

Delegate Miley moves to amend the bill following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof, the following:

1 “That §15-5B-3 of the Code of West Virginia, 1931, as amended,
2 be amended and reenacted; that said code be amended by adding
3 thereto a new section, designated §15-5B-6; that said code be
4 amended by adding thereto two new sections, designated §22A-1-13a
5 and §22A-1-40; that §22A-1-4, §22A-1-14, and §22A-1-21 of said code
6 be amended and reenacted; that said code be amended by adding
7 thereto a new article, designated §22A-1A-1, §22A-1A-2, §22A-1A-3
8 and §22A-1A-4; that said code be amended by adding thereto a new
9 section, designated §22A-2-43a; that §22A-2-2, §22A-2-12,
10 §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66
11 of said code be amended and reenacted; that said code be amended by
12 adding thereto two new sections, designated §22A-6-13 and
13 §22A-6-14; that §22A-6-4 of said code be amended and reenacted;
14 that said code be amended by adding thereto a new section,
15 designated §22A-7-5a; that §22A-7-5 of said code be amended and
16 reenacted; and that said code be amended by adding thereto a new
17 section, designated §22A-12-1, all to read as follows:

18 **CHAPTER 15. PUBLIC SAFETY.**

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

20 **§15-5B-3. Emergency mine response.**

21 (a) To assist the Division of Homeland Security and Emergency

1 Management in implementing and operating the Mine and Industrial
2 Accident Rapid Response System, the Office of Miners' Health,
3 Safety and Training shall, on a quarterly basis, provide the
4 emergency operations center with a mine emergency contact list. In
5 the event of any change in the information contained in the mine
6 emergency contact list, ~~such~~ the changes shall be provided
7 immediately to the emergency operations center. The mine emergency
8 contact list shall include the following information:

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

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

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

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

1 (b) Upon the receipt of an emergency call regarding any
2 accident, as defined in section sixty-six, article two, chapter
3 twenty-two-a of this code, in or about any mine, the emergency
4 operations center shall immediately notify:

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

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

9 (3) Local emergency service personnel in the area in which the
10 accident occurred.

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

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

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

26 (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
25 the location used to post notices pursuant to section eighteen,
26 article one, chapter twenty-two-a of this code.

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

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

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

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

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

16 (1) Supervise and direct the execution and enforcement of the
17 provisions of this article.

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

22 (3) Assign mine inspectors to divisions or districts in
23 accordance with the provisions of section eight of this article as
24 may be necessary to fully and effectively carry out the provisions
25 of this law, including the training of inspectors for the

1 specialized requirements of surface mining, shaft and slope sinking
2 and surface installations and to supervise and direct ~~such~~ the mine
3 inspectors in the performance of their duties.

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

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

10 (6) Hear and determine applications made by mine operators for
11 the annulment or revision of orders made by mine inspectors, and to
12 make inspections of mines, in accordance with the provisions of
13 this article.

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

16 (8) Make annually a full and complete written report of the
17 administration of the office to the Governor and the Legislature of
18 the state for the year ending June 30. The report shall include
19 the number of visits and inspections of mines in the state by mine
20 inspectors, the quantity of coal, coke and other minerals
21 (excluding oil and gas) produced in the state, the number of
22 individuals employed, number of mines in operation, statistics with
23 regard to health and safety of persons working in the mines
24 including the causes of injuries and deaths, improvements made,
25 prosecutions, the total funds of the office from all sources
26 identifying each source of ~~such~~ the funds, the expenditures of the

1 office, the surplus or deficit of the office at the beginning and
2 end of the year, the amount of fines collected, the amount of fines
3 imposed, the value of fines pending, the number and type of
4 violations found, the amount of fines imposed, levied and turned
5 over for collection, the total amount of fines levied but not paid
6 during the prior year, the titles and salaries of all inspectors
7 and other officials of the office, the number of inspections made
8 by each inspector, the number and type of violations found by each
9 inspector. However, no inspector may be identified by name in this
10 report. Such reports shall be filed with the Governor and the
11 Legislature on or before December 31 of the same year for which it
12 was made, and shall upon proper authority be printed and
13 distributed to interested persons.

14 (9) Call or subpoena witnesses, for the purpose of conducting
15 hearings into mine fires, mine explosions or any mine accident; to
16 administer oaths and to require production of any books, papers,
17 records or other documents relevant or material to any hearing,
18 investigation or examination of any mine permitted by this chapter.
19 Any witness so called or subpoenaed shall receive \$40 per diem and
20 shall receive mileage at the rate of \$.15 for each mile actually
21 traveled, which shall be paid out of the State Treasury upon a
22 requisition upon the State Auditor, properly certified by ~~such~~ the
23 witness.

24 (10) Institute civil actions for relief, including permanent
25 or temporary injunctions, restraining orders, or any other
26 appropriate action in the appropriate federal or state court

1 whenever any operator or the operator's agent violates or fails or
2 refuses to comply with any lawful order, notice or decision issued
3 by the director or his or her representative.

4 (11) Beginning the first day of January, two thousand
5 thirteen, the director shall share information regarding suspension
6 or revocation of a certificate of a certified person, as defined in
7 article one of this chapter, for violation of the substance abuse
8 provisions of article one-a of this chapter with other states that
9 subject similar persons to disciplinary action for violation of a
10 substance abuse policy.

11 (12) The director shall propose for legislative promulgation
12 pursuant to article three, chapter twenty-nine-a of this code, a
13 rule establishing a program for the sharing of information between
14 employers who employ certified persons regarding the discharge of
15 persons in safety sensitive positions as defined in section one,
16 article one-a of this chapter for violation of an employers'
17 substance abuse policy.

