecting the  
11 presence of explosive gas, unless they are accompanied by a  
12 certified or properly trained.

13 (b) Operation of mining machines. -- Machine operators and  
14 helpers shall use care while operating mining machines. They shall  
15 examine the roof of the working place to see that it is safe before  
16 starting to operate the machine. They shall not move the machine  
17 while the cutter chain is in motion. Additionally, no person  
18 shall operate the cutterhead on any continuous miner while the  
19 machine is moving from place to place underground: Provided, That  
20 a cutterhead may be operated during clean up or when the machine  
21 is extracting coal.

22 (c) Repair and maintenance of mining machines. -- (1) Repairs  
23 or maintenance shall not be performed on mining machines until the  
24 power is locked and tagged and the machinery is blocked against

1 motion, except where machinery motion is necessary to make  
2 adjustments. For purposes of this subsection, the following terms  
3 shall have the following meanings:

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

7 (B) "Repair" means to fix, mend, or restore to good working  
8 order, pursuant manufacturer specifications.

9 (2) Methods to comply with the standard to prevent inadvertent  
10 or unexpected motion include:

11 (A) Opening the circuit breaker for the affected machinery,  
12 provided no energized parts or conductors are exposed, and placing  
13 the run selector switch for startup of the machinery in the "off"  
14 position. On longwall machinery, this would include placing the  
15 lockout switch in the lockout position in the area were the repair  
16 or maintenance is being performed. A qualified electrician is  
17 required to de-energize a circuit breaker if there are exposed  
18 energized parts or conductors; or

19 (B) Opening the circuit breaker at the power center that  
20 supplies power for the affected machinery and disengaging the power  
21 cable coupler that supplies power to the machinery; or

22 (C) Opening a manual visible disconnect switch, either within  
23 the circuit or onboard the machinery, and locking and tagging the  
24 switch against reenergization. A control circuit start-stop switch  
25 does not constitute a manual disconnect; or

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

7 **§22A-2-55. Protective equipment and clothing.**

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

12        (b) Employees engaged in haulage operations and all other  
13 persons employed around moving equipment on the surface and  
14 underground shall wear snug-fitting clothing.

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

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

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

1           (f) (1) A self-contained self-rescue device approved by the  
2 director shall be worn by each person underground or kept within  
3 his or her immediate reach and the device shall be provided by the  
4 operator. The self-contained self-rescue device shall be adequate  
5 to protect a miner for one hour or longer. Each operator shall  
6 train each miner in the use of ~~such~~ the device and refresher  
7 training courses for all underground employees shall be held ~~during~~  
8 ~~each calendar year~~ once each quarter. Quarters shall be based on  
9 a calendar year.

10           (2) In addition to the requirements of subdivision (1) of this  
11 subsection, the operator shall also provide caches of additional  
12 self-contained self-rescue devices throughout the mine in  
13 accordance with a plan approved by the director. Each additional  
14 self-contained self-rescue device shall be adequate to protect a  
15 miner for one hour or longer. The total number of additional  
16 self-contained self-rescue devices, the total number of storage  
17 caches and the placement of each cache throughout the mine shall be  
18 established by rule pursuant to subsection (I) of this section. A  
19 luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or  
20 "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at  
21 each cache and luminescent direction signs shall be posted leading  
22 to each cache. Lifeline cords or other similar device, with  
23 reflective material at twenty-five foot intervals, shall be  
24 attached to each cache from the last open crosscut to the surface.  
25 The operator shall conduct weekly inspections of each cache and

1 each lifeline cord or other similar device to ensure operability.

2 (3) Any person that, without the authorization of the operator  
3 or the director, knowingly removes or attempts to remove any  
4 self-contained self-rescue device or lifeline cord from the mine or  
5 mine site with the intent to permanently deprive the operator of  
6 the device or lifeline cord or knowingly tampers with or attempts  
7 to tamper with ~~such~~ the device or lifeline cord shall be guilty of  
8 a felony and, upon conviction thereof, shall be imprisoned in a  
9 state correctional facility for not less than one year nor more  
10 than ten years or fined not less than \$10,000 nor more than  
11 \$100,000, or both.

12 (g) (1) A wireless emergency communication device approved by  
13 the director and provided by the operator shall be worn by each  
14 person underground. The wireless emergency communication device  
15 shall, at a minimum, be capable of receiving emergency  
16 communications from the surface at any location throughout the  
17 mine. Each operator shall train each miner in the use of the device  
18 and provide refresher training courses for all underground  
19 employees during each calendar year. The operator shall install in  
20 or around the mine any and all equipment necessary to transmit  
21 emergency communications from the surface to each wireless  
22 emergency communication device at any location throughout the mine.

