

# E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

## **H. B. 4351**

---

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
[BY REQUEST OF THE EXECUTIVE]

---

(Originating in the Committee on the Judiciary)  
[February 16, 2012]

A BILL to amend and reenact §15-5B-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-5B-6; to amend said code by adding thereto two new sections, designated §22A-1-13a and 22A-1-40; to amend and reenact §22A-1-4, §22A-1-14, §22A-1-15 and §22A-1-21 of said code; to amend said code by adding thereto a new article, designated §22A-1A-1, §22A-1A-2 and §22A-1A-3; to amend said code by adding thereto a new section, designated §22A-2-43a; to amend and

reenact §22A-2-2, §22A-2-12, §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code; to amend said code by adding thereto two new sections, designated §22A-6-13 and §22A-6-14; to amend and reenact §22A-6-4 of said code; to amend said code by adding thereto a new section, designated §22A-7-5a; to amend and reenact §22A-7-5 of said code; and to amend said code by adding thereto a new section, designated §22A-12-1, all relating to mine safety, generally; requiring coal mine operators to provide reports to and notify certain entities in the event of an emergency; establishing a mine safety anonymous tip hotline; exempting information provided to the hotline from the Freedom of Information Act; permitting the Director of the Office of Miners' Health, Safety and Training to share information regarding certification suspensions or revocations with other states and to promulgate certain legislative rules; requiring a study be conducted regarding mine inspector qualifications, compensation, training and inspections; creating a criminal offense and establishing criminal penalties for providing advance notice of an inspection or an inspector's

presence at a mine; increasing civil penalty; requiring operators to conduct substance abuse testing during inspections or investigations upon reasonable suspicion; providing for suspension of mining certificates if substance abuse testing refused; providing for rule-making prior to suspension of mining certificates is authorized; requiring coal mining operators to implement substance abuse screening policy and program for certain persons; providing procedures and minimum requirements of substance abuse screening policy and program; requiring substance abuse screening upon preemployment, rehiring or transfer of miner; requiring coal mine operators to notify the Director of the Office of Miners' Health, Safety and Training of failed screening tests and certain screening policy violations; requiring immediate suspension of miner certificates as a result of suspensions or revocations for substance abuse in other jurisdictions and reciprocity; providing procedure for board of appeals hearings on certification suspensions and judicial review of board decisions; providing exemptions from and exceptions to the disclosure of substance abuse screening results; providing

procedure for approval, review, comment and enforcement of mine ventilation plans; expanding payments to idled miners in certain circumstances; increasing the number of days an apprentice must work within sight and sound of mine foreman or experienced miner; requiring methane detectors be maintained in accordance with manufacture specifications and establishing other requirements; expanding scope of preshift examinations and requiring supplemental examinations in certain instances; revising mine ventilation requirements; requiring mine supervisor to verify certain documents; increasing the percentage of rock dust to be maintained in coal mines and providing certain information upon request; prescribing actions required to detect and respond to excess methane gas levels in coal mines; prescribing requirements for persons to operate or repair mining machinery; providing for increased training regarding the use of self-contained self-rescue devices; providing for family of miner participation in investigations in certain circumstances, and limitations thereto; providing additional notification by coal mine operators in the event of an accident; requiring study of and

report on the safety of working or traveling in bleeder or gob areas of certain coal mines; requiring study of mandatory substance abuse program; requiring study of and report on education, training and examination associated with certifying miners; updating terms; and requiring a study on enforcement procedures.

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

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

sections, designated §22A-6-13 and §22A-6-14; that §22A-6-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-7-5a; that §22A-7-5 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22A-12-1, all to read as follows:

**CHAPTER 15. PUBLIC SAFETY.**

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

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

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

9 emergency operations center. The mine emergency contact  
10 list shall include the following information:

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

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

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

23 (4) The names, locations and telephone numbers of all  
24 mine rescue stations, including at least one telephone number  
25 for each station that may be called twenty-four hours a day

26 and a listing of all mines that each mine rescue station serves  
27 in accordance with the provisions of section thirty-five,  
28 article one, chapter twenty-two-a of this code.

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

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

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

37 (3) Local emergency service personnel in the area in  
38 which the accident occurred.

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

42 (d) In the event that an emergency call regarding any  
43 accident, as defined in section sixty-six, article two, chapter  
44 twenty-two-a of this code, in or about any mine, is initially



45 received by a county answering point, as defined in article  
46 six, chapter twenty-four of this code, the call shall be  
47 immediately forwarded to the Mine and Industrial Accident  
48 Emergency Operations Center.

49 (e) Nothing in this section shall be construed to relieve an  
50 operator, as defined in section two, article one, chapter  
51 twenty-two-a of this code, from any reporting or notification  
52 obligation under section sixty-six, article two, chapter  
53 twenty-two-a of this code and under federal law.

