

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4351**

5  
6 (By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

7 [By Request of the Executive]

8 [Passed March 6, 2012; in effect ninety days from passage.]

9  
10 AN ACT to amend and reenact §15-5B-3 of the Code of West Virginia,  
11 1931, as amended; to amend said code by adding thereto a new  
12 section, designated §15-5B-6; to amend and reenact §22A-1-4,  
13 §22A-1-14 and §22A-1-21 of said code; to amend said code by  
14 adding thereto two new sections, designated §22A-1-13a and  
15 22A-1-40; to amend said code by adding thereto a new article,  
16 designated §22A-1A-1, §22A-1A-2, §22A-1A-3 and §22A-1A-4; to  
17 amend and reenact §22A-2-2, §22A-2-12, §22A-2-16, §22A-2-20,  
18 §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code; to  
19 amend said code by adding thereto a new section, designated  
20 §22A-2-43a; to amend and reenact §22A-6-4 of said code; to  
21 amend said code by adding thereto two new sections, designated  
22 §22A-6-13 and §22A-6-14; to amend and reenact §22A-7-5 of said  
23 code; to amend said code by adding thereto a new section,  
24 designated §22A-7-5a; and to amend said code by adding thereto

1 a new article, designated §22A-12-1, all relating to mine  
2 safety generally; requiring coal mine operators to provide  
3 reports to and notify certain entities in the event of an  
4 emergency; establishing a mine safety anonymous tip hotline;  
5 exempting information provided to the hotline from the Freedom  
6 of Information Act; permitting the Director of the Office of  
7 Miners' Health, Safety and Training to share information  
8 regarding certification suspensions or revocations with other  
9 states and to promulgate certain legislative rules; requiring  
10 a study be conducted regarding mine inspector qualifications,  
11 compensation, training and inspections; creating a criminal  
12 offense and establishing criminal penalties for providing  
13 advance notice of an inspection or an inspector's presence at  
14 a mine; increasing civil and criminal penalties; requiring  
15 operator or employer to investigate complaints involving  
16 impaired miners; creating criminal offense and penalty for  
17 willful violation of mine safety laws, rules or standards  
18 causing a fatality; providing confidentiality of certain  
19 meetings relating to violations and mining accidents;  
20 excepting certain statements from release under freedom of  
21 information act; providing conditions relating to statements  
22 to director; allowing designation of certain persons by miner  
23 family members to attend interviews and hearings in certain  
24 circumstances and providing limitations thereto; providing  
25 that Director prepare and distribute list containing certain

1 information of persons to assist families following accidents;  
2 providing for suspension of mining certificates in certain  
3 circumstances; requiring coal mining operators and certain  
4 employers to implement substance abuse screening policy and  
5 program for certain persons; providing procedures and minimum  
6 requirements of substance abuse screening policy and program;  
7 requiring substance abuse screening upon preemployment,  
8 rehiring or transfer of miner; requiring coal mine operators  
9 to provide notification to the Director of the Office of  
10 Miners' Health, Safety and Training of certain information at  
11 specified intervals and upon certain events related to  
12 substance abuse violations; allowing operator policies to be  
13 more restrictive than minimum statutory requirements;  
14 requiring substance abuse screening of all persons in safety  
15 sensitive positions; requiring immediate suspension of miner  
16 certificates as a result of suspensions or revocations for  
17 substance abuse in other jurisdictions and reciprocity;  
18 providing procedure for board of appeals hearings on  
19 certification suspensions and judicial review of board  
20 decisions; providing exemptions from and exceptions to the  
21 disclosure of substance abuse screening results; proving rule-  
22 making on thresholds and other protocols and requirements;  
23 providing internal effective dates; revising procedure for  
24 approval, review, comment and enforcement of mine ventilation  
25 plans; increasing the number of days an apprentice must work

1 within sight and sound of mine foreman or experienced miner;  
2 authorizing additional training when certain conduct creating  
3 hazardous condition at mine; requiring methane detectors be  
4 maintained in accordance with manufacturer specifications;  
5 requiring periodic review copies of fire boss books by the  
6 mining superintendent or senior person at the mine, and duties  
7 thereto; requiring director to proscribe fire boss book;  
8 revising and expanding examination and reporting requirements  
9 relating to certain inspections; increasing the percentage of  
10 rock dust to be maintained in coal mines and providing certain  
11 information upon request; prescribing actions required to  
12 detect and respond to excess methane gas levels in coal mines;  
13 establishing safety levels and testing requirements relating  
14 to methane and providing for rules relating thereto and  
15 requiring certain action at certain levels; prescribing  
16 requirements for persons to operate or repair mining  
17 machinery; providing for increased training regarding the use  
18 of self-contained self-rescue devices; providing additional  
19 notification by coal mine operators in the event of an  
20 accident; allowing reduction of civil penalties when  
21 mitigating circumstances exist; authorizing board to conduct  
22 investigation in accidents resulting in a fatality; requiring  
23 study of and report on the safety of working or traveling in  
24 bleeder or gob areas of certain coal mines; requiring studies  
25 of expanding certification and mandatory substance abuse

1 program and authorizing emergency rule-making by the Board and  
2 Director relating thereto; directing additional education for  
3 certain miners rights and protections; requiring study of and  
4 report on education, training and examination associated with  
5 certifying miners; and requiring a study and report on  
6 enforcement procedures.