23 (2) Any person that, without the authorization of the operator  
24 or the director, knowingly removes or attempts to remove any  
25 wireless emergency communication device or related equipment, from

1 the mine or mine site with the intent to permanently deprive the  
2 operator of the device or equipment or knowingly tampers with or  
3 attempts to tamper with the device or equipment shall be guilty of  
4 a felony and, upon conviction thereof, shall be imprisoned in a  
5 state correctional facility for not less than one year nor more  
6 than ten years or fined not less than \$10,000 nor more than  
7 \$100,000, or both.

8       (h) (1) A wireless tracking device approved by the director  
9 and provided by the operator shall be worn by each person  
10 underground. In the event of an accident or other emergency, the  
11 tracking device shall, at a minimum, be capable of providing  
12 real-time monitoring of the physical location of each person  
13 underground: *Provided*, That no person shall discharge or  
14 discriminate against any miner based on information gathered by a  
15 wireless tracking device during nonemergency monitoring. Each  
16 operator shall train each miner in the use of the device and  
17 provide refresher training courses for all underground employees  
18 during each calendar year. The operator shall install in or around  
19 the mine all equipment necessary to provide real-time emergency  
20 monitoring of the physical location of each person underground.

21       (2) Any person that, without the authorization of the operator  
22 or the director, knowingly removes or attempts to remove any  
23 wireless tracking device or related equipment, approved by the  
24 director, from a mine or mine site with the intent to permanently  
25 deprive the operator of the device or equipment or knowingly

1 tampers with or attempts to tamper with the device or equipment  
2 shall be guilty of a felony and, upon conviction thereof, shall be  
3 imprisoned in a state correctional facility for not less than one  
4 year nor more than ten years or fined not less than \$10,000 nor  
5 more than \$100,000, or both.

6 (I) The director may promulgate emergency and legislative  
7 rules to implement and enforce this section pursuant to the  
8 provisions of article three, chapter twenty-nine-a of this code.

9 **§22A-2-66. Accident; notice; investigation by Office of Miners'**  
10 **Health, Safety and Training.**

11 (a) For the purposes of this section, the term "accident"  
12 means:

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

14 (2) An injury to an individual at a mine which has a  
15 reasonable potential to cause death;

16 (3) The entrapment of an individual;

17 (4) The unplanned inundation of a mine by a liquid or gas;

18 (5) The unplanned ignition or explosion of gas or dust;

19 (6) The unplanned ignition or explosion of a blasting agent or  
20 an explosive;

21 (7) An unplanned fire in or about a mine not extinguished  
22 within five minutes of ignition;

23 (8) An unplanned roof fall at or above the anchorage zone in  
24 active workings where roof bolts are in use or an unplanned roof or  
25 rib fall in active workings that impairs ventilation or impedes

1 passage;

2 (9) A coal or rock outburst that causes withdrawal of miners  
3 or which disrupts regular mining activity for more than one hour;

4 (10) An unstable condition at an impoundment, refuse pile or  
5 culm bank which requires emergency action in order to prevent  
6 failure, or which causes individuals to evacuate an area, or the  
7 failure of an impoundment, refuse pile or culm bank;

8 (11) Damage to hoisting equipment in a shaft or slope which  
9 endangers an individual or which interferes with use of the  
10 equipment for more than thirty minutes; and

11 (12) An event at a mine which causes death or bodily injury to  
12 an individual not at the mine at the time the event occurs.

13 (b) Whenever any accident occurs in or about any coal mine or  
14 the machinery connected therewith, it is the duty of the operator  
15 or the mine foreman in charge of the mine to give notice, within  
16 fifteen minutes of ascertaining the occurrence of an accident, to  
17 the Mine and Industrial Accident Emergency Operations Center at the  
18 statewide telephone number established by the Director of the  
19 Division of Homeland Security and Emergency Management pursuant to  
20 the provisions of article five-b, chapter fifteen of this code  
21 stating the particulars of the accident: *Provided*, That the  
22 operator or the mine foreman in charge of the mine may comply with  
23 this notice requirement by immediately providing notice to the  
24 appropriate local organization for emergency services as defined in  
25 section eight, article five of said chapter, or the appropriate



1 local emergency telephone system operator as defined in article  
2 six, chapter twenty-four of this code: Provided, however, That if,  
3 immediately upon ascertaining the occurrence of an accident, the  
4 operator or the mine foreman in charge of the mine provides notice  
5 to the local organization for emergency services as defined in  
6 section eight, article five, chapter fifteen of this code, or the  
7 appropriate local emergency telephone system operator as defined in  
8 article six, chapter twenty-four of this code, then, in order to  
9 comply with this subsection, the operator or mine foreman in charge  
10 of the mine shall also give notice to the Mine and Industrial  
11 Accident Emergency Operations Center at the statewide number  
12 identified in this subsection within fifteen minutes of completing  
13 the telephone call to the local organization for emergency services  
14 or the appropriate local emergency telephone system operator, as  
15 applicable: Provided, ~~however~~ further, That nothing in this  
16 subsection shall be construed to relieve the operator from any  
17 reporting or notification requirement under federal law.

