

H. B. 4351

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]
[Introduced January 31, 2012; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §15-5B-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-5B-6; to amend and reenact §22A-1-4 of said code; to amend said code by adding thereto a new section, designated §22A-1-13a; to amend and reenact §22A-1-14 of said code; to amend said code by adding thereto a new article, designated §22A-1A-1, §22A-1A-2, §22A-1A-3 and §22A-1A-4; to amend and reenact §22A-2-2, §22A-2-12, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code; to amend said code by adding thereto a new section, designated §22A-2-43a; to amend said code by adding thereto a new section, designated §22A-6-13; and to amend said code by adding thereto a new section, designated §22A-7-5a, all relating to mine safety, generally; requiring coal mine operators to provide reports to and notify certain entities in the event of an emergency;

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

1 other jurisdictions; providing procedure for board of appeals
2 hearings on certification suspensions and judicial review of
3 board decisions; requiring certified persons to report certain
4 criminal convictions to the Office of Miners' Health, Safety
5 and Training; providing exemptions from and exceptions to the
6 disclosure of substance abuse screening results; providing
7 procedure for approval, review, comment and enforcement of
8 mine ventilation plans; increasing the number of days an
9 apprentice must work within sight and sound of mine foreman or
10 experienced miner; requiring methane detectors be maintained
11 in accordance with manufacture specifications; expanding scope
12 of preshift examinations and requiring supplemental
13 examinations in certain instances; increasing the percentage
14 of rock dust to be maintained in coal mines and providing
15 certain information upon request; prescribing actions required
16 to detect and respond to excess methane gas levels in coal
17 mines; prescribing requirements for persons to operate or
18 repair mining machinery; providing for increased training
19 regarding the use of self-contained self-rescue devices;
20 providing additional notification by coal mine operators in
21 the event of an accident; requiring study of and report on the
22 safety of working or traveling in bleeder or gob areas of
23 certain coal mines; and requiring study of and report on
24 education, training and examination associated with certifying

1 miners.

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

3 That §15-5B-3 of the Code of West Virginia, 1931, as amended,
4 be amended and reenacted; that said code be amended by adding
5 thereto a new section, designated §15-5B-6; that §22A-1-4 of said
6 code be amended and reenacted; that said code be amended by adding
7 thereto a new section, designated §22A-1-13a; that §22A-1-14 of
8 said code be amended and reenacted; that said code be amended by
9 adding thereto a new article, designated §22A-1A-1, §22A-1A-2,
10 §22A-1A-3 and §22A-1A-4; that §22A-2-2, §22A-2-12, §22A-2-20,
11 §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code be
12 amended and reenacted; that said code be amended by adding thereto
13 a new section, designated §22A-2-43a; that said code be amended by
14 adding thereto a new section, designated §22A-6-13; and that said
15 code be amended by adding thereto a new section, designated
16 §22A-7-5a, all to read as follows:

17 **CHAPTER 15. PUBLIC SAFETY.**

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

19 **§15-5B-3. Emergency mine response.**

20 (a) To assist the Division of Homeland Security and Emergency
21 Management in implementing and operating the Mine and Industrial
22 Accident Rapid Response System, the Office of Miners' Health,
23 Safety and Training shall, on a quarterly basis, provide the

1 emergency operations center with a mine emergency contact list. In
2 the event of any change in the information contained in the mine
3 emergency contact list, ~~such~~ the changes shall be provided
4 immediately to the emergency operations center. The mine emergency
5 contact list shall include the following information:

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

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

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

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

23 (b) Upon the receipt of an emergency call regarding any
24 accident, as defined in section sixty-six, article two, chapter

1 twenty-two-a of this code, in or about any mine, the emergency
2 operations center shall immediately notify:

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

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

7 (3) Local emergency service personnel in the area in which the
8 accident occurred.

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

12 (d) In the event that an emergency call regarding any
13 accident, as defined in section sixty-six, article two, chapter
14 twenty-two-a of this code, in or about any mine, is initially
15 received by a county answering point, as defined in article six,
16 chapter twenty-four of this code, the call shall be immediately
17 forwarded to the Mine and Industrial Accident Emergency Operations
18 Center.

