

Senate Bill No. 623

(By Senators Palumbo, Tucker and Snyder)

[Introduced February 17, 2014; referred to the Committee on
Energy, Industry and Mining; and then to the Committee on the
Judiciary.]

11 A BILL 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;**

1 **standards and procedures for screening.**

2 (a) Every employer of certified persons, as defined in section
3 two, article one of this chapter, shall implement a substance abuse
4 screening policy and program that 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 rules 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 of Miners' Health, Safety and Training. Collected samples
23 shall be tested by laboratories certified by the United States

1 Department of Health and Human Services, Substance Abuse and Mental
2 Health Services Administration (SAMHSA) for collection and testing.
3 Notwithstanding the provisions of this subdivision, the mine
4 operator may implement a more stringent substance abuse screening
5 policy and program;

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

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

19 (b) For purposes of this subsection, preemployment testing
20 shall be required upon hiring by a new employer, rehiring by a
21 former employer following a termination of the employer/employee
22 relationship, or transferring to a West Virginia mine from an
23 employer's out-of-state mine to the extent that any substance abuse

1 test required by the employer in the other jurisdiction does not
2 comply with the minimum standards for substance abuse testing
3 required by this article. Furthermore, the provisions of this
4 section apply to all employers that employ certified persons who
5 work in mines, regardless of whether that employer is an operator,
6 contractor, subcontractor or otherwise.

7 (c) The employer or his or her agent shall notify the director
8 at least quarterly, on a form prescribed by the director, of the
9 number of preemployment substance abuse screening tests
10 administered during the prior calendar quarter and the number of
11 positive test results associated with the substance abuse screening
12 tests administered.

13 (d) The employer or his or her agent shall notify the
14 director, on a form prescribed by the director, within seven days
15 ~~following completion of an arbitration conducted pursuant to a~~
16 ~~collective bargaining agreement applicable to the certified person,~~
17 ~~if any, of discharging a certified person for violation of the~~
18 ~~employer's substance abuse screening policy and program. of a~~
19 positive drug or alcohol test for each person failing a random
20 test, preemployment test, reasonable suspicion test, post accident
21 test, refusing to submit a sample, possessing a substituted sample,
22 submitting a substituted sample, possessing an adulterated sample
23 or submitting an adulterated sample. The notification shall be

1 accompanied by a record of the test showing positive results or
2 other violation. Notice shall result in the immediate temporary
3 suspension of all certificates held by the certified person who
4 failed the screening, pending a hearing before the board of appeals
5 pursuant to section two of this article.

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

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

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

NOTE: The purpose of this bill is to require mining company employers to notify the director of a positive drug or alcohol test, refusing to submit a sample, possessing a substituted sample, submitting a substituted sample, possessing an adulterated sample or submitting an adulterated sample.

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