54 (f) The Mine and Industrial Accident Rapid Response  
55 System and the emergency operations center are designed  
56 and intended to provide communications assistance to  
57 emergency responders and other responsible persons.  
58 Nothing in this section shall be construed to conflict with the  
59 responsibility and authority of an operator to provide mine  
60 rescue coverage in accordance with the provisions of section  
61 thirty-five, article one, chapter twenty-two-a of this code or  
62 the authority of the Director of the Office of Miners' Health,  
63 Safety and Training to assign mine rescue teams under the

64 provisions of subsection (d) of said section or to exercise any  
65 other authority provided in chapter twenty-two-a of this code.

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

1       The Director of the Division of Homeland Security and  
2       Emergency Management shall maintain a toll free number that  
3       allows callers to report mine safety violations and hazardous  
4       coal mining conditions and practices. The information collected  
5       shall be provided to the Office of Miners' Health, Safety and  
6       Training. No information may be submitted to the Office of  
7       Miners' Health, Safety and Training that would allow  
8       identification of the person placing the call. The calls are  
9       confidential and any documentation thereof or related thereto is  
10       not subject to release and is exempt from the provisions of  
11       article one, chapter twenty-nine-b of this code. The director  
12       shall distribute printed information to all state mining operations  
13       alerting miners to the existence of the toll free line. Each mining  
14       operation shall post this notice at the location used to post  
15       notices pursuant to section eighteen, article one, chapter  
16       twenty-two-a of this code.

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

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

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

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

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

11 (1) Supervise and direct the execution and enforcement  
12 of the provisions of this article.

13 (2) Employ such assistants, clerks, stenographers and  
14 other employees as may be necessary to fully and effectively

15 carry out his or her responsibilities and fix their  
16 compensation, except as otherwise provided in this article.

17 (3) Assign mine inspectors to divisions or districts in  
18 accordance with the provisions of section eight of this article as  
19 may be necessary to fully and effectively carry out the  
20 provisions of this law, including the training of inspectors for the  
21 specialized requirements of surface mining, shaft and slope  
22 sinking and surface installations and to supervise and direct ~~such~~  
23 the mine inspectors in the performance of their duties.

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

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

30 (6) Hear and determine applications made by mine  
31 operators for the annulment or revision of orders made by  
32 mine inspectors, and to make inspections of mines, in  
33 accordance with the provisions of this article.

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

37 (8) Make annually a full and complete written report of  
38 the administration of the office to the Governor and the  
39 Legislature of the state for the year ending June 30. The  
40 report shall include the number of visits and inspections of  
41 mines in the state by mine inspectors, the quantity of coal,  
42 coke and other minerals (excluding oil and gas) produced in  
43 the state, the number of individuals employed, number of  
44 mines in operation, statistics with regard to health and safety  
45 of persons working in the mines including the causes of  
46 injuries and deaths, improvements made, prosecutions, the  
47 total funds of the office from all sources identifying each  
48 source of ~~such~~ the funds, the expenditures of the office, the  
49 surplus or deficit of the office at the beginning and end of the  
50 year, the amount of fines collected, the amount of fines  
51 imposed, the value of fines pending, the number and type of  
52 violations found, the amount of fines imposed, levied and

53 turned over for collection, the total amount of fines levied but  
54 not paid during the prior year, the titles and salaries of all  
55 inspectors and other officials of the office, the number of  
56 inspections made by each inspector, the number and type of  
57 violations found by each inspector. However, no inspector  
58 may be identified by name in this report. Such reports shall  
59 be filed with the Governor and the Legislature on or before  
60 December 31 of the same year for which it was made, and  
61 shall upon proper authority be printed and distributed to  
62 interested persons.

63 (9) Call or subpoena witnesses, for the purpose of  
64 conducting hearings into mine fires, mine explosions or any  
65 mine accident; to administer oaths and to require production  
66 of any books, papers, records or other documents relevant or  
67 material to any hearing, investigation or examination of any  
68 mine permitted by this chapter. Any witness so called or  
69 subpoenaed shall receive \$40 per diem and shall receive  
70 mileage at the rate of \$.15 for each mile actually traveled,  
71 which shall be paid out of the State Treasury upon a

72 requisition upon the State Auditor, properly certified by ~~such~~  
73 the witness.

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

80 (11) Beginning the first day of January, two thousand  
81 thirteen, the director shall share information regarding  
82 suspension or revocation of a certificate of a certified person,  
83 as defined in article one of this chapter, for violation of the  
84 substance abuse provisions of article one-a of this chapter  
85 with other states that subject similar persons to disciplinary  
86 action for violation of a substance abuse policy.

87 (12) The director shall propose for legislative  
88 promulgation pursuant to article three, chapter twenty-nine-a  
89 of this code, a rule establishing a program for the sharing of  
90 information between employers who employ certified

91 persons regarding the discharge of persons in safety sensitive  
92 positions as defined in section one, article one-a of this  
93 chapter for violation of an employers' substance abuse  
94 policy.