19 (e) Nothing in this section shall be construed to relieve an
20 operator, as defined in section two, article one, chapter
21 twenty-two-a of this code, from any reporting or notification
22 obligation under section sixty-six, article two, chapter
23 twenty-two-a of this code and under federal law.

24 (f) The Mine and Industrial Accident Rapid Response System and

1 the emergency operations center are designed and intended to
2 provide communications assistance to emergency responders and other
3 responsible persons. Nothing in this section shall be construed to
4 conflict with the responsibility and authority of an operator to
5 provide mine rescue coverage in accordance with the provisions of
6 section thirty-five, article one, chapter twenty-two-a of this code
7 or the authority of the Director of the Office of Miners' Health,
8 Safety and Training to assign mine rescue teams under the
9 provisions of subsection (d) of said section or to exercise any
10 other authority provided in chapter twenty-two-a of this code.

11 **§15-5B-6. Mine Safety Anonymous Tip Hotline.**

12 The Director of the Division of Homeland Security and
13 Emergency Management shall maintain a toll free number that allows
14 callers to report mine safety violations and hazardous coal mining
15 conditions and practices. The information collected shall be
16 provided to the Office of Miners' Health, Safety and Training. No
17 information may be submitted to the Office of Miners' Health,
18 Safety and Training that would allow identification of the person
19 placing the call. The calls are confidential and any documentation
20 thereof or related thereto is not subject to release and is exempt
21 from the provisions of article one, chapter twenty-nine-b of this
22 code. The director shall distribute printed information to all
23 state mining operations alerting miners to the existence of the
24 toll free line. Each mining operation shall post this notice at

1 the location used to post notices pursuant to section eighteen,
2 article one, chapter twenty-two-a of this code.

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

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

6 **§22A-1-4. Powers and duties of the Director of the Office of**
7 **Miners' Health, Safety and Training**

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

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

18 (1) Supervise and direct the execution and enforcement of the
19 provisions of this article.

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

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

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

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

14 (6) Hear and determine applications made by mine operators for
15 the annulment or revision of orders made by mine inspectors, and to
16 make inspections of mines, in accordance with the provisions of
17 this article.

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

20 (8) Make annually a full and complete written report of the
21 administration of the office to the Governor and the Legislature of
22 the state for the year ending June 30. The report shall include
23 the number of visits and inspections of mines in the state by mine
24 inspectors, the quantity of coal, coke and other minerals

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

20 (9) Call or subpoena witnesses, for the purpose of conducting
21 hearings into mine fires, mine explosions or any mine accident; to
22 administer oaths and to require production of any books, papers,
23 records or other documents relevant or material to any hearing,
24 investigation or examination of any mine permitted by this chapter.

1 Any witness so called or subpoenaed shall receive \$40 per diem and
2 shall receive mileage at the rate of \$.15 for each mile actually
3 traveled, which shall be paid out of the State Treasury upon a
4 requisition upon the State Auditor, properly certified by ~~such~~ the
5 witness.

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

12 (11) Share information regarding suspension or revocation of
13 a certified person's, as defined in section two of this article,
14 certificate for violation of the substance abuse provisions of
15 section fourteen, article one of this chapter or article one-a of
16 this chapter with other states that subject miners to disciplinary
17 action for violation of a substance abuse policy.

18 ~~(11)~~ (12) Perform all other duties which are expressly imposed
19 upon him or her by the provisions of this chapter.

20 ~~(12)~~ (13) Impose reasonable fees upon applicants taking tests
21 administered pursuant to the requirements of this chapter.

22 ~~(13)~~ (14) Impose reasonable fees for the issuance of
23 certifications required under this chapter.

24 ~~(14)~~ (15) Prepare study guides and other forms of publications

1 relating to mine safety and charge a reasonable fee for the sale of
2 the publications.

3 ~~(15)~~ (16) Make all records of the office open for inspection
4 of interested persons and the public.

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

14 **§22A-1-13a. Study of mine inspector qualification, compensation,**
15 **training and inspection programs.**

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

1 the training programs for underground and surface mine inspectors
2 by focusing on technological advances in coal mining techniques,
3 best practices used in modern coal mines and proper mine
4 ventilation. Further the office shall perform an assessment of the
5 resources and qualification of inspectors necessary to approve mine
6 ventilation plans. Finally, the study shall make recommendations
7 on how to reassess mine inspection priorities to ensure that the
8 mines having a history of numerous safety violations are inspected
9 more frequently than mines having a history of comparatively few
10 safety violations. By December 31, 2012, the Office of Miners'
11 Health, Safety and Training shall report to the Legislature's Joint
12 Committee on Government and Finance with recommendations regarding
13 the implementation of its findings.