18 (c) The Director of the Office of Miners' Health, Safety and  
19 Training shall impose, pursuant to rules authorized in this  
20 section, a civil administrative penalty of \$100,000 on the operator  
21 if it is determined that the operator or the mine foremen in charge  
22 of the mine failed to give immediate notice as required in this  
23 section: *Provided,* That the director may waive imposition of the  
24 civil administrative penalty at any time if he or she finds that  
25 the failure to give immediate notice was caused by circumstances

1 wholly outside the control of the operator: Provided, however, That  
2 the assessment of the civil administrative penalty set forth in  
3 this subsection may be appealed to the Board of Appeals, and the  
4 Board of Appeals may, by unanimous vote, reduce the amount of the  
5 civil administrative penalty upon a finding of mitigating  
6 circumstances warranting the imposition of a lesser amount.

7 (d) If anyone is ~~killed~~ fatally injured, the inspector shall  
8 immediately go to the scene of the accident and make  
9 recommendations and render assistance as he or she may deem  
10 necessary for the future safety of the men and investigate the  
11 cause of the explosion or accident and make a record. He or she  
12 shall preserve the record with the other records in his or her  
13 office. The cost of the investigation records shall be paid by the  
14 Office of Miners' Health, Safety and Training. A copy shall be  
15 furnished to the operator and other interested parties. To enable  
16 him or her to make an investigation, he or she has the power to  
17 compel the attendance of witnesses and to administer oaths or  
18 affirmations. The director has the right to appear and testify and  
19 to offer any testimony that may be relevant to the questions and to  
20 cross-examine witnesses.

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

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

23 (a) The board shall adopt as standard rules the "coal mine  
24 health and safety provisions of this chapter". Such standard rules  
25 and any other rules shall be adopted by the board without regard to

1 the provisions of chapter twenty-nine-a of this code. The Board of  
2 Coal Mine Health and Safety shall devote its time toward  
3 promulgating rules in those areas specifically directed by this  
4 chapter and those necessary to prevent fatal accidents and  
5 injuries.

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

10 (c) The board shall develop, promulgate and revise, as may be  
11 appropriate, rules as are necessary and proper to effectuate the  
12 purposes of article two of this chapter and to prevent the  
13 circumvention and evasion thereof, all without regard to the  
14 provisions of chapter twenty-nine-a of this code:

15 (1) Upon consideration of the latest available scientific data  
16 in the field, the technical feasibility of standards, and  
17 experience gained under this and other safety statutes, such rules  
18 may expand protections afforded by this chapter notwithstanding  
19 specific language therein, and such rules may deal with subject  
20 areas not covered by this chapter to the end of affording the  
21 maximum possible protection to the health and safety of miners.

22 (2) No rules promulgated by the board shall reduce or  
23 compromise the level of safety or protection afforded miners below  
24 the level of safety or protection afforded by this chapter.

1           (3) Any miner or representative of any miner, or any coal  
2 operator has the power to petition the circuit court of Kanawha  
3 County for a determination as to whether any rule promulgated or  
4 revised reduces the protection afforded miners below that provided  
5 by this chapter, or is otherwise contrary to law: *Provided*, That  
6 any rule properly promulgated by the board pursuant to the terms  
7 and conditions of this chapter creates a rebuttable presumption  
8 that said rule does not reduce the protection afforded miners below  
9 that provided by this chapter.

10           (4) The director shall cause proposed rules and a notice  
11 thereof to be posted as provided in section eighteen, article one  
12 of this chapter. The director shall deliver a copy of such proposed  
13 rules and accompanying notice to each operator affected. A copy of  
14 such proposed rules shall be provided to any individual by the  
15 director's request. The notice of proposed rules shall contain a  
16 summary in plain language explaining the effect of the proposed  
17 rules.

18           (5) The board shall afford interested persons a period of not  
19 less than thirty days after releasing proposed rules to submit  
20 written data or comments. The board may, upon the expiration of  
21 such period and after consideration of all relevant matters  
22 presented, promulgate such rules with such modifications as it may  
23 deem appropriate.