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

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

25

**CHAPTER 15. PUBLIC SAFETY.**

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

2 **§15-5B-3. Emergency mine response.**

3 (a) To assist the Division of Homeland Security and Emergency  
4 Management in implementing and operating the Mine and Industrial  
5 Accident Rapid Response System, the Office of Miners' Health,  
6 Safety and Training shall, on a quarterly basis, provide the  
7 emergency operations center with a mine emergency contact list. In  
8 the event of any change in the information contained in the mine  
9 emergency contact list, the changes shall be provided immediately  
10 to the emergency operations center. The mine emergency contact list  
11 shall include the following information:

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

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

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

23 (4) The names, locations and telephone numbers of all mine  
24 rescue stations, including at least one telephone number for each

1 station that may be called twenty-four hours a day and a listing of  
2 all mines that each mine rescue station serves in accordance with  
3 the provisions of section thirty-five, article one, chapter  
4 twenty-two-a of this code.

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

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

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

13 (3) Local emergency service personnel in the area in which the  
14 accident occurred.

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

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

25 (e) Nothing in this section shall be construed to relieve an

1 operator, as defined in section two, article one, chapter  
2 twenty-two-a of this code, from any reporting or notification  
3 obligation under section sixty-six, article two, chapter  
4 twenty-two-a of this code and under federal law.

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

16 **§15-5B-6. Mine Safety Anonymous Tip Hotline.**

17 The Director of the Division of Homeland Security and  
18 Emergency Management shall maintain a toll free number that allows  
19 callers to report mine safety violations and hazardous coal mining  
20 conditions and practices. The information collected shall be  
21 provided to the Office of Miners' Health, Safety and Training. No  
22 information may be submitted to the Office of Miners' Health,  
23 Safety and Training that would allow identification of the person  
24 placing the call. The calls are confidential and any documentation  
25 thereof or related thereto is not subject to release and is exempt



1 from the provisions of article one, chapter twenty-nine-b of this  
2 code. The director shall distribute printed information to all  
3 state mining operations alerting miners to the existence of the  
4 toll free line. Each mining operation shall post this notice at  
5 the location used to post notices pursuant to section eighteen,  
6 article one, chapter twenty-two-a of this code.

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

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

10 **§22A-1-4. Powers and duties of the Director of the Office of**  
11 **Miners' Health, Safety and Training**

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

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

21 (1) Supervise and direct the execution and enforcement of the  
22 provisions of this article.

23 (2) Employ such assistants, clerks, stenographers and other  
24 employees as may be necessary to fully and effectively carry out

1 his or her responsibilities and fix their compensation, except as  
2 otherwise provided in this article.

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

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

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

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

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

22 (8) Make annually a full and complete written report of the  
23 administration of the office to the Governor and the Legislature of  
24 the state for the year ending June 30. The report shall include  
25 the number of visits and inspections of mines in the state by mine

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

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

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

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

12 (11) Beginning January 1, 2013, the director shall share  
13 information regarding suspension or revocation of a certificate of  
14 a certified person, as defined in this article for violation of the  
15 substance abuse provisions of article one-a of this chapter with  
16 other states that subject similar persons to disciplinary action  
17 for violation of a substance abuse policy.

18 (12) The director shall propose rules for legislative approval  
19 pursuant to article three, chapter twenty-nine-a of this code, a  
20 rule establishing a program for the sharing of information between  
21 employers who employ certified persons regarding the discharge of  
22 persons in safety sensitive positions as defined in section one,  
23 article one-a of this chapter for violation of an employer's  
24 substance abuse policy.

25 (13) Perform all other duties which are expressly imposed upon

1 him or her by the provisions of this chapter.

2 (14) Impose reasonable fees upon applicants taking tests  
3 administered pursuant to the requirements of this chapter.

4 (15) Impose reasonable fees for the issuance of certifications  
5 required under this chapter.

6 (16) Prepare study guides and other forms of publications  
7 relating to mine safety and charge a reasonable fee for the sale of  
8 the publications.

9 (17) Make all records of the office open for inspection of  
10 interested persons and the public.

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

20 **§22A-1-13a. Study of mine inspector qualification, compensation,**  
21 **training and inspection programs.**

22 The director is directed to conduct a study of the minimum  
23 qualifications for mine inspectors, the minimum compensation paid  
24 to mine inspectors and the overall training program established for  
25 mine inspectors. The study shall identify ways to attract and

1 retain new, qualified mine inspectors to minimize the effect of the  
2 anticipated retirement of a significant number of current  
3 inspectors. Additionally, the study shall examine ways to improve  
4 the training programs for mine inspectors by focusing on  
5 technological advances in coal mining techniques, best practices  
6 used in modern coal mines and proper mine ventilation. Further,  
7 the director shall perform an assessment of the resources and  
8 qualification of inspectors necessary to approve mine ventilation  
9 plans. Finally, the study shall make recommendations on how to  
10 reassess mine inspection priorities to ensure that mines having a  
11 history of numerous safety violations are inspected more frequently  
12 than mines having a history of comparatively few safety violations  
13 while preserving the minimum number of inspections required by the  
14 code. By December 31, 2012, the Office of Miners' Health, Safety  
15 and Training shall report to the Legislature's Joint Committee on  
16 Government and Finance with recommendations regarding the  
17 implementation of its findings.

18 **§22A-1-14. Director and inspectors authorized to enter mines;**  
19 **duties of inspectors to examine mines; no advance**  
20 **notice of an inspection; reports after fatal**  
21 **accidents.**

22 (a) The director, or his or her authorized representative, has  
23 authority to visit, enter, and examine any mine, whether  
24 underground or on the surface, and may call for the assistance of

1 any district mine inspector or inspectors whenever assistance is  
2 necessary in the examination of any mine. The operator of every  
3 coal mine shall furnish the director or his or her authorized  
4 representative proper facilities for entering the mine and making  
5 examination or obtaining information.

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

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

1 that mine. Any person who, with the requisite intent, knowingly  
2 causes or conspires to provide advance notice of any inspection or  
3 of an inspector's presence at a mine is guilty of a felony and,  
4 upon conviction thereof, shall be fined not more than \$15,000 or  
5 imprisoned in a state correctional facility not less than one year  
6 and not more than five years, or both fined and imprisoned.

