

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 623**

5 (SENATORS PALUMBO, TUCKER AND SNYDER, *original sponsors*)

6 _____
7 [Passed March 8, 2014; in effect from passage.]
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11 AN ACT to amend and reenact §22A-1A-1 of the Code of West Virginia,
12 1931, as amended, relating to Office of Miners' Health, Safety
13 and Training administration and substance abuse; and requiring
14 employers to notify the director of a positive drug or alcohol
15 test, refusing to submit a sample, possessing a substituted
16 sample, submitting a substituted sample, possessing an
17 adulterated sample or submitting an adulterated sample.

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

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

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

22 **ADMINISTRATION; SUBSTANCE ABUSE.**

23 **§22A-1A-1. Substance abuse screening; minimum requirements;**
24 **standards and procedures for screening.**

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

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

7 (A) Amphetamines;

8 (B) Cannabinoids/THC;

9 (C) Cocaine;

10 (D) Opiates;

11 (E) Phencyclidine (PCP);

12 (F) Benzodiazepines;

13 (G) Propoxyphene;

14 (H) Methadone;

15 (I) Barbiturates; and

16 (J) Synthetic narcotics.

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

1 testing. Notwithstanding the provisions of this subdivision, the
2 mine operator may implement a more stringent substance abuse
3 screening policy and program;

4 (2) A random substance abuse testing program covering the
5 substances referenced in subdivision (1) of this subsection.
6 "Random testing" means that each person subject to testing has a
7 statistically equal chance of being selected for testing at random
8 and at unscheduled times. The selection of persons for random
9 testing shall be made by a scientifically valid method, such as a
10 random number table or a computer-based random number generator
11 that is matched with the persons' Social Security numbers, payroll
12 identification numbers or other comparable identifying numbers; and

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

16 (b) For purposes of this subsection, preemployment testing
17 shall be required upon hiring by a new employer, rehiring by a
18 former employer following a termination of the employer/employee
19 relationship or transferring to a West Virginia mine from an
20 employer's out-of-state mine to the extent that any substance abuse
21 test required by the employer in the other jurisdiction does not
22 comply with the minimum standards for substance abuse testing
23 required by this article. Furthermore, the provisions of this
24 section apply to all employers that employ certified persons who

1 work in mines, regardless of whether that employer is an operator,
2 contractor, subcontractor or otherwise.

3 (c) (1) Every employer shall notify the director, on a form
4 prescribed by the director, within seven (7) days of any of the
5 following:

6 (A) A positive drug or alcohol test of a certified person,
7 whether it be a preemployment test, random test, reasonable
8 suspicion test or post-accident test;

9 (B) The refusal of a certified person to submit a sample;

10 (C) A certified person possessing a substituted sample or an
11 adulterated sample; or

12 (D) A certified person submitting a substituted sample or an
13 adulterated sample.

14 (2) With respect to any certified person subject to a
15 collective bargaining agreement, the employer shall notify the
16 director, on a form prescribed by the director, within seven (7)
17 days of any of the following: *Provided*, That notification pursuant
18 to this subdivision shall not result in the immediate temporary
19 suspension, suspension or revocation of any certificate held by a
20 certified person who is subject to a collective bargaining
21 agreement unless and until the arbitration is concluded and the
22 discharge is upheld:

23 (A) A positive drug or alcohol test of a certified person,
24 whether it be a preemployment test, random test, reasonable

1 suspicion test or post-accident test;

2 (B) The refusal of a certified person to submit a sample;

3 (C) A certified person possessing a substituted sample or an
4 adulterated sample; or

5 (D) A certified person submitting a substituted sample or an
6 adulterated sample.

7 (3) When the employer submits the completed notification form
8 prescribed by the director, the employer shall also submit a copy
9 of the laboratory test results showing the substances tested for
10 and the results of the test.

11 (4) Notice shall result in the immediate temporary suspension
12 of all certificates held by the certified person who failed the
13 screening, pending a hearing before the board of appeals pursuant
14 to section two of this article: *Provided*, That notification
15 pursuant to this subsection shall not result in the immediate
16 temporary suspension of any certificate held by a certified person
17 who is subject to a collective bargaining agreement unless and
18 until the arbitration is concluded and the discharge is upheld, and
19 no certificate held by a certified person who is subject to a
20 collective bargaining agreement shall be suspended or revoked
21 unless the discharge is upheld in arbitration: *Provided, however*,
22 That if the certified person terminates his or her employment or
23 voluntarily removes himself or herself from the grievance or
24 arbitration procedure, the certified person may be immediately,

1 temporarily decertified pursuant to this article.

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

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

1 "safety-sensitive position" means an employment position where the
2 employee's job responsibilities include duties and activities that
3 involve the personal safety of the employee or others working at a
4 mine.