95       ~~(11)~~ (13) Perform all other duties which are expressly  
96 imposed upon him or her by the provisions of this chapter.

97       ~~(12)~~ (14) Impose reasonable fees upon applicants taking  
98 tests administered pursuant to the requirements of this  
99 chapter.

100       ~~(13)~~ (15) Impose reasonable fees for the issuance of  
101 certifications required under this chapter.

102       ~~(14)~~ (16) Prepare study guides and other forms of  
103 publications relating to mine safety and charge a reasonable  
104 fee for the sale of the publications.

105       ~~(15)~~ (17) Make all records of the office open for  
106 inspection of interested persons and the public.

107       (c) The Director of the Office of Miners' Health, Safety  
108 and Training, or his or her designee, upon receipt of the list  
109 of approved innovative mine safety technologies from the



110 Mine Safety Technology Task Force, has thirty days to  
111 approve or amend the list as provided in section four, article  
112 thirteen-bb, chapter eleven of this code. At the expiration of  
113 the time period, the director shall publish the list of approved  
114 innovative mine safety technologies as provided in section  
115 four, article thirteen-bb, chapter eleven of this code.

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

1 The director is directed to conduct a study of the  
2 minimum qualifications for mine inspectors, the minimum  
3 compensation paid to mine inspectors and the overall training  
4 program established for mine inspectors. The study shall  
5 identify ways to attract and retain new, qualified mine  
6 inspectors to minimize the effect of the anticipated retirement  
7 of a significant number of current inspectors. Additionally,  
8 the study shall examine ways to improve the training  
9 programs for mine inspectors by focusing on technological  
10 advances in coal mining techniques, best practices used in  
11 modern coal mines and proper mine ventilation. Further, the

12 office shall perform an assessment of the resources and  
13 qualification of inspectors necessary to approve mine  
14 ventilation plans. Finally, the study shall make  
15 recommendations on how to reassess mine inspection  
16 priorities to ensure that mines having a history of numerous  
17 safety violations are inspected more frequently than mines  
18 having a history of comparatively few safety violations while  
19 preserving the minimum number of inspections required by  
20 the code. By December 31, 2012, the Office of Miners'  
21 Health, Safety and Training shall report to the Legislature's  
22 Joint Committee on Government and Finance with  
23 recommendations regarding the implementation of its  
24 findings.

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

1 (a) The director, or his or her authorized representative,  
2 has authority to visit, enter, and examine any mine, whether  
3 underground or on the surface, and may call for the

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

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

15 (c) Mine inspectors shall devote their full-time and  
16 undivided attention to the performance of their duties, and  
17 they shall examine all of the mines in their respective districts  
18 at least four times annually, and as often, in addition thereto,  
19 as the director may direct, or the necessities of the case or the  
20 condition of the mine or mines may require, with no advance  
21 notice of inspection provided to any person, and they shall  
22 make a personal examination of each working face and all

23 entrances to abandoned parts of the mine where gas is known  
24 to liberate, for the purpose of determining whether an  
25 imminent danger, referred to in section fifteen of this article,  
26 exists in ~~any such~~ the mine, or whether any provision of  
27 article two of this chapter is being violated or has been  
28 violated within the past forty-eight hours in ~~any such~~ the  
29 mine. No other person shall, with the intent of undermining  
30 the integrity of an unannounced mine inspection, provide  
31 advance notice of any inspection or of an inspector's  
32 presence at a mine to any person at that mine. Any person  
33 who, with the requisite intent, knowingly causes or conspires  
34 to provide advance notice of any inspection or of an  
35 inspector's presence at a mine is guilty of a felony and, upon  
36 conviction thereof, shall be fined not more than \$15,000 or  
37 imprisoned in a state correctional facility not less than one  
38 year and not more than five years, or both fined and  
39 imprisoned.

40 (d) In addition to the other duties imposed by this article  
41 and article two of this chapter, it is the duty of each inspector

42 to note each violation he or she finds and issue a finding,  
43 order, or notice, as appropriate for each violation so noted.  
44 During the investigation of any accident, any violation may  
45 be noted whether or not the inspector actually observes the  
46 violation and whether or not the violation exists at the time  
47 the inspector notes the violation, so long as the inspector has  
48 clear and convincing evidence the violation has occurred or  
49 is occurring.

50 (e) On or after July 1, 2012, an inspector shall require the  
51 operator or other employer to investigate all complaints  
52 received by the Office of Miners' Health, Safety and  
53 Training involving a certified person's substance abuse or  
54 alcohol related impairment at a mine. Within thirty days  
55 following notification by the Office of Miners' Health, Safety  
56 and Training to the operator or other employer of the  
57 complaint, the operator or other employer shall file with the  
58 Director a summary of its investigation into the alleged  
59 substance abuse or alcohol related impairment of a certified  
60 person.