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

16 (e) On or after July 1, 2012, an inspector shall require the  
17 operator or other employer to investigate all complaints received  
18 by the Office of Miners' Health, Safety and Training involving a  
19 certified person's substance abuse or alcohol related impairment at  
20 a mine. Within thirty days following notification by the Office of  
21 Miners' Health, Safety and Training to the operator or other  
22 employer of the complaint, the operator or other employer shall  
23 file with the Director a summary of its investigation into the  
24 alleged substance abuse or alcohol related impairment of a  
25 certified person.



1 (f) The mine inspector shall visit the scene of each fatal  
2 accident occurring in any mine within his or her district and shall  
3 make an examination into the particular facts of the accident; make  
4 a report to the director, setting forth the results of the  
5 examination, including the condition of the mine and the cause or  
6 causes of the fatal accident, if known, and all the reports shall  
7 be made available to the interested parties, upon written requests.

8 (g) At the commencement of any inspection of a coal mine by an  
9 authorized representative of the director, the authorized  
10 representative of the miners at the mine at the time of the  
11 inspection shall be given an opportunity to accompany the  
12 authorized representative of the director on the inspection.

13 **§22A-1-21. Penalties.**

14 (a) (1) Any operator of a coal mine in which a violation of  
15 any health or safety rule occurs or who violates any other  
16 provisions of this chapter shall be assessed a civil penalty by the  
17 director under subdivision (3) of this subsection, which shall be  
18 not more than \$5,000, for each violation, unless the director  
19 determines that it is appropriate to impose a special assessment  
20 for the violation, pursuant to the provisions of subdivision (2),  
21 subsection (b) of this section. Each violation constitutes a  
22 separate offense. In determining the amount of the penalty, the  
23 director shall consider the operator's history of previous  
24 violations, whether the operator was negligent, the appropriateness  
25 of the penalty to the size of the business of the operator charged,

1 the gravity of the violation and the demonstrated good faith of the  
2 operator charged in attempting to achieve rapid compliance after  
3 notification of a violation.

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

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

12 (4) A civil penalty under subdivision (1) or (2) of subsection  
13 (a) of this section or subdivision (1) or (2) of subsection (b) of  
14 this section shall be assessed by the director only after the  
15 person charged with a violation under this chapter or rule  
16 promulgated pursuant to this chapter has been given an opportunity  
17 for a public hearing and the director has determined, by a decision  
18 incorporating the director's findings of fact in the decision, that  
19 a violation did occur and the amount of the penalty which is  
20 warranted and incorporating, when appropriate, an order in the  
21 decision requiring that the penalty be paid. Any hearing under this  
22 section shall be of record.

23 (5) If the person against whom a civil penalty is assessed  
24 fails to pay the penalty within the time prescribed in the order,  
25 the director may file a petition for enforcement of the order in

1 any appropriate circuit court. The petition shall designate the  
2 person against whom the order is sought to be enforced as the  
3 respondent. A copy of the petition shall immediately be sent by  
4 certified mail, return receipt requested, to the respondent and to  
5 the representative of the miners at the affected mine or the  
6 operator, as the case may be. The director shall certify and file  
7 in the court the record upon which the order sought to be enforced  
8 was issued. The court has jurisdiction to enter a judgment  
9 enforcing, modifying and enforcing as modified, or setting aside,  
10 in whole or in part, the order and decision of the director or it  
11 may remand the proceedings to the director for any further action  
12 it may direct. The court shall consider and determine de novo all  
13 relevant issues, except issues of fact which were or could have  
14 been litigated in review proceedings before a circuit court under  
15 section twenty of this article and, upon the request of the  
16 respondent, those issues of fact which are in dispute shall be  
17 submitted to a jury. On the basis of the jury's findings the court  
18 shall determine the amount of the penalty to be imposed. Subject to  
19 the direction and control of the Attorney General, attorneys  
20 appointed for the director may appear for and represent the  
21 director in any action to enforce an order assessing civil  
22 penalties under this subdivision.

23       (b) (1) Any operator who knowingly violates a health or safety  
24 provision of this chapter or health or safety rule promulgated  
25 pursuant to this chapter, or knowingly violates or fails or refuses

1 to comply with any order issued under section fifteen of this  
2 article, or any order incorporated in a final decision issued under  
3 this article, except an order incorporated in a decision under  
4 subsection (a) of this section or subsection (b), section  
5 twenty-two of this article, shall be assessed a civil penalty by  
6 the director under subdivision (5), subsection (a) of this section  
7 of not more than \$5,000 and for a second or subsequent violation  
8 assessed a civil penalty of not more than \$10,000, unless the  
9 director determines that it is appropriate to impose a special  
10 assessment for the violation, pursuant to the provisions of  
11 subdivision (2) of this subsection.

12 (2) In lieu of imposing a civil penalty pursuant to the  
13 provisions of subsection (a) of this section or subdivision (1) of  
14 this subsection, the director may impose a special assessment if an  
15 operator violates a health or safety provision of this chapter or  
16 health or safety rule promulgated pursuant to this chapter and the  
17 violation is of serious nature and involves one or more of the  
18 following by the operator:

19 (A) Violations involving fatalities and serious injuries;

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

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

23 (D) Violations involving an imminent danger;

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

1 (F) A discrimination violation under section twenty-two of  
2 this article.

3 In situations in which the director determines that there are  
4 factors present which would make it appropriate to impose a special  
5 assessment, the director shall assess a civil penalty of at least  
6 \$5,000 and not more than \$10,000.

