

H. B. 2126

(By Delegates R. Smith, Faircloth, Folk, Moffatt, Gearheart,
Wagner, Border, D. Evans, Ambler and Kessinger)

[Introduced January 20, 2015; referred to the

Committee on Industry and Labor then the Judiciary.]

A BILL to amend and reenact §22A-1A-1 of the Code of West Virginia, 1931, as amended, relating to substance abuse screening of persons certified to perform a duty in the operation of a mine by the Office of Miners' Health, Safety and Training administration; and permitting the immediate temporary suspension, suspension or revocation of a certificate held by a certified person subject to a collective bargaining agreement until the arbitration has concluded and the discharge upheld of a person who has tested positive for certain drugs or alcohol, refused to submit a sample for screening, possessed or submitted a substituted sample, or possessed or submitted an adulterated sample for testing.

Be it enacted by the Legislature of West Virginia:

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

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

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures

1 **for screening.**

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

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

6 (A) Amphetamines;

7 (B) Cannabinoids/THC;

8 (C) Cocaine;

9 (D) Opiates;

10 (E) Phencyclidine (PCP);

11 (F) Benzodiazepines;

12 (G) Propoxyphene;

13 (H) Methadone;

14 (I) Barbiturates; and

15 (J) Synthetic narcotics.

16 Split samples shall be collected by providers who are certified as complying with standards
17 and procedures set out in the United States Department of Transportation's rule, 49 C. F. R. Part 40,
18 which may be amended from time to time by legislative rule of the Office of Miners' Health, Safety
19 and Training. Collected samples shall be tested by laboratories certified by the United States
20 Department of Health and Human Services, Substance Abuse and Mental Health Services
21 Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this
22 subdivision, the mine operator may implement a more stringent substance abuse screening policy

1 and program;

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

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

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

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

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

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

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

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

4 (2) With respect to any certified person subject to a collective bargaining agreement, the
5 employer shall notify the director, on a form prescribed by the director, within seven (7) days of any
6 of the following: ~~Provided, That notification pursuant to this subdivision shall not result in the~~
7 ~~immediate temporary suspension, suspension or revocation of any certificate held by a certified~~
8 ~~person who is subject to a collective bargaining agreement unless and until the arbitration is~~
9 ~~concluded and the discharge is upheld:~~

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

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

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

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

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

18 (4) Notice shall result in the immediate temporary suspension of all certificates held by the
19 certified person who failed the screening, pending a hearing before the board of appeals pursuant to
20 section two of this article: ~~Provided, That notification pursuant to this subsection shall not result~~
21 ~~in the immediate temporary suspension of any certificate held by a certified person who is subject~~
22 ~~to a collective bargaining agreement unless and until the arbitration is concluded and the discharge~~

1 ~~is upheld, and no certificate held by a certified person who is subject to a collective bargaining~~
2 ~~agreement shall be suspended or revoked unless the discharge is upheld in arbitration: *Provided,*~~
3 ~~*however,* That if the certified person terminates his or her employment or voluntarily removes~~
4 ~~himself or herself from the grievance or arbitration procedure, the certified person may be~~
5 ~~immediately, temporarily decertified pursuant to this article.~~

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

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

- 1 involve the personal safety of the employee or others working at a mine.

NOTE: The purpose of this bill is to remove the prohibition against the immediate temporary suspension, suspension or revocation of a certificate held by a certified person subject to a collective bargaining agreement until the arbitration has concluded and the discharge upheld of a person who has tested positive for certain drugs or alcohol, refused to submit a sample for screening, possessed or submitted a substituted sample, or possessed or submitted an adulterated sample for testing.

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