61        (f) The mine inspector shall visit the scene of each fatal  
62        accident occurring in any mine within his or her district and  
63        shall make an examination into the particular facts of ~~such~~  
64        the accident; make a report to the director, setting forth the  
65        results of ~~such~~ the examination, including the condition of  
66        the mine and the cause or causes of ~~such~~ the fatal accident, if  
67        known, and all ~~such~~ the reports shall be made available to  
68        the interested parties, upon written requests.

69        (g) At the commencement of any inspection of a coal  
70        mine by an authorized representative of the director, the  
71        authorized representative of the miners at the mine at the time  
72        of ~~such~~ the inspection shall be given an opportunity to  
73        accompany the authorized representative of the director on  
74        ~~such~~ the inspection.

**§22A-1-21. Penalties.**

1        (a) (1) Any operator of a coal mine in which a violation  
2        ~~occurs~~ of any health or safety rule occurs or who violates any  
3        other provisions of this chapter shall be assessed a civil  
4        penalty by the director under subdivision (3) of this

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

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

21 (3) Any miner who knowingly violates any health or  
22 safety provision of this chapter or health or safety rule  
23 promulgated pursuant to this chapter is subject to a civil

24 penalty assessed by the director under subdivision (4) of this  
25 subsection which shall not be more than \$250 for each  
26 occurrence of the violation.

27 (4) A civil penalty under subdivision (1) or (2) of  
28 subsection (a) of this section or subdivision (1) or (2) of  
29 subsection (b) of this section shall be assessed by the director  
30 only after the person charged with a violation under this  
31 chapter or rule promulgated pursuant to this chapter has been  
32 given an opportunity for a public hearing and the director has  
33 determined, by a decision incorporating the director's  
34 findings of fact in the decision, that a violation did occur and  
35 the amount of the penalty which is warranted and  
36 incorporating, when appropriate, an order in the decision  
37 requiring that the penalty be paid. Any hearing under this  
38 section shall be of record.

39 (5) If the person against whom a civil penalty is assessed  
40 fails to pay the penalty within the time prescribed in the  
41 order, the director may file a petition for enforcement of the  
42 order in any appropriate circuit court. The petition shall



43 designate the person against whom the order is sought to be  
44 enforced as the respondent. A copy of the petition shall  
45 immediately be sent by certified mail, return receipt  
46 requested, to the respondent and to the representative of the  
47 miners at the affected mine or the operator, as the case may  
48 be. The director shall certify and file in the court the record  
49 upon which the order sought to be enforced was issued. The  
50 court has jurisdiction to enter a judgment enforcing,  
51 modifying and enforcing as modified, or setting aside, in  
52 whole or in part, the order and decision of the director or it  
53 may remand the proceedings to the director for any further  
54 action it may direct. The court shall consider and determine  
55 de novo all relevant issues, except issues of fact which were  
56 or could have been litigated in review proceedings before a  
57 circuit court under section twenty of this article and, upon the  
58 request of the respondent, those issues of fact which are in  
59 dispute shall be submitted to a jury. On the basis of the jury's  
60 findings the court shall determine the amount of the penalty  
61 to be imposed. Subject to the direction and control of the

62 Attorney General, attorneys appointed for the director may  
63 appear for and represent the director in any action to enforce  
64 an order assessing civil penalties under this subdivision.

65 (b) (1) Any operator who knowingly violates a health or  
66 safety provision of this chapter or health or safety rule  
67 promulgated pursuant to this chapter, or knowingly violates or  
68 fails or refuses to comply with any order issued under section  
69 fifteen of this article, or any order incorporated in a final  
70 decision issued under this article, except an order incorporated  
71 in a decision under subsection (a) of this section or subsection  
72 (b), section twenty-two of this article, shall be assessed a civil  
73 penalty by the director under subdivision (5), subsection (a) of  
74 this section of not more than \$5,000 and for a second or  
75 subsequent violation assessed a civil penalty of not more than  
76 \$10,000, unless the director determines that it is appropriate to  
77 impose a special assessment for ~~said~~ the violation, pursuant to  
78 the provisions of subdivision (2) of this subsection.

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

81 of this subsection, the director may impose a special  
82 assessment if an operator violates a health or safety provision  
83 of this chapter or health or safety rule promulgated pursuant  
84 to this chapter and the violation is of serious nature and  
85 involves one or more of the following by the operator:

86 (A) Violations involving fatalities and serious injuries;

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

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

90 (D) Violations involving an imminent danger;

91 (E) Violations involving an extraordinarily high degree  
92 of negligence or gravity or other unique aggravating  
93 circumstances; or

94 (F) A discrimination violation under section twenty-two  
95 of this article.