18 ~~(11)~~ (13) Perform all other duties which are expressly imposed
19 upon him or her by the provisions of this chapter.

20 ~~(12)~~ (14) Impose reasonable fees upon applicants taking tests
21 administered pursuant to the requirements of this chapter.

22 ~~(13)~~ (15) Impose reasonable fees for the issuance of
23 certifications required under this chapter.

24 ~~(14)~~ (16) Prepare study guides and other forms of publications
25 relating to mine safety and charge a reasonable fee for the sale of
26 the publications.

1 ~~(15)~~ (17) Make all records of the office open for inspection
2 of interested persons and the public.

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

12 **§22A-1-13a. Study of mine inspector qualification, compensation,**
13 **training and inspection programs.**

14 The director is directed to conduct a study of the minimum
15 qualifications for mine inspectors, the minimum compensation paid
16 to mine inspectors and the overall training program established for
17 mine inspectors. The study shall identify ways to attract and
18 retain new, qualified mine inspectors to minimize the effect of the
19 anticipated retirement of a significant number of current
20 inspectors. Additionally, the study shall examine ways to improve
21 the training programs for mine inspectors by focusing on
22 technological advances in coal mining techniques, best practices
23 used in modern coal mines and proper mine ventilation. Further,
24 the office shall perform an assessment of the resources and
25 qualification of inspectors necessary to approve mine ventilation
26 plans. Finally, the study shall make recommendations on how to

1 reassess mine inspection priorities to ensure that mines having a
2 history of numerous safety violations are inspected more frequently
3 than mines having a history of comparatively few safety violations
4 while preserving the minimum number of inspections required by the
5 code. By December 31, 2012, the Office of Miners' Health, Safety
6 and Training shall report to the Legislature's Joint Committee on
7 Government and Finance with recommendations regarding the
8 implementation of its findings.

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

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

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

25 (c) Mine inspectors shall devote their full-time and undivided

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

23 (d) In addition to the other duties imposed by this article
24 and article two of this chapter, it is the duty of each inspector
25 to note each violation he or she finds and issue a finding, order,
26 or notice, as appropriate for each violation so noted. During the

1 investigation of any accident, any violation may be noted whether
2 or not the inspector actually observes the violation and whether or
3 not the violation exists at the time the inspector notes the
4 violation, so long as the inspector has clear and convincing
5 evidence the violation has occurred or is occurring.

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

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

24 (g) At the commencement of any inspection of a coal mine by an
25 authorized representative of the director, the authorized
26 representative of the miners at the mine at the time of ~~such~~ the

1 inspection shall be given an opportunity to accompany the
2 authorized representative of the director on ~~such~~ the inspection.

3 **§22A-1-21. Penalties.**

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

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

22 (3) Any miner who knowingly violates any health or safety
23 provision of this chapter or health or safety rule promulgated
24 pursuant to this chapter is subject to a civil penalty assessed by
25 the director under subdivision (4) of this subsection which shall
26 not be more than \$250 for each occurrence of the violation.

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

12 (5) If the person against whom a civil penalty is assessed
13 fails to pay the penalty within the time prescribed in the order,
14 the director may file a petition for enforcement of the order in
15 any appropriate circuit court. The petition shall designate the
16 person against whom the order is sought to be enforced as the
17 respondent. A copy of the petition shall immediately be sent by
18 certified mail, return receipt requested, to the respondent and to
19 the representative of the miners at the affected mine or the
20 operator, as the case may be. The director shall certify and file
21 in the court the record upon which the order sought to be enforced
22 was issued. The court has jurisdiction to enter a judgment
23 enforcing, modifying and enforcing as modified, or setting aside,
24 in whole or in part, the order and decision of the director or it
25 may remand the proceedings to the director for any further action
26 it may direct. The court shall consider and determine de novo all

1 relevant issues, except issues of fact which were or could have
2 been litigated in review proceedings before a circuit court under
3 section twenty of this article and, upon the request of the
4 respondent, those issues of fact which are in dispute shall be
5 submitted to a jury. On the basis of the jury's findings the court
6 shall determine the amount of the penalty to be imposed. Subject to
7 the direction and control of the Attorney General, attorneys
8 appointed for the director may appear for and represent the
9 director in any action to enforce an order assessing civil
10 penalties under this subdivision.

11 (b) (1) Any operator who knowingly violates a health or safety
12 provision of this chapter or health or safety rule promulgated
13 pursuant to this chapter, or knowingly violates or fails or refuses
14 to comply with any order issued under section fifteen of this
15 article, or any order incorporated in a final decision issued under
16 this article, except an order incorporated in a decision under
17 subsection (a) of this section or subsection (b), section
18 twenty-two of this article, shall be assessed a civil penalty by
19 the director under subdivision (5), subsection (a) of this section
20 of not more than \$5,000 and for a second or subsequent violation
21 assessed a civil penalty of not more than \$10,000, unless the
22 director determines that it is appropriate to impose a special
23 assessment for ~~said~~ the violation, pursuant to the provisions of
24 subdivision (2) of this subsection.

25 (2) In lieu of imposing a civil penalty pursuant to the
26 provisions of subsection (a) of this section or subdivision (1) of

1 this subsection, the director may impose a special assessment if an
2 operator violates a health or safety provision of this chapter or
3 health or safety rule promulgated pursuant to this chapter and the
4 violation is of serious nature and involves one or more of the
5 following by the operator:

6 (A) Violations involving fatalities and serious injuries;

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

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

10 (D) Violations involving an imminent danger;

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

13 (F) A discrimination violation under section twenty-two of
14 this article.