7 (c) Whenever a corporate operator knowingly violates a health  
8 or safety provision of this chapter or health or safety rules  
9 promulgated pursuant to this chapter, or knowingly violates or  
10 fails or refuses to comply with any order issued under this law or  
11 any order incorporated in a final decision issued under this law,  
12 except an order incorporated in a decision issued under subsection  
13 (a) of this section or subsection (b), section twenty-two of this  
14 article, any director, officer or agent of the corporation who  
15 knowingly authorized, ordered or carried out the violation, failure  
16 or refusal is subject to the same civil penalties that may be  
17 imposed upon a person under subsections (a) and (b) of this  
18 section.

19 (d) Whoever knowingly makes any false statement,  
20 representation or certification in any application, record, report,  
21 plan or other document filed or required to be maintained pursuant  
22 to this law or any order or decision issued under this law is  
23 guilty of a misdemeanor and, upon conviction thereof, shall be  
24 fined not more than \$10,000 or confined in jail not more than one  
25 year, or both fined and confined. The conviction of any person

1 under this subsection shall result in the revocation of any  
2 certifications held by the person under this chapter which  
3 certified or authorized the person to direct other persons in coal  
4 mining by operation of law and bars that person from being issued  
5 any license under this chapter, except a miner's certification, for  
6 a period of not less than one year or for a longer period as may be  
7 determined by the director.

8       (e) Whoever willfully distributes, sells, offers for sale,  
9 introduces or delivers in commerce any equipment for use in a coal  
10 mine, including, but not limited to, components and accessories of  
11 the equipment, who willfully misrepresents the equipment as  
12 complying with the provisions of this law, or with any  
13 specification or rule of the director applicable to the equipment,  
14 and which does not comply with the law, specification or rule, is  
15 guilty of a misdemeanor and, upon conviction thereof, is subject to  
16 the same fine and confinement that may be imposed upon a person  
17 under subsection (d) of this section.

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

25       (g) There is continued in the Treasury of the State of West

1 Virginia a Special Health, Safety and Training Fund. All civil  
2 penalty assessments collected under this section shall be collected  
3 by the director and deposited with the Treasurer of the State of  
4 West Virginia to the credit of the Special Health, Safety and  
5 Training Fund. The fund shall be used by the director who is  
6 authorized to expend the moneys in the fund for the administration  
7 of this chapter.

8 **§22A-1-40. Reporting violations, accident investigations; witness**  
9 **interviews.**

10 (a) To the extent permitted by law, any person meeting with,  
11 or providing a statement to, the director may request to do so on  
12 a confidential basis without the consent, presence, involvement or  
13 knowledge of any third party. Upon such a request, the director  
14 shall keep the identity of any individual providing such a  
15 statement and the statement itself confidential, to the extent  
16 permitted by law, and the statement shall be exempt from disclosure  
17 under article one, chapter twenty-nine-b of this code. Nothing in  
18 this section precludes a person from being represented when  
19 speaking with the director. Further, nothing in this section  
20 precludes a person under subpoena or who is voluntarily speaking  
21 with the director from authorizing any other person from  
22 participation in such meeting or statement.

23 (b) If any miner is entrapped, fatally injured or otherwise  
24 unable, as the result of an accident, to designate a representative  
25 to observe witness interviews and investigatory hearings conducted

1 in an accident investigation, the miner's closest relative may  
2 designate one representative who may, subject to subsection (a) of  
3 this section, attend witness interviews and investigatory hearings  
4 regarding the accident for the sole purpose of observing such  
5 interviews and hearings and conveying information to the accident  
6 victim's family: *Provided*, That the right of a designated  
7 representative to observe witness interviews and investigatory  
8 hearings pursuant to this subsection shall be subject to subsection  
9 (a) of this section and shall not extend to interviews or  
10 investigatory hearings of a criminal nature conducted by state or  
11 federal inspectors or other state or federal law enforcement  
12 officers. No more than five representatives designated pursuant to  
13 this section may attend witness interviews and investigatory  
14 hearings for the purpose of observing such interviews and hearings  
15 and conveying information to accident victims' families.

16 (c) The director shall, in consultation with the Board of Coal  
17 Mine Health and Safety, develop a list of persons skilled in the  
18 fields of grief and crisis management, communications and family  
19 support. Following any mining accident involving entrapped miners  
20 or fatal injuries, the director shall promptly provide the list of  
21 such individuals to the families of the accident victim or victims.  
22 The individuals contained on the list developed by the Director  
23 shall be available as a resource to families of accident victims  
24 who seek their assistance. The list shall also contain a reference  
25 to this code section and a statement that the family has the right



1 to designate a representative of their choosing regardless of  
2 whether that person is named on the list.

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

5 **§22A-1A-1. Substance abuse screening; minimum requirements;**  
6 **standards and procedures for screening.**

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

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

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

23 Split samples shall be collected by providers who are  
24 certified as complying with standards and procedures set out in the

1 United States Department of Transportation's rule, 49 CFR Part 40,  
2 which may be amended from time to time by legislative rule of the  
3 Office of Miners' Health, Safety and Training. Collected samples  
4 shall be tested by laboratories certified by the United States  
5 Department of Health and Human Services, Substance Abuse and Mental  
6 Health Services Administration (SAMHSA) for collection and testing.  
7 Notwithstanding the provisions of this subdivision, the mine  
8 operator may implement a more stringent substance abuse screening  
9 policy and program;

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

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

23 (b) For purposes of this subsection, preemployment testing  
24 shall be required upon hiring by a new employer, rehiring by a  
25 former employer following a termination of the employer/employee

1 relationship, or transferring to a West Virginia mine from an  
2 employer's out-of-state mine to the extent that any substance abuse  
3 test required by the employer in the other jurisdiction does not  
4 comply with the minimum standards for substance abuse testing  
5 required by this article. Furthermore, the provisions of this  
6 section apply to all employers that employ certified persons who  
7 work in mines, regardless of whether that employer is an operator,  
8 contractor, subcontractor or otherwise.