24           (6) On or before the last day of any period fixed for the

1 submission of written data or comments under subdivision (5) of  
2 this section, any interested person may file with the board written  
3 objections to a proposed rule, stating the grounds therefor and  
4 requesting a public hearing on such objections. As soon as  
5 practicable after the period for filing such objections has  
6 expired, the board shall release a notice specifying the proposed  
7 rules to which objections have been filed and a hearing requested.

8       (7) Promptly after any such notice is released by the board  
9 under subdivision (6) of this section, the board shall issue notice  
10 of, and hold a public hearing for the purpose of receiving relevant  
11 evidence. Within sixty days after completion of the hearings, the  
12 board shall make findings of fact which shall be public, and may  
13 promulgate such rules with such modifications as it deems  
14 appropriate. In the event the board determines that a proposed rule  
15 should not be promulgated or should be modified, it shall within a  
16 reasonable time publish the reasons for its determination.

17       (8) All rules promulgated by the board shall be published in  
18 the state register and continue in effect until modified or  
19 superseded in accordance with the provisions of this chapter.

20       (d) To carry out its duties and responsibilities, the board is  
21 authorized to employ such personnel, including legal counsel,  
22 experts and consultants, as it deems necessary. In addition, the  
23 board, within the appropriations provided for by the Legislature,  
24 may conduct or contract for research and studies and is entitled to

1 the use of the services, facilities and personnel of any agency,  
2 institution, school, college or university of this state.

3 (e) The director shall within sixty days of a coal mining  
4 serious accident, fatality or fatalities provide the board with all  
5 available reports regarding such serious accident, fatality or  
6 fatalities.

7 The board shall review all reports and any recommended rules  
8 submitted by the director, receive any additional information it  
9 requests, and may, on its own initiative, investigate the  
10 circumstances surrounding a serious coal mining accident, fatality  
11 or fatalities and ascertain the cause or causes of such coal mining  
12 fatality or fatalities. In order to investigate a serious coal  
13 mining accident, fatality or fatalities, a majority of the board  
14 must vote in favor of commencing an investigation; Provided, That  
15 in the event of a tie vote, the Health and Safety Administrator, as  
16 established in article six of this chapter, shall cast a vote  
17 resolving the tie. Within ninety days of the receipt of the Federal  
18 Mine Safety and Health Administration's fatal accident report and  
19 the director's report and recommended rules, the board shall review  
20 and consider the presentation of said report and rules and the  
21 results of its own investigation, if any, and, if a majority of all  
22 voting board members determines that additional rules can assist in  
23 the prevention of the specific type of fatality, the board shall  
24 either accept and promulgate the director's recommended rules,

1 amend the director's recommended rules or draft new rules, as are  
2 necessary to prevent the recurrence of such fatality. If the board  
3 chooses to amend the director's recommended rules or draft its own  
4 rules, a vote is required within one hundred twenty days as to  
5 whether to promulgate the amended rule or the rule drafted by the  
6 board: *Provided, however,* That the board may, by majority vote,  
7 find that exceptional circumstances exist and the deadline cannot  
8 be met: *Provided, ~~however~~ further,* That under no circumstances  
9 shall such deadline be extended by more than a total of ninety  
10 days. A majority vote of the board is required to promulgate any  
11 such rule.

12       The board shall annually, not later than July 1, review the  
13 major causes of coal mining injuries during the previous calendar  
14 year, reviewing the causes in detail, and shall promulgate such  
15 rules as may be necessary to prevent the recurrence of such  
16 injuries.

17       Further, the board shall, on or before January 10, of each  
18 year, submit a report to the Governor, President of the Senate and  
19 Speaker of the House, which report shall include, but is not  
20 limited to:

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

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

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

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

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

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

11 (7) In addition to the report by the board, as herein  
12 contained, each individual member of said board has right to submit  
13 a separate report, setting forth any views contrary to the report  
14 of the board, and the separate report, if any, shall be appended to  
15 the report of the board and be considered a part thereof.

16 **§22A-6-13. Study of ingress and egress to bleeder and gob areas**  
17 **of longwall panels and pillar sections.**

18 The Board of Coal Mine Health and Safety is directed to study  
19 the safety of working or traveling in bleeder or gob areas of a  
20 longwall panel or pillar section of a mine where only one  
21 travelable entry in and out of the area exists. The study shall  
22 consider what additional roof control or other measures, if any,  
23 should be implemented to ensure that underground miners who work or



1 travel in bleeder or gob areas of a longwall panel or pillar  
2 section having only one travelable entry in and out of the areas  
3 are at least as safe as miners working in comparable areas with  
4 multiple travelable entries in and out of the areas. By December  
5 31, 2012, the board shall report to the Legislature's Joint  
6 Committee on Government and Finance with recommendations regarding  
7 implementation of the findings of this study.