15 In situations in which the director determines that there are
16 factors present which would make it appropriate to impose a special
17 assessment, the director shall assess a civil penalty of at least
18 \$5,000 and not more than \$10,000.

19 (c) Whenever a corporate operator knowingly violates a health
20 or safety provision of this chapter or health or safety rules
21 promulgated pursuant to this chapter, or knowingly violates or
22 fails or refuses to comply with any order issued under this law or
23 any order incorporated in a final decision issued under this law,
24 except an order incorporated in a decision issued under subsection
25 (a) of this section or subsection (b), section twenty-two of this
26 article, any director, officer or agent of the corporation who

1 knowingly authorized, ordered or carried out the violation, failure
2 or refusal is subject to the same civil penalties that may be
3 imposed upon a person under subsections (a) and (b) of this
4 section.

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

20 (e) Whoever willfully distributes, sells, offers for sale,
21 introduces or delivers in commerce any equipment for use in a coal
22 mine, including, but not limited to, components and accessories of
23 the equipment, who willfully misrepresents the equipment as
24 complying with the provisions of this law, or with any
25 specification or rule of the director applicable to the equipment,
26 and which does not comply with the law, specification or rule, is

1 guilty of a misdemeanor and, upon conviction thereof, is subject to
2 the same fine and ~~imprisonment~~ confinement that may be imposed upon
3 a person under subsection (d) of this section.

4 (f) Any person who willfully violates any safety standard
5 pursuant to this chapter or a rule promulgated thereunder that
6 causes a fatality or who willfully orders or carries out such
7 violation that causes a fatality is guilty of a felony and, upon
8 conviction thereof, shall be fined not more than \$10,000 or
9 confined in a state correctional facility not less than one year
10 and not more than five years, or both fined and imprisoned.

11 ~~(f)~~ (g) There is continued in the Treasury of the State of
12 West Virginia a Special Health, Safety and Training Fund. All
13 civil penalty assessments collected under this section shall be
14 collected by the director and deposited with the Treasurer of the
15 State of West Virginia to the credit of the Special Health, Safety
16 and Training Fund. The fund shall be used by the director who is
17 authorized to expend the moneys in the fund for the administration
18 of this chapter.

19 **§22A-1-40. Reporting violations, accident investigations; witness**
20 **interviews.**

21 (a) To the extent permitted by law, any person meeting with,
22 or providing a statement to, the director may request to do so on
23 a confidential basis without the consent, presence, involvement or
24 knowledge of any third party. Upon such a request, the director
25 shall keep the identity of any individual providing such a
26 statement and the statement itself confidential, to the extent

1 permitted by law, and the statement shall be exempt from disclosure
2 under article one, chapter twenty-nine-b of this code. Nothing in
3 this section precludes a person from being represented when
4 speaking with the director. Further, nothing in this section
5 precludes a person under subpoena or who is voluntarily speaking
6 with the director from authorizing any other person from
7 participation in such meeting or statement.

8 (b) If any miner is entrapped, fatally injured or otherwise
9 unable, as the result of an accident, to designate a representative
10 to observe witness interviews and investigatory hearings conducted
11 in an accident investigation, the miner's closest relative may
12 designate one representative who may, subject to subsection (a) of
13 this section, attend witness interviews and investigatory hearings
14 regarding the accident for the sole purpose of observing such
15 interviews and hearings and conveying information to the accident
16 victim's families: *Provided*, That the right of a designated
17 representative to observe witness interviews and investigatory
18 hearings pursuant to this subsection shall be subject to subsection
19 (a) and shall not extend to interviews or investigatory hearings of
20 a criminal nature conducted by state or federal inspectors or other
21 state or federal law enforcement officers. No more than five
22 representatives designated pursuant to this section may attend
23 witness interviews and investigatory hearings for the purpose of
24 observing such interviews and hearings and conveying information to
25 accident victims' family.

26 (c) The Director shall, in consultation with the Board of Coal

1 Mine Health and Safety, develop a list of persons skilled in the
2 fields of grief and crisis management, communications and family
3 support. Following any mining accident involving entrapped miners
4 or fatal injuries, the Director shall promptly provide the list of
5 such individuals to the families of the accident victim or victims.
6 The individuals contained on the list developed by the Director
7 shall be available as a resource to families of accident victims
8 who seek their assistance. The list shall also contain a reference
9 to this code section and a statement that the family has the right
10 to designate a representative of their choosing regardless of
11 whether that person is named on the list.

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

13 **ADMINISTRATION; SUBSTANCE ABUSE.**

14 **§22A-1A-1. Substance abuse screening; minimum requirements;**
15 **standards and procedures for screening.**

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

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

22 A. Amphetamines,

23 B. Cannabinoids/THC,

24 C. Cocaine,

25 D. Opiates,

1 E. Phencyclidine (PCP),

2 F. Benzodiazepines,

3 G. Propoxyphene,

4 H. Methadone,

5 I. Barbiturates, and

6 J. Synthetic narcotics.

7 Split samples shall be collected by providers who are
8 certified as complying with standards and procedures set out in the
9 United States Department of Transportation's rule, 49 CFR Part 40,
10 which may be amended from time to time by legislative rule of the
11 Office of Miners' Health, Safety and Training. Collected samples
12 shall be tested by laboratories certified by the United States
13 Department of Health and Human Services, Substance Abuse and Mental
14 Health Services Administration (SAMHSA) for collection and testing.
15 Notwithstanding the provisions of this subdivision, the mine
16 operator may implement a more stringent substance abuse screening
17 policy and program;

18 (2) A random substance abuse testing program covering the
19 substances referenced in subdivision (1) of this subsection.
20 "Random testing" means that each person subject to testing has a
21 statistically equal chance of being selected for testing at random
22 and at unscheduled times. The selection of persons for random
23 testing shall be made by a scientifically valid method, such as a
24 random number table or a computer-based random number generator
25 that is matched with the persons' social security numbers, payroll
26 identification numbers, or other comparable identifying numbers;

1 and

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

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

16 (c) The employer or his or her agent shall notify the director
17 at least quarterly, on a form prescribed by the director, of the
18 number of pre-employment substance abuse screening tests
19 administered during the prior calendar quarter and the number of
20 positive test results associated with the substance abuse screening
21 tests administered.