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

15 (d) The employer or his or her agent shall notify the  
16 director, on a form prescribed by the director, within seven days  
17 following completion of an arbitration conducted pursuant to a  
18 collective bargaining agreement applicable to the certified person,  
19 if any, of discharging a certified person for violation of the  
20 employer's substance abuse screening policy and program. The  
21 notification shall be accompanied by a record of the test showing  
22 positive results or other violation. Notice shall result in the  
23 immediate temporary suspension of all certificates held by the  
24 certified person who failed the screening, pending a hearing before  
25 the board of appeals pursuant to section two of this article.

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

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

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

3 **§22A-1A-2. Board of Appeals hearing procedures.**

4 (a) Any hearing conducted after the temporary suspension of a  
5 certified person's certificate pursuant to this article, shall be  
6 conducted within sixty days of the temporary suspension. The Board  
7 of Appeals shall make every effort to hold the hearing within forty  
8 days of the temporary suspension.

9 (b) All hearings of the Board of Appeals pursuant to this  
10 section shall be conducted in accordance with the provisions of  
11 subsection (c), section thirty-one, article one of this chapter.  
12 The Board of Appeals may suspend the certificate or certificates of  
13 a certified person for violation of this article or for any other  
14 violation of this chapter pertaining to substance abuse. The Board  
15 of Appeals may impose further disciplinary actions for repeat  
16 violations. The director shall have the authority to propose  
17 legislative rules for promulgation in accordance with article  
18 three, chapter twenty-nine-a of this code to establish the  
19 disciplinary actions referenced in this section following the  
20 receipt of recommendations from the Board of Coal Mine Health and  
21 Safety following completion of the study required pursuant to  
22 section fourteen, article six of this chapter. The legislative  
23 rules authorized by this subsection shall not, however, include any  
24 provisions requiring an employer to take or refrain from taking any  
25 specific personnel action or mandating any employer to establish or

1 maintain an employer-funded substance abuse rehabilitation program.

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

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

10 **§22A-1A-3. Disclosure of records exempt; exceptions.**

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

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

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

21 (2) The purpose of the disclosure;

22 (3) The precise information to be disclosed;

23 (4) The duration of the consent; and

24 (5) The signature of the person authorizing the release of the  
25 information;

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

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

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

9 (e) Where release of the information is deemed appropriate by  
10 the Board of Appeals or a court of competent jurisdiction in a  
11 disciplinary proceeding.

12 **§22A-1A-4. Effective date.**

13 The provisions of this article are effective beginning January  
14 1, 2013.

15 **ARTICLE 2. UNDERGROUND MINES.**

16 **§22A-2-2. Submittal of detailed ventilation plan to director.**

17 (a) A mine operator shall submit a detailed ventilation plan  
18 and any addendums to the director for review and comment. The mine  
19 operator shall review the plan with the director and address  
20 concerns to the extent practicable. The operator shall deliver to  
21 the miners' representative employed by the operator at the mine, if  
22 any, a copy of the operator's proposed annual ventilation plan at  
23 least ten days prior to the date of submission. The miners'  
24 representative, if any, shall be afforded the opportunity to submit

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

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

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

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

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



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

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

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

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

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

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

6 **§22A-2-16. Examinations of reports of fire bosses.**

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

17 **§22A-2-20. Preparation of danger signal by fire boss or certified**  
18 **person acting as such prior to examination; report; records**  
19 **open for inspection.**

20 (a) It is the duty of the fire boss, or a certified person  
21 acting as such, to prepare a danger signal (a separate signal for  
22 each shift) with red color at the mine entrance at the beginning of  
23 his or her shift or prior to his or her entering the mine to make  
24 his or her examination and, except for those persons already on

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

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

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

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

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

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

25 (a) In all mines, dangerous accumulations of fine, dry coal

1 and coal dust shall be removed from the mine, and all dry and dusty  
2 operating sections and haulageways and conveyors and back entries  
3 shall be rock dusted or dust allayed by other methods as may be  
4 approved by the director.

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

11       (c) In all dry and dusty mines or sections thereof, rock dust  
12 shall be applied and maintained upon the roof, floor and sides of  
13 all operating sections, haulageways and parallel entries connected  
14 thereto by open crosscuts. Back entries shall be rock dusted.  
15 Rock dust shall be so applied to include the last open crosscut of  
16 rooms and entries, and to within forty feet of faces. Rock dust  
17 shall be maintained in a quantity that the incombustible content of  
18 the mine dust that could initiate or propagate an explosion shall  
19 not be less than eighty percent. The incombustible content of mine  
20 dust in return entries shall also be equal to or greater than  
21 eighty percent.

22       (d) Rock dust shall not contain more than five percent by  
23 volume of quartz or free silica particles and shall be pulverized  
24 so that one hundred percent will pass through a twenty mesh screen  
25 and seventy percent or more will pass through a two hundred mesh

1 screen.

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

6 **§22A-2-43. Actions to detect and respond to excess methane.**

7 The following actions are required to detect and respond to  
8 excess methane:

9 (a) *Hand-held testing required.* -- In any mine, no electrical  
10 equipment or permissible diesel powered equipment may be brought  
11 in by the last open crosscut until a qualified person tests for  
12 methane. If one percent or more methane is present, the equipment  
13 may not be taken into the area until the methane concentration is  
14 reduced to less than one percent. Thereafter, subsequent methane  
15 examinations shall be made at least every twenty minutes while any  
16 electrical or diesel powered equipment is present and energized.