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

100 (c) Whenever a corporate operator knowingly violates a  
101 health or safety provision of this chapter or health or safety  
102 rules promulgated pursuant to this chapter, or knowingly  
103 violates or fails or refuses to comply with any order issued  
104 under this law or any order incorporated in a final decision  
105 issued under this law, except an order incorporated in a  
106 decision issued under subsection (a) of this section or  
107 subsection (b), section twenty-two of this article, any  
108 director, officer or agent of the corporation who knowingly  
109 authorized, ordered or carried out the violation, failure or  
110 refusal is subject to the same civil penalties that may be  
111 imposed upon a person under subsections (a) and (b) of this  
112 section.

113 (d) Whoever knowingly makes any false statement,  
114 representation or certification in any application, record, report,  
115 plan or other document filed or required to be maintained  
116 pursuant to this law or any order or decision issued under this  
117 law is guilty of a misdemeanor and, upon conviction thereof,  
118 shall be fined not more than ~~\$5,000~~ \$10,000 or imprisoned

119 confined in the jail not more than ~~six months~~ one year, or both  
120 fined and ~~imprisoned~~ confined. The conviction of any person  
121 under this subsection shall result in the revocation of any  
122 certifications held by the person under this chapter which  
123 certified or authorized the person to direct other persons in coal  
124 mining by operation of law and bars that person from being  
125 issued any license under this chapter, except a miner's  
126 certification, for a period of not less than one year or for a longer  
127 period as may be determined by the director.

128 (e) Whoever willfully distributes, sells, offers for sale,  
129 introduces or delivers in commerce any equipment for use in  
130 a coal mine, including, but not limited to, components and  
131 accessories of the equipment, who willfully misrepresents the  
132 equipment as complying with the provisions of this law, or  
133 with any specification or rule of the director applicable to the  
134 equipment, and which does not comply with the law,  
135 specification or rule, is guilty of a misdemeanor and, upon  
136 conviction thereof, is subject to the same fine and  
137 ~~imprisonment~~ confinement that may be imposed upon a  
138 person under subsection (d) of this section.

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

146        ~~(f)~~ (g) There is continued in the Treasury of the State of  
147        West Virginia a Special Health, Safety and Training Fund.  
148        All civil penalty assessments collected under this section  
149        shall be collected by the director and deposited with the  
150        Treasurer of the State of West Virginia to the credit of the  
151        Special Health, Safety and Training Fund. The fund shall be  
152        used by the director who is authorized to expend the moneys  
153        in the fund for the administration of this chapter.

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

1        (a) To the extent permitted by law, any person meeting  
2        with, or providing a statement to, the director may request to

3 do so on a confidential basis without the consent, presence,  
4 involvement or knowledge of any third party. Upon such a  
5 request, the director shall keep the identity of any individual  
6 providing such a statement and the statement itself  
7 confidential, to the extent permitted by law, and the statement  
8 shall be exempt from disclosure under article one, chapter  
9 twenty-nine-b of this code. Nothing in this section precludes  
10 a person from being represented when speaking with the  
11 director. Further, nothing in this section precludes a person  
12 under subpoena or who is voluntarily speaking with the  
13 director from authorizing any other person from participation  
14 in such meeting or statement.

15 (b) If any miner is entrapped, fatally injured or otherwise  
16 unable, as the result of an accident, to designate a  
17 representative to observe witness interviews and  
18 investigatory hearings conducted in an accident investigation,  
19 the miner's closest relative may designate one representative  
20 who may, subject to subsection (a) of this section, attend  
21 witness interviews and investigatory hearings regarding the

22 accident for the sole purpose of observing such interviews  
23 and hearings and conveying information to the accident  
24 victim's families: *Provided*, That the right of a designated  
25 representative to observe witness interviews and  
26 investigatory hearings pursuant to this subsection shall be  
27 subject to subsection (a) and shall not extend to interviews or  
28 investigatory hearings of a criminal nature conducted by state  
29 or federal inspectors or other state or federal law enforcement  
30 officers. No more than five representatives designated  
31 pursuant to this section may attend witness interviews and  
32 investigatory hearings for the purpose of observing such  
33 interviews and hearings and conveying information to  
34 accident victims' family.

35 (c) The Director shall, in consultation with the Board of  
36 Coal Mine Health and Safety, develop a list of persons  
37 skilled in the fields of grief and crisis management,  
38 communications and family support. Following any mining  
39 accident involving entrapped miners or fatal injuries, the  
40 Director shall promptly provide the list of such individuals to



41 the families of the accident victim or victims. The individuals  
42 contained on the list developed by the Director shall be  
43 available as a resource to families of accident victims who  
44 seek their assistance. The list shall also contain a reference  
45 to this code section and a statement that the family has the  
46 right to designate a representative of their choosing  
47 regardless of whether that person is named on the list.