8 **§22A-6-14. Study of mandatory substance abuse program.**

9 The Board of Coal Mine Health and Safety is directed to study  
10 the mandatory substance abuse screening policy and program  
11 requirements of article one-a of this chapter and make  
12 recommendations to the Director regarding (a) establishment of  
13 guidelines to be employed by the Board of Appeals when  
14 administering disciplinary actions to certified persons pursuant  
15 article one-a of this chapter, (b) requiring certification by the  
16 Office of Miners' Health, Safety and Training of persons who  
17 regularly work at mines who are not presently required to obtain  
18 certification, and (c) establishment of additional minimum  
19 requirements and protocols to be integrated into the substance  
20 abuse screening policy and program requirements of article one-a of  
21 this chapter. In completing this study, the board shall consider  
22 the ratio of positive test results to the number of pre-employment  
23 substance abuse screening tests administered pursuant to section  
24 one, article one-a of this chapter and reported to the Director  
25 accordingly. By December 31, 2012, the board shall submit its

1 report to the Director with recommendations for promulgations of  
2 legislative rules pursuant to article three, chapter twenty-nine-a  
3 regarding the implementation of the findings of this study.

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

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

6 (a) The board shall establish criteria and standards for a  
7 program of education, training and examination to be required of  
8 all prospective miners and miners prior to their certification in  
9 any of the various miner specialties requiring certification under  
10 this article or any other provision of this code. The specialties  
11 include, but are not limited to, underground miner, surface miner,  
12 apprentice, underground mine foreman-fire boss, assistant  
13 underground mine foreman-fire boss, shotfirer, mine electrician and  
14 belt examiner. Notwithstanding the provisions of this section, the  
15 director may by rule further subdivide the classifications for  
16 certification.

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

22 (c) The board may establish criteria and standards for a  
23 program of preemployment education and training to be required of  
24 miners working on the surface at underground mines who are not  
25 certified under the provisions of this article or any other

1 provision of this code.

2 (d) The board shall set minimum standards for a program of  
3 continuing education and training of certified persons and other  
4 miners on an annual basis: *Provided*, That the standards shall be  
5 consistent with the provisions of section seven of this article.  
6 Prior to issuing the standards, the board shall conduct public  
7 hearings at which the parties who may be affected by its actions  
8 may be heard. The education and training shall be provided in a  
9 manner determined by the director to be sufficient to meet the  
10 standards established by the board.

11 (e) The board may, in conjunction with any state, local or  
12 federal agency or any other person or institution, provide for the  
13 payment of a stipend to prospective miners enrolled in one or more  
14 of the programs of miner education, training and certification  
15 provided in this article or any other provision of this code.

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

19 (g) Nothing in this article empowers the board to revoke or  
20 suspend any certificate issued by the director of the Office of  
21 Miners' Health, Safety and Training.

22 (h) The board may, upon its own motion or whenever requested  
23 to do so by the director, consider two certificates issued by this  
24 state to be of equal value or consider training provided or  
25 required by federal agencies to be sufficient to meet training and

1 education requirements set by it, the director, or by the  
2 provisions of this code.

3 (I) The board shall establish an education and training  
4 program for all miners that provides a minimum of one hour of  
5 instruction on miners rights as they relate to the operation of  
6 unsafe equipment which includes but is not limited to the  
7 provisions of section seventy-one of article two of this chapter,  
8 his or her right to withdrawal from unsafe conditions as provided  
9 in section seventy-one-a of article two of this chapter and his or  
10 her rights under section twenty-two, article one of this chapter.  
11 **§22A-7-5a. Study of miner training and education.**

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

1 this study.

2 **ARTICLE 12. UNDERGROUND ACCIDENT INVESTIGATIONS.**

3 **§22A-12-1. Report on enforcement procedures.**

4 The director shall, by December 31, 2013, report to the  
5 Legislature and Governor on the need for revisions in the state's  
6 underground mine safety enforcement procedures. The director shall  
7 initiate the study using appropriate academic resources and mining  
8 safety organizations to conduct a program review of state  
9 enforcement procedures to evaluate what reforms will assure that  
10 mining operations follow state mandated safety protocols. The  
11 report shall include recommended legislation, rules and policies,  
12 consider various options for improving inspections, accountability  
13 and equitable and timely administrative procedures that cause  
14 remediation of hazardous working conditions.