22 (d) The employer or his or her agent shall notify the
23 director, on a form prescribed by the director, within seven days
24 following completion of an arbitration conducted pursuant to a
25 collective bargaining agreement applicable to the certified person,
26 if any, of discharging a certified person for violation of the

1 employer's substance abuse screening policy and program. The
2 notification shall be accompanied by a record of the test showing
3 positive results or other violation. Notice shall result in the
4 immediate temporary suspension of all certificates held by the
5 certified person who failed the screening, pending a hearing before
6 the board of appeals pursuant to section two of this article.

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

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

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

8 **§22A-1A-2. Board of Appeals hearing procedures.**

9 (a) Any hearing conducted after the temporary suspension of a
10 certified person's certificate pursuant to this article, shall be
11 conducted within sixty days of the temporary suspension. The Board
12 of Appeals shall make every effort to hold the hearing within forty
13 days of the temporary suspension.

14 (b) All hearings of the Board of Appeals pursuant to this
15 section shall be conducted in accordance with the provisions of
16 subsection (c), section thirty-one, article one of this chapter.
17 The Board of Appeals may suspend the certificate or certificates of
18 a certified person for violation of this article or for any other
19 violation of this chapter pertaining to substance abuse. The Board
20 of Appeals may impose further disciplinary actions for repeat
21 violations. The director shall have the authority to propose
22 legislative rules for promulgation in accordance with article
23 three, chapter twenty-nine-a of this code to establish the
24 disciplinary actions referenced in this section following the
25 receipt of recommendations from the Board of Coal Mine Health and
26 Safety following completion of the study required pursuant to

1 section fourteen, article six of this chapter. The legislative
2 rules authorized by this subsection shall not, however, include any
3 provisions requiring an employer to take or refrain from taking any
4 specific personnel action or mandating any employer to establish or
5 maintain an employer-funded substance abuse rehabilitation program.

6 (c) No person whose certification is suspended or revoked
7 under this section may perform any duties under any other
8 certification issued under this chapter, during the period of the
9 suspension imposed by the Board of Appeals.

10 (d) Any party adversely affected by a final order or decision
11 issued by the Board of Appeals hereunder is entitled to judicial
12 review thereof pursuant to section four, article five, chapter
13 twenty-nine-a of this code.

14 **§22A-1A-3. Disclosure of records exempt; exceptions.**

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

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

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

25 (2) The purpose of the disclosure;

26 (3) The precise information to be disclosed;

1 (4) The duration of the consent; and

2 (5) The signature of the person authorizing the release of the
3 information;

4 (b) Where the release of the information is compelled by the
5 Board of Appeals or a court of competent jurisdiction;

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

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

12 (e) Where release of the information is deemed appropriate by
13 the Board of Appeals or a court of competent jurisdiction in a
14 disciplinary proceeding.

15 **§22A-1A-4. Effective date.**

16 The provisions of this article are effective beginning the
17 first day of January, two thousand and thirteen.

18 **ARTICLE 2. UNDERGROUND MINES.**

19 **§22A-2-2. Submittal of detailed ventilation plan to director.**

20 (a) A mine operator shall submit a detailed ventilation plan
21 and any addendums to the director for review and comment. The mine
22 operator shall review the plan with the director and address
23 concerns to the extent practicable. The operator shall deliver to
24 the miners' representative employed by the operator at the mine, if
25 any, a copy of the operator's proposed annual ventilation plan at

1 least ten days prior to the date of submission. The miners'
2 representative, if any, shall be afforded the opportunity to submit
3 written comments to the operator prior to such submission; in
4 addition the miners' representative, if any, may submit written
5 comments to the director. The director shall submit any concern
6 that is not addressed to the United States Department of Labor -
7 Mine Safety and Health Administration [MSHA] through comments to
8 the plan. The mine operator shall provide a copy of the plan to
9 the director ten days prior to the submittal of the plan to MSHA.

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

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

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

25 **§22A-2-12. Instruction of employees and supervision of**
26 **apprentices; annual examination of persons using**

1 **approved methane detecting devices; records of**
2 **examination; maintenance of methane detectors,**
3 **etc.**

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

20 (b) It is the duty of the mine foreman or the assistant mine
21 foreman of every coal mine in this state to see that every person
22 employed to work in ~~such~~ the mine is, before beginning work
23 therein, instructed in the particular danger incident to his or her
24 work in ~~such~~ the mine, and furnished a copy of the mining laws and
25 rules of ~~such~~ the mine. It is the duty of every mine operator who

1 employs apprentices, as that term is used in sections three and
2 four, article eight of this chapter to ensure that the apprentices
3 are effectively supervised with regard to safety practices and to
4 instruct apprentices in safe mining practices. Every apprentice
5 shall work under the direction of the mine foreman or his or her
6 assistant mine foreman and they are responsible for his or her
7 safety. The mine foreman or assistant mine foreman may delegate
8 the supervision of an apprentice to an experienced miner, but the
9 foreman and his or her assistant mine foreman remain responsible
10 for the apprentice. During the first ~~ninety~~ one hundred twenty
11 days of employment in a mine, the apprentice shall work within
12 sight and sound of the mine foreman, assistant mine foreman, or an
13 experienced miner, and in ~~such~~ a location that the mine foreman,
14 assistant mine foreman or experienced miner can effectively respond
15 to cries for help of the apprentice. ~~Such~~ The location shall be on
16 the same side of any belt, conveyor or mining equipment.