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

18 (a) The director, or his or her authorized representative, has
19 authority to visit, enter, and examine any mine, whether
20 underground or on the surface, and may call for the assistance of
21 any district mine inspector or inspectors whenever ~~such~~ assistance
22 is necessary in the examination of any mine. The operator of every
23 coal mine shall furnish the director or his or her authorized

1 representative proper facilities for entering ~~such~~ the mine and
2 making examination or obtaining information.

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

7 (c) Mine inspectors shall devote their full-time and undivided
8 attention to the performance of their duties, and they shall
9 examine all of the mines in their respective districts at least
10 four times annually, and as often, in addition thereto, as the
11 director may direct, or the necessities of the case or the
12 condition of the mine or mines may require, with no advance notice
13 of inspection provided to any person, and they shall make a
14 personal examination of each working face and all entrances to
15 abandoned parts of the mine where gas is known to liberate, for the
16 purpose of determining whether an imminent danger, referred to in
17 section fifteen of this article, exists in ~~any such~~ the mine, or
18 whether any provision of article two of this chapter is being
19 violated or has been violated within the past forty-eight hours in
20 ~~any such~~ the mine. No other person shall, with the intent of
21 affecting the integrity of an unannounced mine inspection, provide
22 advance notice of any inspection or of an inspector's presence at
23 a mine to any person at that mine. Any person who knowingly causes
24 or conspires to provide advance notice of any inspection or of an

1 inspector's presence at a mine is guilty of a felony and, upon
2 conviction thereof, shall be fined not more than \$15,000 or
3 imprisoned in a state correctional facility not less than one year
4 and not more than five years, or both.

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

14 (e) On or after July 1, 2012, an inspector shall require the
15 operator or other employer to conduct substance abuse testing as
16 part of an inspection or complaint investigation if there is
17 reasonable cause to suspect a certified person's impairment due to
18 the presence of intoxicants or any controlled substance not used in
19 accordance with the prescription of a licensed prescriber, or if
20 such impairment has been a contributing factor to any accident in
21 which a serious personal injury or death occurs at a mine. If
22 anyone is fatally or seriously injured in an accident, the
23 inspector shall require substance abuse testing of the certified
24 person fatally or seriously injured and of any other certified

1 person who may have contributed to the accident. Any substance
2 abuse testing required under this section will be paid for by the
3 Office of Miners' Health, Safety and Training. Refusal by any
4 person to submit to substance abuse testing under this section, or
5 the failure to pass the test, shall result in the immediate
6 temporary suspension of all certificates held by that person,
7 pending a hearing before the board of appeals pursuant to section
8 two, article one-a of this chapter. All substance abuse testing
9 provided in this section shall be conducted in accordance with
10 article one-a of this chapter.

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

19 (g) At the commencement of any inspection of a coal mine by an
20 authorized representative of the director, the authorized
21 representative of the miners at the mine at the time of ~~such~~ the
22 inspection shall be given an opportunity to accompany the
23 authorized representative of the director on ~~such~~ the inspection.

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

1 **ADMINISTRATION; SUBSTANCE ABUSE.**

2 **§22A-1A-1. Substance abuse screening of certified persons; minimum**
3 **requirements; standards and procedures for screening.**

4 (a) Beginning July 1, 2012, every employer of certified
5 persons, as defined in article one of this chapter, who work in
6 underground mines, surface mines and or preparation plants shall
7 implement a substance abuse screening policy and program for all
8 miner specialties requiring certification under article seven of
9 this chapter or any other provision of this code that shall, at a
10 minimum, include:

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

- 14 A. Amphetamines,
- 15 B. Cannabinoids/THC,
- 16 C. Cocaine,
- 17 D. Opiates,
- 18 E. Phencyclidine (PCP),
- 19 F. Benzodiazepines,
- 20 G. Propoxyphene,
- 21 H. Methadone,
- 22 I. Barbiturates, and
- 23 J. Synthetic narcotics.