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

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

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

25 (A) Except intrinsically safe atmospheric monitoring systems

1 (AMS), electrically powered equipment in the affected area shall be  
2 de-energized and other mechanized equipment shall be shut off.

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

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

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

12 (A) Except for the mine foreman, assistant mine foreman, or  
13 individuals authorized by the mine foreman or assistant mine  
14 foreman, all individuals shall be withdrawn from the affected area.  
15 If a federal or state mine inspector is present in the area of the  
16 mine where one and five-tenths percent or more of methane is  
17 detected, the federal or state mine inspector and the miners'  
18 representative, if any, may remain in the area with the mine  
19 foreman, assistant mine foreman or other individuals authorized by  
20 the mine foreman or assistant mine foreman.

21 (B) Except for intrinsically safe AMS, electrically powered  
22 equipment in the affected area shall be disconnected at the power  
23 source.

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

25 (1) When one percent or more methane is present in a return



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

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

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

24       (4) No other work shall be permitted in the affected area  
25 until the methane concentration in the return air is less than one

1 percent.

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

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

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

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

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

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

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

25 (B) Except for the mine foreman, assistant mine foreman or

1 individuals authorized by the mine foreman or assistant mine  
2 foreman, all individuals shall be withdrawn from the affected area.  
3 If a federal or state mine inspector is present in the area of the  
4 mine where one and five-tenths percent or more of methane is  
5 detected, the federal or state mine inspector and the miners'  
6 representative, if any, may remain in the area with the mine  
7 foreman, assistant mine foreman or other individuals authorized by  
8 the mine foreman or assistant mine foreman.

9 (C) Except for intrinsically safe AMS, equipment in the  
10 affected area shall be de-energized, electric power shall be  
11 disconnected at the power source and other mechanized equipment  
12 shall be shut off.

13 (D) No other work shall be permitted in the affected area  
14 until the methane concentration in the return air is less than one  
15 and five-tenths percent.

16 (f) Bleeders and other return air courses.--

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

21 (g) *Machine mounted methane monitors.* --

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

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

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

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

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

22          When the methane concentration at any machine-mounted methane  
23 monitor reaches one percent, the monitor shall give a warning  
24 signal. The warning signal device of the methane monitor shall be  
25 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 by rule.

25 **§22A-2-43a. Operation of cutting and mining machines; repair and**

1                   **maintenance of same.**

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

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

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

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

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

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

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

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

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

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

1 **§22A-2-55. Protective equipment and clothing.**

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

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

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

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

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

20 (f) (1) A self-contained self-rescue device approved by the  
21 director shall be worn by each person underground or kept within  
22 his or her immediate reach and the device shall be provided by the  
23 operator. The self-contained self-rescue device shall be adequate  
24 to protect a miner for one hour or longer. Each operator shall  
25 train each miner in the use of the device and refresher training



1 courses for all underground employees shall be held once each  
2 quarter. Quarters shall be based on a calendar year.

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

20 (3) Any person that, without the authorization of the operator  
21 or the director, knowingly removes or attempts to remove any  
22 self-contained self-rescue device or lifeline cord from the mine or  
23 mine site with the intent to permanently deprive the operator of  
24 the device or lifeline cord or knowingly tampers with or attempts  
25 to tamper with the device or lifeline cord shall be guilty of a

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

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

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

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

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

24           (i) The director may promulgate emergency and legislative  
25 rules to implement and enforce this section pursuant to the

1 provisions of article three, chapter twenty-nine-a of this code.

2 **§22A-2-66. Accident; notice; investigation by Office of Miners'**

3 **Health, Safety and Training.**

4 (a) For the purposes of this section, the term "accident"  
5 means:

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

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

9 (3) The entrapment of an individual;

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

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

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

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

16 (8) An unplanned roof fall at or above the anchorage zone in  
17 active workings where roof bolts are in use or an unplanned roof or  
18 rib fall in active workings that impairs ventilation or impedes  
19 passage;

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

22 (10) An unstable condition at an impoundment, refuse pile or  
23 culm bank which requires emergency action in order to prevent  
24 failure, or which causes individuals to evacuate an area, or the  
25 failure of an impoundment, refuse pile or culm bank;

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

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

6           (b) Whenever any accident occurs in or about any coal mine or  
7 the machinery connected therewith, it is the duty of the operator  
8 or the mine foreman in charge of the mine to give notice, within  
9 fifteen minutes of ascertaining the occurrence of an accident, to  
10 the Mine and Industrial Accident Emergency Operations Center at the  
11 statewide telephone number established by the Director of the  
12 Division of Homeland Security and Emergency Management pursuant to  
13 the provisions of article five-b, chapter fifteen of this code  
14 stating the particulars of the accident: *Provided*, That the  
15 operator or the mine foreman in charge of the mine may comply with  
16 this notice requirement by immediately providing notice to the  
17 appropriate local organization for emergency services as defined in  
18 section eight, article five of said chapter, or the appropriate  
19 local emergency telephone system operator as defined in article  
20 six, chapter twenty-four of this code: *Provided, however*, That if,  
21 immediately upon ascertaining the occurrence of an accident, the  
22 operator or the mine foreman in charge of the mine provides notice  
23 to the local organization for emergency services as defined in  
24 section eight, article five, chapter fifteen of this code, or the  
25 appropriate local emergency telephone system operator as defined in

1 article six, chapter twenty-four of this code, then, in order to  
2 comply with this subsection, the operator or mine foreman in charge  
3 of the mine shall also give notice to the Mine and Industrial  
4 Accident Emergency Operations Center at the statewide number  
5 identified in this subsection within fifteen minutes of completing  
6 the telephone call to the local organization for emergency services  
7 or the appropriate local emergency telephone system operator, as  
8 applicable: *Provided, further,* That nothing in this subsection  
9 shall be construed to relieve the operator from any reporting or  
10 notification requirement under federal law.