17 (c) Persons whose duties require them to use a ~~flame safety~~
18 ~~lamp~~ approved methane detecting device or other approved methane
19 detectors shall be examined at least annually as to their
20 competence by a qualified official from the Office of Miners'
21 Health, Safety and Training and a record of ~~such~~ the examination
22 shall be kept by the operator and the office. ~~Flame safety lamps~~
23 Approved methane detecting devices and other approved methane
24 detectors shall be given proper maintenance and shall be tested
25 before each working shift. Each operator shall provide for the
26 proper maintenance and care of the permissible ~~flame safety lamp~~

1 approved methane detecting device or any other approved device for
2 detecting methane and oxygen deficiency by a person trained in ~~such~~
3 the maintenance, and, before each shift, care shall be taken to
4 ensure that ~~such the lamp~~ approved methane detecting device or
5 other device is in a permissible condition and maintained according
6 to manufacturer's specifications.

7 **§22A-2-16. Examinations of reports of fire bosses.**

8 The mine foreman shall, ~~also~~ each day, read carefully and
9 countersign with ink or indelible pencil all reports entered in the
10 record book of the fire bosses. ~~and he~~ The mine foreman shall
11 supervise the fire boss or fire bosses, except as ~~hereinafter~~
12 provided in section twenty-one of this article. No less frequently
13 than bi-weekly, the superintendent or, if there is no
14 superintendent, the senior person at the mine shall obtain complete
15 copies of the books of the fire bosses, and acknowledge that he or
16 she has reviewed such copies and acted accordingly. This
17 acknowledgment shall be made by signing a book prescribed by the
18 director for that purpose.

19 **§22A-2-20. Preparation of danger signal by fire boss or certified**
20 **person acting as such prior to examination; report; records**
21 **open for inspection.**

22 (a) It ~~shall be~~ is the duty of the fire boss, or a certified
23 person acting as such, to prepare a danger signal (a separate
24 signal for each shift) with red color at the mine entrance at the
25 beginning of his or her shift or prior to his or her entering the

1 mine to make his or her examination and, except for those persons
2 already on assigned duty, no person except the mine owner, operator
3 or agent, and only then in the case of necessity, shall pass beyond
4 this danger signal until the mine has been examined by the fire
5 boss or other certified person and the mine or certain parts
6 thereof reported by him or her to be safe. When reported by him or
7 her to be safe, the danger sign or color thereof shall be changed
8 to indicate that the mine is safe in order that employees going on
9 shift may begin work. Each person designated to make ~~such~~ the fire
10 boss examinations shall be assigned a definite underground area of
11 ~~such~~ the mine, and, in making his or her examination shall examine
12 all active working places in the assigned area and make tests with
13 an approved device for accumulations of methane and oxygen
14 deficiency; examine seals and doors; examine and test the roof,
15 face and ribs in the working places and on active roadways and
16 travelways, approaches to abandoned workings, ~~and~~ accessible falls
17 in active sections and areas where any person is scheduled to work
18 or travel underground. He or she shall place his or her initials
19 and the date at or near the face of each place he or she examines.
20 Should he or she find a condition which he or she considers
21 dangerous to persons entering ~~such~~ the areas, he or she shall place
22 a conspicuous danger sign at all entrances to ~~such~~ the place or
23 places. Only persons authorized by the mine management may enter
24 ~~such~~ the places while the sign is posted and only for the purpose
25 of eliminating the dangerous condition. Upon completing his or her
26 examination he or she shall report by suitable communication system

1 or in person the results of this examination to a certified person
2 designated by mine management to receive and record ~~such~~ the
3 report, at a designated station on the surface of the premises of
4 the mine or underground, before other persons enter the mine to
5 work in ~~such~~ coal-producing shifts. He or she shall also record the
6 results of his or her examination with ink or indelible pencil in
7 a book prescribed by the director, kept for ~~such~~ the purpose at a
8 place on the surface of the mine designated by mine management. All
9 records of daily and weekly reports, as prescribed herein, shall be
10 open for inspection by interested persons.

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

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

21 (d) Upon completing his or her examination he or she shall
22 report by suitable communication system or in person the results of
23 this examination to a certified person designated by mine
24 management to receive and record the report, at a designated
25 station on the surface of the premises of the mine or underground,
26 before other persons enter the area of the mine subject to the

1 supplemental examination. The results of the examination shall be
2 recorded with ink or indelible pencil by the examiner in the book
3 referenced in subsection (a) of this section before he or she
4 leaves the mine on that shift.

5 **§22A-2-24. Control of coal dust; rock dusting.**

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

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

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

1 ~~eighty percent.~~ The incombustible content of mine dust in return
2 entries shall also be equal to or greater than eighty percent.

3 (d) Rock dust shall not contain more than five percent by
4 volume of quartz or free silica particles and shall be pulverized
5 so that one hundred percent will pass through a twenty mesh screen
6 and seventy percent or more will pass through a two hundred mesh
7 screen.