24 Samples shall be collected by providers who are certified as

1 complying with standards and procedures set out in the United
2 States Department of Transportation's rule, 49 CFR Part 40.
3 Collected samples shall be tested by laboratories certified by the
4 United States Department of Health and Human Services, Substance
5 Abuse and Mental Health Services Administration (SAMHSA) for
6 collection and testing. Notwithstanding the provisions of this
7 subdivision, the mine operator may implement a more stringent
8 substance abuse screening policy and program;

9 (2) A random substance abuse testing program covering the
10 substances referenced in subdivision (1) of this subsection shall
11 be employed to test certified persons. "Random testing" means that
12 each certified person has a statistically equal chance of being
13 selected for testing at random and at unscheduled times. The
14 selection of certified persons for random testing shall be made by
15 a scientifically valid method, such as a random number table or a
16 computer-based random number generator that is matched with the
17 certified persons' social security numbers, payroll identification
18 numbers, or other comparable identifying numbers. The random
19 testing program shall be designed to annually test a number of
20 certified persons equal to fifty percent of the certified persons
21 employed by an employer; and

22 (3) An alcohol testing program where, at minimum, certified
23 persons are tested for the presence of alcohol if there is
24 reasonable cause to suspect a certified person's impairment, or if

1 impairment is suspected to have been a contributing factor to any
2 accident in which a serious personal injury or death occurs at a
3 mine. If anyone is fatally or seriously injured in an accident,
4 the operator shall require alcohol testing of the certified person
5 fatally or seriously injured and of any other certified person who
6 may have contributed to the accident. A blood alcohol concentration
7 in excess of four hundredths of one percent or more, by weight,
8 shall indicate that the certified person tested is intoxicated for
9 purposes of this article.

10 (4) Review of the substance abuse screening program with all
11 miners at the time of employment and annually thereafter.

12 (b) For purposes of this subsection, preemployment testing
13 shall be required any time a certified person is hired by a new
14 employer, is rehired by a former employer following a termination
15 of the employer/employee relationship, or is transferred to a West
16 Virginia mine from his or her employer's out-of-state mine to the
17 extent that any substance abuse test required by the employer in
18 the other jurisdiction does not comply with the minimum standards
19 for substance abuse testing required by this article. Furthermore,
20 the provisions of this section apply to all employers that employ
21 certified persons who work in underground or surface mines,
22 regardless of whether that employer is an operator, contractor,
23 subcontractor or otherwise.

24 (c) The employer or his or her agent shall notify the

1 director, on a form prescribed by the director, within seven days
2 of any failure of a preemployment substance abuse screening test
3 and provide a record of the test showing such failure or violation.
4 Notice of the failure shall result in the immediate temporary
5 suspension of all certificates held by the certified person who
6 failed such screening, pending a hearing before the board of
7 appeals pursuant to section two of this article.

8 (d) The employer or his or her agent shall notify the
9 director, on a form prescribed by the director, within seven days
10 of: (1) Discharging a certified person due to violation of the
11 company's substance or alcohol abuse policies; (2) a certified
12 person testing positive for intoxication while on duty status; or
13 (3) a certified person testing positive as using any controlled
14 substance without the prescription of a licensed prescriber. An
15 employer having a substance abuse program shall not be required to
16 notify the director under subdivision (3) of this subsection,
17 unless the certified person having tested positive fails to
18 complete the employer's substance abuse program. The notification
19 shall be accompanied by a record of the test showing positive
20 results or violation. Notice shall result in the immediate
21 temporary suspension of all certificates held by the certified
22 person who failed the screening, pending a hearing before the board
23 of appeals pursuant to section two of this article.

24 (e) Suspension or revocation of a certified person's

1 certificate as a miner or other miner specialty in another
2 jurisdiction by the applicable licensing or regulatory authority
3 for substance abuse-related matters shall result in the director
4 immediately and temporarily suspending the certified person's West
5 Virginia certificate, pending a hearing before the board of appeals
6 pursuant to section two of this article.

7 (f) The provisions of this article shall not be construed to
8 preclude an employer from developing or maintaining a drug and
9 alcohol abuse policy, testing program or substance abuse program
10 that exceeds the minimum requirements set forth in this section.