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

25 (d) If anyone is fatally injured, the inspector shall

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

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

15 **§22A-6-4. Board powers and duties.**

16 (a) The board shall adopt as standard rules the "coal mine  
17 health and safety provisions of this chapter". Such standard rules  
18 and any other rules shall be adopted by the board without regard to  
19 the provisions of chapter twenty-nine-a of this code. The Board of  
20 Coal Mine Health and Safety shall devote its time toward  
21 promulgating rules in those areas specifically directed by this  
22 chapter and those necessary to prevent fatal accidents and  
23 injuries.

24 (b) The board shall review such standard rules and, when  
25 deemed appropriate to improve or enhance coal mine health and

1 safety, revise the same or develop and promulgate new rules dealing  
2 with coal mine health and safety.

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

8 (1) Upon consideration of the latest available scientific data  
9 in the field, the technical feasibility of standards, and  
10 experience gained under this and other safety statutes, such rules  
11 may expand protections afforded by this chapter notwithstanding  
12 specific language therein, and such rules may deal with subject  
13 areas not covered by this chapter to the end of affording the  
14 maximum possible protection to the health and safety of miners.

15 (2) No rules promulgated by the board shall reduce or  
16 compromise the level of safety or protection afforded miners below  
17 the level of safety or protection afforded by this chapter.

18 (3) Any miner or representative of any miner, or any coal  
19 operator has the power to petition the circuit court of Kanawha  
20 County for a determination as to whether any rule promulgated or  
21 revised reduces the protection afforded miners below that provided  
22 by this chapter, or is otherwise contrary to law: *Provided*, That  
23 any rule properly promulgated by the board pursuant to the terms  
24 and conditions of this chapter creates a rebuttable presumption  
25 that said rule does not reduce the protection afforded miners below



1 that provided by this chapter.

2       (4) The director shall cause proposed rules and a notice  
3 thereof to be posted as provided in section eighteen, article one  
4 of this chapter. The director shall deliver a copy of such proposed  
5 rules and accompanying notice to each operator affected. A copy of  
6 such proposed rules shall be provided to any individual by the  
7 director's request. The notice of proposed rules shall contain a  
8 summary in plain language explaining the effect of the proposed  
9 rules.

10       (5) The board shall afford interested persons a period of not  
11 less than thirty days after releasing proposed rules to submit  
12 written data or comments. The board may, upon the expiration of  
13 such period and after consideration of all relevant matters  
14 presented, promulgate such rules with such modifications as it may  
15 deem appropriate.

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

24       (7) Promptly after any such notice is released by the board  
25 under subdivision (6) of this section, the board shall issue notice

1 of, and hold a public hearing for the purpose of receiving relevant  
2 evidence. Within sixty days after completion of the hearings, the  
3 board shall make findings of fact which shall be public, and may  
4 promulgate such rules with such modifications as it deems  
5 appropriate. In the event the board determines that a proposed rule  
6 should not be promulgated or should be modified, it shall within a  
7 reasonable time publish the reasons for its determination.

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

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

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

21       The board shall review all reports and any recommended rules  
22 submitted by the director, receive any additional information it  
23 requests, and may, on its own initiative, investigate the  
24 circumstances surrounding a coal mining fatality or fatalities and  
25 ascertain the cause or causes of such coal mining fatality or

1 fatalities. In order to investigate a coal mining fatality or  
2 fatalities, a majority of the board must vote in favor of  
3 commencing an investigation. Within ninety days of the receipt of  
4 the Federal Mine Safety and Health Administration's fatal accident  
5 report and the director's report and recommended rules, the board  
6 shall review and consider the presentation of said report and rules  
7 and the results of its own investigation, if any, and, if a  
8 majority of all voting board members determines that additional  
9 rules can assist in the prevention of the specific type of  
10 fatality, the board shall either accept and promulgate the  
11 director's recommended rules, amend the director's recommended  
12 rules or draft new rules, as are necessary to prevent the  
13 recurrence of such fatality. If the board chooses to amend the  
14 director's recommended rules or draft its own rules, a vote is  
15 required within one hundred twenty days as to whether to promulgate  
16 the amended rule or the rule drafted by the board: *Provided*, That  
17 the board may, by majority vote, find that exceptional  
18 circumstances exist and the deadline cannot be met: *Provided*,  
19 *however* That under no circumstances shall such deadline be extended  
20 by more than a total of ninety days. A majority vote of the board  
21 is required to promulgate any such rule.

22 The board shall annually, not later than July 1, review the  
23 major causes of coal mining injuries during the previous calendar  
24 year, reviewing the causes in detail, and shall promulgate such  
25 rules as may be necessary to prevent the recurrence of such

1 injuries.

2 Further, the board shall, on or before January 10, of each  
3 year, submit a report to the Governor, President of the Senate and  
4 Speaker of the House, which report shall include, but is not  
5 limited to:

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

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

11 (3) What rules the board intends to promulgate during the  
12 current calendar year;

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

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

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

20 (7) In addition to the report by the board, as herein  
21 contained, each individual member of said board has right to submit  
22 a separate report, setting forth any views contrary to the report  
23 of the board, and the separate report, if any, shall be appended to  
24 the report of the board and be considered a part thereof.