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

12 **§22A-2-43. Actions to detect and respond to excess methane.**

13 The following actions are required to detect and respond to
14 excess methane:

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

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

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

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

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

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

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

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

17 (A) Except for the mine foreman, assistant mine foreman, or
18 individuals authorized by the mine foreman or assistant mine
19 foreman, all individuals shall be withdrawn from the affected area.

20 If a federal or state mine inspector is present in the area of the
21 mine where one and five-tenths percent or more of methane is
22 detected, the federal or state mine inspector and the miners'
23 representative, if any, may remain in the area with the mine
24 foreman, assistant mine foreman or other individuals authorized by
25 the mine foreman or assistant mine foreman.

26 (B) Except for intrinsically safe AMS, electrically powered

1 equipment in the affected area shall be disconnected at the power
2 source.

3 (d) Return air split.--

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

11 (2) When one and five-tenths percent or more methane is
12 present in a return air split between the last working place on a
13 working section and where that split of air meets another split of
14 air or the location where the split is used to ventilate seals or
15 worked-out areas, except for the mine foreman, assistant mine
16 foreman or individuals authorized by the mine or assistant mine
17 foreman, all individuals shall be withdrawn from the affected area.
18 If a federal or state mine inspector is present in the area of the
19 mine where one and five-tenths percent or more of methane is
20 detected, the federal or state mine inspector and the miners'
21 representative, if any, may remain in the area with the mine
22 foreman, assistant mine foreman or other individuals authorized by
23 the mine foreman or assistant mine foreman.

24 (3) Other than intrinsically safe AMS, equipment in the
25 affected area shall be de-energized, electric power shall be
26 disconnected at the power source and other mechanized equipment

1 shall be shut off.

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

5 (e) Return air split alternative. --

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

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

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

17 (C) Rock dust is continuously applied with a mechanical duster
18 to the return air course during coal production at a location in
19 the air course immediately outby the most inby monitoring point.

20 (2) When one and five-tenths percent or more methane is
21 present in a return air split between a point in the return
22 opposite the section loading point and where that split of air
23 meets another split of air or where the split of air is used to
24 ventilate seals or worked-out areas:

25 (A) Changes or adjustments shall be made at once to the
26 ventilation system to reduce the concentration of methane in the

1 return air below one and five-tenths percent.

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

5 If a federal or state mine inspector is present in the area of the
6 mine where one and five-tenths percent or more of methane is
7 detected, the federal or state mine inspector and the miners'
8 representative, if any, may remain in the area with the mine
9 foreman, assistant mine foreman or other individuals authorized by
10 the mine foreman or assistant mine foreman.

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) Bleeders and other return air courses.--

19 The concentration of methane in a bleeder split of air
20 immediately before the air in the split joins another split of air,
21 or in a return air course other than as described in subsections
22 (d) and (e) of this section, shall not exceed two percent.

23 (g) Machine mounted methane monitors. --

24 (1) Approved methane monitors shall be installed and
25 maintained on all face cutting machines, continuous miners,
26 longwall face equipment and other mechanized equipment used to

1 extract coal or load coal within the working place.

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

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

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

22 (h) *Automatic de-energization of extraction apparatus.* --

23 When the methane concentration at any machine-mounted methane
24 monitor reaches one percent, the monitor shall give a warning
25 signal. The warning signal device of the methane monitor shall be
26 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 for a
7 sustained period; or

8 (2) The monitor is not operating properly.

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

12 (i) Compliance schedule for machine refit.--

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

25 **§22A-2-43a. Operation of cutting and mining machines; repair and**
26 **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 such an 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 locked and tagged, if required by law, and the
19 machinery is blocked against motion, except where machinery motion
20 is necessary to make adjustments. For purposes of this subsection,
21 the following terms shall have the 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

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

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

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

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

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

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

24 **§22A-2-55. Protective equipment and clothing.**

25 (a) Welders and helpers shall use proper shields or goggles to
26 protect their eyes. All employees shall have approved goggles or

1 shields and use the same where there is a hazard from flying
2 particles or other eye hazards.

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

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

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

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

17 (f) (1) A self-contained self-rescue device approved by the
18 director shall be worn by each person underground or kept within
19 his or her immediate reach and the device shall be provided by the
20 operator. The self-contained self-rescue device shall be adequate
21 to protect a miner for one hour or longer. Each operator shall
22 train each miner in the use of ~~such~~ the device and refresher
23 training courses for all underground employees shall be held ~~during~~
24 ~~each calendar year~~ once each quarter. Quarters shall be based on
25 a calendar year.

26 (2) In addition to the requirements of subdivision (1) of this

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

17 (3) Any person that, without the authorization of the operator
18 or the director, knowingly removes or attempts to remove any
19 self-contained self-rescue device or lifeline cord from the mine or
20 mine site with the intent to permanently deprive the operator of
21 the device or lifeline cord or knowingly tampers with or attempts
22 to tamper with ~~such~~ the device or lifeline cord shall be guilty of
23 a felony and, upon conviction thereof, shall be imprisoned in a
24 state correctional facility for not less than one year nor more
25 than ten years or fined not less than \$10,000 nor more than
26 \$100,000, or both.

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

12 (2) Any person that, without the authorization of the operator
13 or the director, knowingly removes or attempts to remove any
14 wireless emergency communication device or related equipment, from
15 the mine or mine site with the intent to permanently deprive the
16 operator of the device or equipment or knowingly tampers with or
17 attempts to tamper with the device or equipment shall be guilty of
18 a felony and, upon conviction thereof, shall be imprisoned in a
19 state correctional facility for not less than one year nor more
20 than ten years or fined not less than \$10,000 nor more than
21 \$100,000, or both.