11 **§22A-1A-2. Board of appeals hearing procedures.**

12 (a) Any hearing conducted after the temporary suspension of a
13 certified person's certificate due to: (1) A criminal conviction in
14 any court of competent jurisdiction for possession or use of any
15 controlled substance without the prescription of a licensed
16 prescriber; (2) a failure to pass a substance abuse test required
17 pursuant to section fourteen, article one of this chapter; (3) a
18 failure to pass a preemployment or random substance abuse screening
19 test; (4) a discharge for the violation of the employer's substance
20 abuse or alcohol abuse policies; (5) a positive test for the use of
21 any controlled substance without the prescription of a licensed
22 prescriber; (6) a positive test for intoxication while on duty
23 status; (7) a failure to complete a substance abuse program
24 pursuant to subsection (c), section one of this article; or (8)

1 failure to report a criminal conviction pursuant to section three
2 of this article, shall be conducted within sixty days of the
3 temporary suspension. The board of appeals shall make every effort
4 to hold the hearing within forty days of the temporary suspension.

5 (b) All hearings of the board of appeals pursuant to this
6 section shall be conducted in accordance with the provisions of
7 subsection (c), section thirty-one, article one of this chapter.
8 The board of appeals may suspend the certificate or certificates of
9 a certified person for violation of this article, for the refusal
10 of any person to submit to substance abuse testing under section
11 fourteen, article one of this chapter, for the failure of any
12 substance abuse test administered in accordance with said section
13 or for any other violation of this chapter pertaining to substance
14 abuse. The board of appeals shall suspend the certificate or
15 certificates of a certified person and administer progressive
16 penalties for repeat violations in accordance with legislative
17 rules promulgated by the director. The director shall have the
18 authority to propose legislative rules for promulgation in
19 accordance with article three, chapter twenty-nine-a of this code
20 to establish the penalties referenced in this section.

21 (c) No person whose certification is suspended or revoked
22 under this section may perform any duties under any other
23 certification issued under this chapter, during the period of the
24 suspension imposed by the board of appeals.

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

5 **§22A-1A-3. Certified persons required to report criminal**
6 **convictions.**

7 Any person holding a certification issued by the Office of
8 Miners' Health, Safety & Training shall report to the director,
9 within thirty days, any criminal conviction in any court of
10 competent jurisdiction for possession or use of any controlled
11 substance without the prescription of a licensed prescriber. The
12 conviction or failure to timely report a conviction shall result in
13 the immediate temporary suspension of all certificates held by the
14 person, pending a hearing before the board of appeals pursuant to
15 section two of this article.

16 **§22A-1A-4. Disclosure of records exempt; exceptions.**

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

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

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

3 (2) The purpose of the disclosure;

4 (3) The precise information to be disclosed;

5 (4) The duration of the consent; and

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

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

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

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

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

19 **ARTICLE 2. UNDERGROUND MINES.**

20 **§22A-2-2. Submittal of detailed ventilation plan to director.**

21 (a) A mine operator shall submit a detailed ventilation plan
22 and any addendums to the director for review and comment. The mine
23 operator shall review the plan with the director and address
24 concerns to the extent practicable. The director shall submit any

1 concern that is not addressed to the United States Department of
2 Labor - Mine Safety and Health Administration through comments to
3 the plan. The mine operator shall provide a copy of the plan to
4 the director and the miners' representative, if any, employed by
5 the operator at the mine ten days prior to the submittal of the
6 plan to MSHA.

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

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

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

22 **§22A-2-12. Instruction of employees and supervision of**
23 **apprentices; annual examination of persons using**
24 **approved methane detectors; records of**

1 **examination; maintenance of methane detectors,**
2 **etc.**

3 (a) The Office of Miners' Health, Safety and Training shall
4 prescribe and establish a course of instruction in mine safety and
5 particularly in dangers incident to ~~such~~ employment in mines and in
6 mining laws and rules, which course of instruction shall be
7 successfully completed within twelve weeks after any person is
8 first employed as a miner. It is further the duty and
9 responsibility of the office of miners' health, safety and training
10 to see that ~~such~~ the course is given to all persons as above
11 provided after their first being employed in any mine in this
12 state.