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

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

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

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

8 A. Amphetamines,

9 B. Cannabinoids/THC,

10 C. Cocaine,

11 D. Opiates,

12 E. Phencyclidine (PCP),

13 F. Benzodiazepines,

14 G. Propoxyphene,

15 H. Methadone,

16 I. Barbiturates, and

17 J. Synthetic narcotics.

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

28 the mine operator may implement a more stringent substance  
29 abuse screening policy and program;

30 (2) A random substance abuse testing program covering  
31 the substances referenced in subdivision (1) of this  
32 subsection. "Random testing" means that each person subject  
33 to testing has a statistically equal chance of being selected for  
34 testing at random and at unscheduled times. The selection of  
35 persons for random testing shall be made by a scientifically  
36 valid method, such as a random number table or a  
37 computer-based random number generator that is matched  
38 with the persons' social security numbers, payroll  
39 identification numbers, or other comparable identifying  
40 numbers; and

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

45 (b) For purposes of this subsection, preemployment  
46 testing shall be required upon hiring by a new employer,

47 rehiring by a former employer following a termination of the  
48 employer/employee relationship, or transferring to a West  
49 Virginia mine from an employer's out-of-state mine to the  
50 extent that any substance abuse test required by the employer  
51 in the other jurisdiction does not comply with the minimum  
52 standards for substance abuse testing required by this article.  
53 Furthermore, the provisions of this section apply to all  
54 employers that employ certified persons who work in mines,  
55 regardless of whether that employer is an operator,  
56 contractor, subcontractor or otherwise.

57 (c) The employer or his or her agent shall notify the  
58 director at least quarterly, on a form prescribed by the  
59 director, of the number of pre-employment substance abuse  
60 screening tests administered during the prior calendar quarter  
61 and the number of positive test results associated with the  
62 substance abuse screening tests administered.

63 (d) The employer or his or her agent shall notify the  
64 director, on a form prescribed by the director, within seven  
65 days following completion of an arbitration conducted

66 pursuant to a collective bargaining agreement applicable to  
67 the certified person, if any, of discharging a certified person  
68 for violation of the employer's substance abuse screening  
69 policy and program. The notification shall be accompanied  
70 by a record of the test showing positive results or other  
71 violation. Notice shall result in the immediate temporary  
72 suspension of all certificates held by the certified person who  
73 failed the screening, pending a hearing before the board of  
74 appeals pursuant to section two of this article.

75 (e) Suspension or revocation of a certified person's  
76 certificate as a miner or other miner specialty in another  
77 jurisdiction by the applicable regulatory or licensing  
78 authority for substance abuse-related matters shall result in  
79 the director immediately and temporarily suspending the  
80 certified person's West Virginia certificate until such time as  
81 the certified person's certification is reinstated in the other jurisdiction.

82 (f) The provisions of this article shall not be construed to  
83 preclude an employer from developing or maintaining a drug

84 and alcohol abuse policy, testing program or substance abuse  
85 program that exceeds the minimum requirements set forth in  
86 this section. The provisions of this article shall also not be  
87 construed to require an employer to alter, amend, revise or  
88 otherwise change, in any respect, a previously established  
89 substance abuse screening policy and program that meets or  
90 exceeds the minimum requirements set forth in this section.  
91 The provisions of this article shall require an employer to  
92 subject its employees who as part of their employment are  
93 regularly present at a mine and who are employed in a safety-  
94 sensitive position to preemployment and random substance  
95 abuse tests: *Provided*, That each employer shall retain the  
96 discretion to establish the parameters of its substance abuse  
97 screening policy and program so long as it meets the  
98 minimum requirements of this article. For purposes of this  
99 section, a “safety-sensitive position” means an employment  
100 position where the employee’s job responsibilities include  
101 duties and activities that involve the personal safety of the  
102 employee or others working at a mine.

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

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

7       (b) All hearings of the Board of Appeals pursuant to this  
8       section shall be conducted in accordance with the provisions  
9       of subsection (c), section thirty-one, article one of this  
10       chapter. The Board of Appeals may suspend the certificate  
11       or certificates of a certified person for violation of this article  
12       or for any other violation of this chapter pertaining to  
13       substance abuse. The Board of Appeals may impose further  
14       disciplinary actions for repeat violations. The director shall  
15       have the authority to propose legislative rules for  
16       promulgation in accordance with article three, chapter  
17       twenty-nine-a of this code to establish the disciplinary  
18       actions referenced in this section following the receipt of

19 recommendations from the Board of Coal Mine Health and  
20 Safety following completion of the study required pursuant  
21 to section fourteen, article six of this chapter. The legislative  
22 rules authorized by this subsection shall not, however,  
23 include any provisions requiring an employer to take or  
24 refrain from taking any specific personnel action or  
25 mandating any employer to establish or maintain an  
26 employer-funded substance abuse rehabilitation program.