22 (h) (1) A wireless tracking device approved by the director
23 and provided by the operator shall be worn by each person
24 underground. In the event of an accident or other emergency, the
25 tracking device shall, at a minimum, be capable of providing
26 real-time monitoring of the physical location of each person

1 underground: *Provided*, That no person shall discharge or
2 discriminate against any miner based on information gathered by a
3 wireless tracking device during nonemergency monitoring. Each
4 operator shall train each miner in the use of the device and
5 provide refresher training courses for all underground employees
6 during each calendar year. The operator shall install in or around
7 the mine all equipment necessary to provide real-time emergency
8 monitoring of the physical location of each person underground.

9 (2) Any person that, without the authorization of the operator
10 or the director, knowingly removes or attempts to remove any
11 wireless tracking device or related equipment, approved by the
12 director, from a mine or mine site with the intent to permanently
13 deprive the operator of the device or equipment or knowingly
14 tampers with or attempts to tamper with the device or equipment
15 shall be guilty of a felony and, upon conviction thereof, shall be
16 imprisoned in a state correctional facility for not less than one
17 year nor more than ten years or fined not less than \$10,000 nor
18 more than \$100,000, or both.

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

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

24 (a) For the purposes of this section, the term "accident"
25 means:

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

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

3 (3) The entrapment of an individual;

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

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

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

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

10 (8) An unplanned roof fall at or above the anchorage zone in
11 active workings where roof bolts are in use or an unplanned roof or
12 rib fall in active workings that impairs ventilation or impedes
13 passage;

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

16 (10) An unstable condition at an impoundment, refuse pile or
17 culm bank which requires emergency action in order to prevent
18 failure, or which causes individuals to evacuate an area, or the
19 failure of an impoundment, refuse pile or culm bank;

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

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

25 (b) Whenever any accident occurs in or about any coal mine or
26 the machinery connected therewith, it is the duty of the operator

1 or the mine foreman in charge of the mine to give notice, within
2 fifteen minutes of ascertaining the occurrence of an accident, to
3 the Mine and Industrial Accident Emergency Operations Center at the
4 statewide telephone number established by the Director of the
5 Division of Homeland Security and Emergency Management pursuant to
6 the provisions of article five-b, chapter fifteen of this code
7 stating the particulars of the accident: *Provided*, That the
8 operator or the mine foreman in charge of the mine may comply with
9 this notice requirement by immediately providing notice to the
10 appropriate local organization for emergency services as defined in
11 section eight, article five of said chapter, or the appropriate
12 local emergency telephone system operator as defined in article
13 six, chapter twenty-four of this code: *Provided, however, That if,*
14 *immediately upon ascertaining the occurrence of an accident, the*
15 *operator or the mine foreman in charge of the mine provides notice*
16 *to the local organization for emergency services as defined in*
17 *section eight, article five, chapter fifteen of this code, or the*
18 *appropriate local emergency telephone system operator as defined in*
19 *article six, chapter twenty-four of this code, then, in order to*
20 *comply with this subsection, the operator or mine foreman in charge*
21 *of the mine shall also give notice to the Mine and Industrial*
22 *Accident Emergency Operations Center at the statewide number*
23 *identified in this subsection within fifteen minutes of completing*
24 *the telephone call to the local organization for emergency services*
25 *or the appropriate local emergency telephone system operator, as*
26 *applicable: *Provided, however further,** That nothing in this

1 subsection shall be construed to relieve the operator from any
2 reporting or notification requirement under federal law.

3 (c) The Director of the Office of Miners' Health, Safety and
4 Training shall impose, pursuant to rules authorized in this
5 section, a civil administrative penalty of \$100,000 on the operator
6 if it is determined that the operator or the mine foremen in charge
7 of the mine failed to give immediate notice as required in this
8 section: *Provided*, That the director may waive imposition of the
9 civil administrative penalty at any time if he or she finds that
10 the failure to give immediate notice was caused by circumstances
11 wholly outside the control of the operator: *Provided, however, That*
12 the assessment of the civil administrative penalty set forth in
13 this subsection may be appealed to the Board of Appeals, and the
14 Board of Appeals may, by unanimous vote, reduce the amount of the
15 civil administrative penalty upon a finding of mitigating
16 circumstances warranting the imposition of a lesser amount.

17 (d) If anyone is ~~killed~~ fatally injured, the inspector shall
18 immediately go to the scene of the accident and make
19 recommendations and render assistance as he or she may deem
20 necessary for the future safety of the men and investigate the
21 cause of the explosion or accident and make a record. He or she
22 shall preserve the record with the other records in his or her
23 office. The cost of the investigation records shall be paid by the
24 Office of Miners' Health, Safety and Training. A copy shall be
25 furnished to the operator and other interested parties. To enable
26 him or her to make an investigation, he or she has the power to

1 compel the attendance of witnesses and to administer oaths or
2 affirmations. The director has the right to appear and testify and
3 to offer any testimony that may be relevant to the questions and to
4 cross-examine witnesses.

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

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

7 (a) The board shall adopt as standard rules the "coal mine
8 health and safety provisions of this chapter". Such standard rules
9 and any other rules shall be adopted by the board without regard to
10 the provisions of chapter twenty-nine-a of this code. The Board of
11 Coal Mine Health and Safety shall devote its time toward
12 promulgating rules in those areas specifically directed by this
13 chapter and those necessary to prevent fatal accidents and
14 injuries.