13 (b) It is the duty of the mine foreman or the assistant mine
14 foreman of every coal mine in this state to see that every person
15 employed to work in ~~such~~ the mine is, before beginning work
16 therein, instructed in the particular danger incident to his or her
17 work in ~~such~~ the mine, and furnished a copy of the mining laws and
18 rules of ~~such~~ the mine. It is the duty of every mine operator who
19 employs apprentices, as that term is used in sections three and
20 four, article eight of this chapter to ensure that the apprentices
21 are effectively supervised with regard to safety practices and to
22 instruct apprentices in safe mining practices. Every apprentice
23 shall work under the direction of the mine foreman or his or her
24 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 or other~~ an approved methane ~~detectors~~ detector shall be
13 examined at least annually as to their competence by a qualified
14 official from the Office of Miners' Health, Safety and Training and
15 a record of ~~such~~ the examination shall be kept by the operator and
16 the office. ~~Flame safety lamps and other~~ Approved methane detectors
17 shall be given proper maintenance and shall be tested before each
18 working shift. Each operator shall provide for the proper
19 maintenance and care of the ~~permissible flame safety lamp or any~~
20 ~~other~~ approved device for detecting methane and oxygen deficiency
21 by a person trained in ~~such~~ proper maintenance, and, before each
22 shift, care shall be taken to ensure that ~~such~~ the ~~lamp or other~~
23 device is in a permissible condition and maintained according to
24 manufacturer's specifications.

1 **§22A-2-20. Preparation of danger signal by fire boss or certified**
2 **person acting as such prior to examination; report;**
3 **records open for inspection.**

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

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

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

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

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

6 (d) The results of the examination shall be recorded with ink
7 or indelible pencil by the examiner in the book referenced in
8 subsection (a) of this section before he or she leaves the mine on
9 that shift.

10 **§22A-2-24. Control of coal dust; rock dusting.**

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

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

22 (c) In all dry and dusty mines or sections thereof, rock dust
23 shall be applied and maintained upon the roof, floor and sides of
24 all operating sections, haulageways and parallel entries connected

1 thereto by open crosscuts. Back entries shall be rock dusted.
2 Rock dust shall be so applied to include the last open crosscut of
3 rooms and entries, and to within forty feet of faces. Rock dust
4 shall be maintained in ~~such~~ a quantity that the incombustible
5 content of the mine dust that could initiate or propagate an
6 explosion shall not be less than ~~sixty-five~~ eighty percent. ~~but the~~
7 ~~incombustible content in return entries shall not be less than~~
8 ~~eighty percent.~~ The incombustible content of mine dust in return
9 entries shall also be equal to or greater than eighty percent.

10 (d) Rock dust shall not contain more than five percent by
11 volume of quartz or free silica particles and shall be pulverized
12 so that one hundred percent will pass through a twenty mesh screen
13 and seventy percent or more will pass through a two hundred mesh
14 screen.

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

19 **§22A-2-43. Actions to detect and respond to excess methane.**

20 The following actions are required to detect and respond to
21 excess methane:

22 (a) *Testing required.* -- In any mine, no electrical equipment
23 or permissible diesel powered equipment may be brought in by the
24 last open crosscut until a qualified person tests for methane. If

1 one percent or more methane is present, the equipment may not be
2 taken into the area until the methane concentration is reduced to
3 less than one percent. Thereafter, subsequent methane examinations
4 shall be made at least every twenty minutes while any electrical or
5 diesel powered equipment is present and energized.

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

9 (c) *Working places and intake air courses.* --

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

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

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

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

22 (2) When one and five tenths percent or more methane is
23 present in a working place or an intake air course, including an
24 air course in which a belt conveyor is located or in an area where

1 mechanized mining equipment is being installed or removed:

2 (A) Except for federal or state mine inspectors, the mine
3 foreman or assistant mine foreman or individuals authorized by the
4 mine foreman or assistant mine foreman, all individuals shall be
5 withdrawn from the affected area.

6 (B) Except for intrinsically safe AMS, electrically powered
7 equipment in the affected area shall be disconnected at the power
8 source.

9 (d) *Return air split.--*

10 (1) When one percent or more methane is present in a return
11 air split between the last working place on a working section and
12 where that split of air meets another split of air or the location
13 at which the split is used to ventilate seals or worked-out areas,
14 changes or adjustments shall be made at once to the ventilation
15 system to reduce the concentration of methane in the return air to
16 less than one percent.