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

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

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

1 Records of substance abuse and alcohol screening tests,  
2 written or otherwise, received by the Office of Miners'



3 Health, Safety and Training, its employees, agents and  
4 representatives are confidential communications and are  
5 exempt from disclosure under article one, chapter  
6 twenty-nine-b of the code, except as follows:

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

10 (1) The name of the person who is authorized to obtain  
11 the information;

12 (2) The purpose of the disclosure;

13 (3) The precise information to be disclosed;

14 (4) The duration of the consent; and

15 (5) The signature of the person authorizing the release of  
16 the information;

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

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

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

25       (e) Where release of the information is deemed  
26       appropriate by the Board of Appeals or a court of competent  
27       jurisdiction in a disciplinary proceeding.

**§22A-1A-4. Effective date.**

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

**ARTICLE 2. UNDERGROUND MINES.**

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

1       (a) A mine operator shall submit a detailed ventilation  
2       plan and any addendums to the director for review and  
3       comment. The mine operator shall review the plan with the  
4       director and address concerns to the extent practicable. The  
5       operator shall deliver to the miners' representative employed  
6       by the operator at the mine, if any, a copy of the operator's  
7       proposed annual ventilation plan at least ten days prior to the

8 date of submission. The miners' representative, if any, shall  
9 be afforded the opportunity to submit written comments to  
10 the operator prior to such submission; in addition the miners'  
11 representative, if any, may submit written comments to the  
12 director. The director shall submit any concern that is not  
13 addressed to the United States Department of Labor - Mine  
14 Safety and Health Administration (MSHA) through  
15 comments to the plan. The mine operator shall provide a  
16 copy of the plan to the director ten days prior to the submittal  
17 of the plan to MSHA.

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

21 (c) In the event of an unforeseen situation requiring  
22 immediate action on a plan revision, the operator shall submit  
23 the proposed revision to the director and the miners'  
24 representative, if any, employed by the operator at the mine  
25 when the proposed revision is submitted to MSHA. The  
26 director shall work with the operator to review and comment  
27 on the proposed plan revision to MSHA as quickly as possible.

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

**§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using approved methane detecting devices; records of examination; maintenance of methane detectors, etc.**

1        (a) The Office of Miners' Health, Safety and Training  
2        shall prescribe and establish a course of instruction in mine  
3        safety and particularly in dangers incident to ~~such~~  
4        employment in mines and in mining laws and rules, which  
5        course of instruction shall be successfully completed within  
6        twelve weeks after any person is first employed as a miner.  
7        It is further the duty and responsibility of the Office of  
8        Miners' Health, Safety and Training to see that ~~such~~ the  
9        course is given to all persons as above provided after their  
10       first being employed in any mine in this state. In addition to  
11       other enforcement actions available to the director, upon a

12 finding by the director of the existence of a pattern of  
13 conduct creating a hazardous condition at a mine, the director  
14 shall notify the Board of Miners' Training, Education and  
15 Certification, which shall cause additional training to occur  
16 at the mine addressing such safety issue or issues identified  
17 by the director, pursuant to article seven of this chapter.

18 (b) It is the duty of the mine foreman or the assistant  
19 mine foreman of every coal mine in this state to see that  
20 every person employed to work in ~~such~~ the mine is, before  
21 beginning work therein, instructed in the particular danger  
22 incident to his or her work in ~~such~~ the mine, and furnished a  
23 copy of the mining laws and rules of ~~such~~ the mine. It is the  
24 duty of every mine operator who employs apprentices, as that  
25 term is used in sections three and four, article eight of this  
26 chapter to ensure that the apprentices are effectively  
27 supervised with regard to safety practices and to instruct  
28 apprentices in safe mining practices. Every apprentice shall  
29 work under the direction of the mine foreman or his or her  
30 assistant mine foreman and they are responsible for his or her

31 safety. The mine foreman or assistant mine foreman may  
32 delegate the supervision of an apprentice to an experienced  
33 miner, but the foreman and his or her assistant mine foreman  
34 remain responsible for the apprentice. During the first ~~ninety~~  
35 one hundred twenty days of employment in a mine, the  
36 apprentice shall work within sight and sound of the mine  
37 foreman, assistant mine foreman, or an experienced miner,  
38 and in ~~such~~ a location that the mine foreman, assistant mine  
39 foreman or experienced miner can effectively respond to  
40 cries for help of the apprentice. ~~Such~~ The location shall be  
41 on the same side of any belt, conveyor or mining equipment.