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

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

24 (1) Upon consideration of the latest available scientific data
25 in the field, the technical feasibility of standards, and

1 experience gained under this and other safety statutes, such rules
2 may expand protections afforded by this chapter notwithstanding
3 specific language therein, and such rules may deal with subject
4 areas not covered by this chapter to the end of affording the
5 maximum possible protection to the health and safety of miners.

6 (2) No rules promulgated by the board shall reduce or
7 compromise the level of safety or protection afforded miners below
8 the level of safety or protection afforded by this chapter.

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

18 (4) The director shall cause proposed rules and a notice
19 thereof to be posted as provided in section eighteen, article one
20 of this chapter. The director shall deliver a copy of such proposed
21 rules and accompanying notice to each operator affected. A copy of
22 such proposed rules shall be provided to any individual by the
23 director's request. The notice of proposed rules shall contain a
24 summary in plain language explaining the effect of the proposed
25 rules.

26 (5) The board shall afford interested persons a period of not

1 less than thirty days after releasing proposed rules to submit
2 written data or comments. The board may, upon the expiration of
3 such period and after consideration of all relevant matters
4 presented, promulgate such rules with such modifications as it may
5 deem appropriate.

6 (6) On or before the last day of any period fixed for the
7 submission of written data or comments under subdivision (5) of
8 this section, any interested person may file with the board written
9 objections to a proposed rule, stating the grounds therefor and
10 requesting a public hearing on such objections. As soon as
11 practicable after the period for filing such objections has
12 expired, the board shall release a notice specifying the proposed
13 rules to which objections have been filed and a hearing requested.

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

23 (8) All rules promulgated by the board shall be published in
24 the State Register and continue in effect until modified or
25 superseded in accordance with the provisions of this chapter.

1 (d) To carry out its duties and responsibilities, the board is
2 authorized to employ such personnel, including legal counsel,
3 experts and consultants, as it deems necessary. In addition, the
4 board, within the appropriations provided for by the Legislature,
5 may conduct or contract for research and studies and is entitled to
6 the use of the services, facilities and personnel of any agency,
7 institution, school, college or university of this state.

8 (e) The director shall within sixty days of a coal mining
9 fatality or fatalities provide the board with all available reports
10 regarding such fatality or fatalities.

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

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

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

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

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

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

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

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

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

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

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

15 **§22A-6-13. Study of ingress and egress to bleeder and gob areas**
16 **of longwall panels and pillar sections.**

17 The Board of Coal Mine Health and Safety is directed to study
18 the safety of working or traveling in bleeder or gob areas of a
19 longwall panel or pillar section of a mine where only one
20 travelable entry in and out of the area exists. The study shall
21 consider what additional roof control or other measures, if any,
22 should be implemented to ensure that underground miners who work or
23 travel in bleeder or gob areas of a longwall panel or pillar
24 section having only one travelable entry in and out of the areas
25 are at least as safe as miners working in comparable areas with
26 multiple travelable entries in and out of the areas. By December

1 31, 2012, the board shall report to the Legislature's Joint
2 Committee on Government and Finance with recommendations regarding
3 implementation of the findings of this study.

4 **§22A-6-14. Study of mandatory substance abuse program.**

5 The Board of Coal Mine Health and Safety is directed to study
6 the mandatory substance abuse screening policy and program
7 requirements of article one-a of this chapter and make
8 recommendations to the director regarding (a) establishment of
9 guidelines to be employed by the Board of Appeals when
10 administering disciplinary actions to certified persons pursuant
11 to article one-a of this chapter, (b) requiring certification by
12 the Office of Miners' Health, Safety and Training of persons who
13 regularly work at mines who are not presently required to obtain
14 certification, and (c) establishment of additional minimum
15 requirements, parameters, methodologies and protocols to be
16 integrated into the substance abuse screening policy and program
17 requirements of article one-a of this chapter. By the thirty-first
18 day of August, two thousand and twelve, the board shall submit its
19 report to the director. The director is authorized to propose for
20 legislative promulgation, legislative rules pursuant to article
21 three, chapter twenty-nine-a of this code regarding the
22 implementation of the findings of this study. These rules shall be
23 initially promulgated as emergency rules by the director pursuant
24 to the provisions of section fifteen, article three, chapter
25 twenty-nine-a of the code by the thirty-first day of December, two
26 thousand and twelve, and shall include the establishment of

1 certification requirements recommended by the board for persons who
2 regularly work at mines that are not presently required to obtain
3 certification and establishment of guidelines to be employed by the
4 Board of Appeals when administering disciplinary actions to
5 certified persons pursuant to article one-a of this chapter.

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

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

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

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

24 (c) The board may establish criteria and standards for a
25 program of preemployment education and training to be required of

1 miners working on the surface at underground mines who are not
2 certified under the provisions of this article or any other
3 provision of this code.

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

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

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

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

24 (h) The board may, upon its own motion or whenever requested
25 to do so by the director, consider two certificates issued by this
26 state to be of equal value or consider training provided or

1 required by federal agencies to be sufficient to meet training and
2 education requirements set by it, the director, or by the
3 provisions of this code.

4 (i) As part of the annual training required by this section,
5 the board shall include training of certified persons and other
6 miners, instruction on miners' rights as they relate to the
7 operation of unsafe equipment as provided in section seventy-one of
8 article two of this chapter, his or her right to withdrawal from
9 unsafe conditions as provided in section seventy-one-a of article
10 two of this chapter and his or her rights under section twenty-two,
11 article one of this chapter.

12 **§22A-7-5a. Study of miner training and education.**

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

1 this study.

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

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

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