17 (2) When one and five tenths percent or more methane is
18 present in a return air split between the last working place on a
19 working section and where that split of air meets another split of
20 air or the location where the split is used to ventilate seals or
21 worked-out areas, except for federal or state mine inspectors, the
22 mine foreman, assistant mine foreman or individuals authorized by
23 the mine foreman or assistant mine foreman, all individuals shall
24 be withdrawn from the affected area.

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

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

8 (e) *Return air split alternative.* --

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

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

14 (B) The methane content of the air in the split is
15 continuously monitored during mining operations by an AMS that
16 gives a visual and audible signal on the working section when the
17 methane in the return air reaches one and five tenths percent and
18 the methane content is monitored as specified in the approved
19 ventilation plan.

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

23 (2) When one and five tenths percent or more methane is
24 present in a return air split between a point in the return

1 opposite the section loading point and where that split of air
2 meets another split of air or where the split of air is used to
3 ventilate seals or worked-out areas:

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

7 (B) Except for federal or state mine inspectors, the mine
8 foreman, assistant mine foreman or individuals authorized by the
9 mine foreman or assistant mine foreman, all individuals shall be
10 withdrawn from the affected area.

11 (C) Except for 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 (D) No other work shall be permitted in the affected area
16 until the methane concentration in the return air is less than one
17 and five tenths percent.

18 (f) *Methane monitors.* --

19 (1) Approved methane monitors shall be installed and
20 maintained on all face cutting machines, continuous miners,
21 longwall face equipment, loading machines and other mechanized
22 equipment used to extract coal or load coal within the working
23 place.

24 (2) The sensing device for methane monitors on longwall

1 shearing machines shall be installed at the return air end of the
2 longwall face. An additional sensing device also shall be
3 installed on the longwall shearing machine, downwind and as close
4 to the cutting head as practicable. An alternative location or
5 locations for the sensing device required on the longwall shearing
6 machine may be approved in the ventilation plan.

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

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

20 (g) *Automatic de-energization of extraction apparatus.* --

21 When the methane concentration at any machine-mounted methane
22 monitor reaches one percent, the monitor shall give a warning
23 signal. The warning signal device of the methane monitor shall be
24 visible to a person operating the equipment on which the monitor is

1 mounted. The methane monitor shall automatically de-energize the
2 extraction apparatus on the machine on which it is mounted, but not
3 the machine as a whole to facilitate proper mining procedures,
4 when:

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

7 (2) The monitor is not operating properly.

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

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

12 Within one hundred twenty days of the effective date of the
13 amendments to this section, the Board of Coal Mine Health and
14 Safety shall promulgate legislative rules pursuant to article
15 three, chapter twenty-nine-a of this code establishing a compliance
16 schedule setting forth the timeframe in which all new and existing
17 face cutting machines, continuous miners, longwall face equipment,
18 loading machines and other mechanized equipment used to extract
19 coal or load coal within the working place shall be refitted with
20 methane monitors. Enforcement of subsections (f) and (g) of this
21 section shall not commence until after the timeframe is established
22 rule.

23 **§22A-2-43a. Operation of cutting and mining machines; repair and**
24 **maintenance of same.**

1 (a) Qualified person to operate cutting machine. -- No person
2 shall be placed in charge of a coal-cutting machine in any mine who
3 is not a qualified person, capable of determining the safety of the
4 roof and sides of the working places and of detecting the presence
5 of explosive gas, unless they are accompanied by a certified or
6 qualified person who has passed a qualifying examination.

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

16 (c) Repair and maintenance of mining machines. -- (1) Repairs
17 or maintenance shall not be performed on mining machines until the
18 power is off and the machinery is blocked against motion, except
19 where machinery motion is necessary to make adjustments. For
20 purposes of this subsection, the following terms shall have the
21 following meanings:

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

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

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

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

13 (B) Opening the circuit breaker at the power center that
14 supplies power for the affected machinery and disengaging the power
15 cable coupler that supplies power to the machinery; or

16 (C) Opening a manual visible disconnect switch, either within
17 the circuit or onboard the machinery, and securing the switch
18 against reenergization. A control circuit start-stop switch does
19 not constitute a manual disconnect; or

20 (D) In cases such as steeply inclined belt conveyors and
21 suspended loads, when removing the power alone will not ensure
22 against unintentional or inadvertent movement, the machinery shall
23 be physically blocked, in addition to removing the power by one of
24 the three methods described above. Physical blocking may be

1 achieved by the use of such devices as bars, chocks or clamps.