25 **§22A-6-13. Study of ingress and egress to bleeder and gob areas**

1                   **of longwall panels and pillar sections.**

2 The Board of Coal Mine Health and Safety is directed to study the  
3 safety of working or traveling in bleeder or gob areas of a  
4 longwall panel or pillar section of a mine where only one  
5 travelable entry in and out of the area exists. The study shall  
6 consider what additional roof control or other measures, if any,  
7 should be implemented to ensure that underground miners who work or  
8 travel in bleeder or gob areas of a longwall panel or pillar  
9 section having only one travelable entry in and out of the areas  
10 are at least as safe as miners working in comparable areas with  
11 multiple travelable entries in and out of the areas. By December  
12 31, 2012, the board shall report to the Legislature's Joint  
13 Committee on Government and Finance with recommendations regarding  
14 implementation of the findings of this study.

15 **§22A-6-14. Study of mandatory substance abuse program.**

16           The Board of Coal Mine Health and Safety is directed to study  
17 the mandatory substance abuse screening policy and program  
18 requirements of article one-a of this chapter and make  
19 recommendations to the director regarding: (a) Establishment of  
20 guidelines to be employed by the Board of Appeals when  
21 administering disciplinary actions to certified persons pursuant to  
22 article one-a of this chapter; (b) requiring certification by the  
23 Office of Miners' Health, Safety and Training of persons who  
24 regularly work at mines who are not presently required to obtain  
25 certification; and (c) establishment of additional minimum

1 requirements, parameters, methodologies and protocols to be  
2 integrated into the substance abuse screening policy and program  
3 requirements of article one-a of this chapter. By August 31, 2012,  
4 the board shall submit its report to the director. The director is  
5 authorized to propose for legislative promulgation, legislative  
6 rules pursuant to article three, chapter twenty-nine-a of this code  
7 regarding the implementation of the findings of this study. These  
8 rules shall be initially promulgated as emergency rules by the  
9 director pursuant to the provisions of section fifteen, article  
10 three, chapter twenty-nine-a of the code by December 31, 2012, and  
11 shall include the establishment of certification requirements  
12 recommended by the board for persons who regularly work at mines  
13 that are not presently required to obtain certification and  
14 establishment of guidelines to be employed by the Board of Appeals  
15 when administering disciplinary actions to certified persons  
16 pursuant to article one-a of this chapter.

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

18 **§22A-7-5. Board powers and duties.**

19 (a) The board shall establish criteria and standards for a  
20 program of education, training and examination to be required of  
21 all prospective miners and miners prior to their certification in  
22 any of the various miner specialties requiring certification under  
23 this article or any other provision of this code. The specialties  
24 include, but are not limited to, underground miner, surface miner,  
25 apprentice, underground mine foreman-fire boss, assistant

1 underground mine foreman-fire boss, shotfirer, mine electrician and  
2 belt examiner. Notwithstanding the provisions of this section, the  
3 director may by rule further subdivide the classifications for  
4 certification.

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

10 (c) The board may establish criteria and standards for a  
11 program of preemployment education and training to be required of  
12 miners working on the surface at underground mines who are not  
13 certified under the provisions of this article or any other  
14 provision of this code.

15 (d) The board shall set minimum standards for a program of  
16 continuing education and training of certified persons and other  
17 miners on an annual basis: *Provided*, That the standards shall be  
18 consistent with the provisions of section seven of this article.  
19 Prior to issuing the standards, the board shall conduct public  
20 hearings at which the parties who may be affected by its actions  
21 may be heard. The education and training shall be provided in a  
22 manner determined by the director to be sufficient to meet the  
23 standards established by the board.

24 (e) The board may, in conjunction with any state, local or  
25 federal agency or any other person or institution, provide for the

1 payment of a stipend to prospective miners enrolled in one or more  
2 of the programs of miner education, training and certification  
3 provided in this article or any other provision of this code.

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

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

10 (h) The board may, upon its own motion or whenever requested  
11 to do so by the director, consider two certificates issued by this  
12 state to be of equal value or consider training provided or  
13 required by federal agencies to be sufficient to meet training and  
14 education requirements set by it, the director, or by the  
15 provisions of this code.

16 (i) As part of the annual training required by this section,  
17 the board shall include training of certified persons and other  
18 miners, instruction on miners' rights as they relate to the  
19 operation of unsafe equipment as provided in section seventy-one of  
20 article two of this chapter, his or her right to withdrawal from  
21 unsafe conditions as provided in section seventy-one-a of article  
22 two of this chapter and his or her rights under section twenty-two,  
23 article one of this chapter.

24 **§22A-7-5a. Study of miner training and education.**

25 The board is directed to conduct a study of the overall



1 program of education, training and examination associated with the  
2 various miner specialties requiring certification under this  
3 article or any other provision of this code. The study shall  
4 identify ways to enhance miner education and training to adequately  
5 reflect technological advances in coal mining techniques and best  
6 practices used in modern coal mines, and improve supervision of  
7 apprentice miners. Furthermore, the board shall place particular  
8 emphasis in its study on ways to improve education and training in  
9 the areas of proper mine ventilation, methane monitoring and  
10 equipment de-energization, fire-boss procedures and overall core  
11 mining competencies. By December 31, 2012, the board shall report  
12 to the Legislature's Joint Committee on Government and Finance with  
13 recommendations regarding the implementation of the findings of  
14 this study.

15 **ARTICLE 12. UNDERGROUND ACCIDENT INVESTIGATIONS. §22A-12-1. Report**  
16 **on enforcement procedures.**

17 The director shall, by December 31, 2013, report to the  
18 Legislature and Governor on the need for revisions in the state's  
19 underground mine safety enforcement procedures. The director shall  
20 initiate the study using appropriate academic resources and mining  
21 safety organizations to conduct a program review of state  
22 enforcement procedures to evaluate what reforms will assure that  
23 mining operations follow state mandated safety protocols. The  
24 report shall include recommended legislation, rules and policies,  
25 consider various options for improving inspections, accountability

1 and equitable and timely administrative procedures that cause  
2 remediation of hazardous working conditions.