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

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

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

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

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

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

21 (f) (1) A self-contained self-rescue device approved by the
22 director shall be worn by each person underground or kept within
23 his or her immediate reach and the device shall be provided by the
24 operator. The self-contained self-rescue device shall be adequate

1 to protect a miner for one hour or longer. Each operator shall
2 train each miner in the use of ~~such~~ the device and refresher
3 training courses for all underground employees shall be held ~~during~~
4 ~~each calendar year~~ once each quarter. Quarters shall be based on
5 a calendar year.

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

23 (3) Any person that, without the authorization of the operator
24 or the director, knowingly removes or attempts to remove any

1 self-contained self-rescue device or lifeline cord from the mine or
2 mine site with the intent to permanently deprive the operator of
3 the device or lifeline cord or knowingly tampers with or attempts
4 to tamper with ~~such~~ the device or lifeline cord shall be guilty of
5 a felony and, upon conviction thereof, shall be imprisoned in a
6 state correctional facility for not less than one year nor more
7 than ten years or fined not less than \$10,000 nor more than
8 \$100,000, or both.

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

20 (2) Any person that, without the authorization of the operator
21 or the director, knowingly removes or attempts to remove any
22 wireless emergency communication device or related equipment, from
23 the mine or mine site with the intent to permanently deprive the
24 operator of the device or equipment or knowingly tampers with or

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

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

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

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

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

8 **§22A-2-66. Accident; notice; investigation by Office of Miners'**
9 **Health, Safety and Training.**

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

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

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

15 (3) The entrapment of an individual;

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

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

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

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

22 (8) An unplanned roof fall at or above the anchorage zone in
23 active workings where roof bolts are in use or an unplanned roof or
24 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

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

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

1 civil administrative penalty at any time if he or she finds that
2 the failure to give immediate notice was caused by circumstances
3 wholly outside the control of the operator.

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

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

19 **§22A-6-13. Study of ingress and egress to bleeder and gob areas**
20 **of longwall panels and pillar sections.**

21 The Board of Coal Mine Health and Safety is directed to study
22 the safety of working or traveling in bleeder or gob areas of a
23 longwall panel or pillar section of a mine where only one
24 travelable entry in and out of the area exists. The study shall

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

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

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

1 recommendations regarding the implementation of the findings of
2 this study.

NOTE: The purpose of this bill is to improve mine safety in the State of West Virginia by requiring coal mine operators to provide reports to and notify certain entities in the event of an emergency; establishing a mine safety anonymous tip hotline; permitting the Director of the Office of Miners' Health, Safety and Training to share information regarding certification suspensions or revocations with other states; requiring a study be conducted regarding mine inspector qualifications, compensation, training and inspections; creating a criminal offense and establishing criminal penalties for providing advance notice of an inspection or an inspector's presence at a mine; requiring operators to conduct substance abuse testing during inspections or investigations upon reasonable suspicion; providing for suspension of mining certificates if substance abuse testing refused; requiring coal mining operators to implement substance abuse screening policy and program for certified persons; requiring substance abuse screening upon preemployment, rehiring or transfer of certified person; providing procedure for board of appeals hearings on certification suspensions and judicial review of board decisions; providing procedure for approval, review, comment and enforcement of mine ventilation plans; increasing the number of days an apprentice must work within sight and sound of mine foreman or experienced miner; requiring methane detectors be maintained in accordance with manufacture specifications; expanding scope of preshift examinations and requiring supplemental examinations in certain instances; increasing the percentage of rock dust to be maintained in coal mines; prescribing actions required to detect and respond to excess methane gas levels in coal mines; prescribing requirements for persons to operate or repair mining machinery; providing for increased training regarding the use of self-contained self-rescue devices; requiring study of and report on the safety of working or traveling in bleeder or gob areas of certain coal mines; and requiring study of and report on education, training and examination associated with certifying miners.

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

§22A-2-2 and §22A-2-43 have been completely rewritten. Article 22A-1A-1 *et seq.* and §§15-5B-6; 22A-1-13a; 22A-2-43a; 22A-6-13; and 22A-7-5a are new. Therefore, strike throughs and underscoring have

been omitted.