42 (c) Persons whose duties require them to use a ~~flame~~  
43 ~~safety lamp~~ approved methane detecting device or other  
44 approved methane detectors shall be examined at least  
45 annually as to their competence by a qualified official from  
46 the Office of Miners' Health, Safety and Training and a  
47 record of ~~such~~ the examination shall be kept by the operator  
48 and the office. ~~Flame safety lamps~~ Approved methane  
49 detecting devices and other approved methane detectors shall

50 be given proper maintenance and shall be tested before each  
 51 working shift. Each operator shall provide for the proper  
 52 maintenance and care of the permissible ~~flame safety lamp~~  
 53 approved methane detecting device or any other approved  
 54 device for detecting methane and oxygen deficiency by a  
 55 person trained in ~~such~~ the maintenance, and, before each  
 56 shift, care shall be taken to ensure that ~~such~~ the ~~lamp~~  
 57 approved methane detecting device or other device is in a  
 58 permissible condition and maintained according to  
 59 manufacturer's specifications.

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

1 The mine foreman shall, ~~also~~ each day, read carefully and  
 2 countersign with ink or indelible pencil all reports entered in  
 3 the record book of the fire bosses. ~~and he~~ The mine foreman  
 4 shall supervise the fire boss or fire bosses, except as  
 5 ~~hereinafter~~ provided in section twenty-one of this article. No  
 6 less frequently than bi-weekly, the superintendent or, if there  
 7 is no superintendent, the senior person at the mine shall  
 8 obtain complete copies of the books of the fire bosses, and

9 acknowledge that he or she has reviewed such copies and  
10 acted accordingly. This acknowledgment shall be made by  
11 signing a book prescribed by the director for that purpose.

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

1 (a) It shall be is the duty of the fire boss, or a certified  
2 person acting as such, to prepare a danger signal (a separate  
3 signal for each shift) with red color at the mine entrance at  
4 the beginning of his or her shift or prior to his or her entering  
5 the mine to make his or her examination and, except for those  
6 persons already on assigned duty, no person except the mine  
7 owner, operator or agent, and only then in the case of  
8 necessity, shall pass beyond this danger signal until the mine  
9 has been examined by the fire boss or other certified person  
10 and the mine or certain parts thereof reported by him or her  
11 to be safe. When reported by him or her to be safe, the danger  
12 sign or color thereof shall be changed to indicate that the  
13 mine is safe in order that employees going on shift may begin



14 work. Each person designated to make ~~such~~ the fire boss  
15 examinations shall be assigned a definite underground area  
16 of ~~such~~ the mine, and, in making his or her examination shall  
17 examine all active working places in the assigned area and  
18 make tests with an approved device for accumulations of  
19 methane and oxygen deficiency; examine seals and doors;  
20 examine and test the roof, face and ribs in the working places  
21 and on active roadways and travelways, approaches to  
22 abandoned workings, ~~and~~ accessible falls in active sections  
23 and areas where any person is scheduled to work or travel  
24 underground. He or she shall place his or her initials and the  
25 date at or near the face of each place he or she examines.  
26 Should he or she find a condition which he or she considers  
27 dangerous to persons entering ~~such~~ the areas, he or she shall  
28 place a conspicuous danger sign at all entrances to ~~such~~ the  
29 place or places. Only persons authorized by the mine  
30 management may enter ~~such~~ the places while the sign is  
31 posted and only for the purpose of eliminating the dangerous  
32 condition. Upon completing his or her examination he or she

33 shall report by suitable communication system or in person  
34 the results of this examination to a certified person  
35 designated by mine management to receive and record ~~such~~  
36 the report, at a designated station on the surface of the  
37 premises of the mine or underground, before other persons  
38 enter the mine to work in ~~such~~ coal-producing shifts. He or  
39 she shall also record the results of his or her examination  
40 with ink or indelible pencil in a book prescribed by the  
41 director, kept for ~~such~~ the purpose at a place on the surface  
42 of the mine designated by mine management. All records of  
43 daily and weekly reports, as prescribed herein, shall be open  
44 for inspection by interested persons.

45 (b) Supplemental examination. -- When it becomes  
46 necessary to have workers enter areas of the mine not  
47 covered during the preshift examination, a supplemental  
48 examination shall be performed by a fire boss or certified  
49 person acting as such within three hours before any person  
50 enters the area. The fire boss or certified person acting as  
51 such shall examine the area for hazardous conditions,

52 determine if air is traveling in its proper direction and test for  
53 oxygen deficiency and methane.

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

56 (d) Upon completing his or her examination he or she  
57 shall report by suitable communication system or in person  
58 the results of this examination to a certified person  
59 designated by mine management to receive and record the  
60 report, at a designated station on the surface of the premises  
61 of the mine or underground, before other persons enter the  
62 area of the mine subject to the supplemental examination.

63 The results of the examination shall be recorded with ink or  
64 indelible pencil by the examiner in the book referenced in  
65 subsection (a) of this section before he or she leaves the mine  
66 on that shift.

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

1 (a) In all mines, dangerous accumulations of fine, dry  
2 coal and coal dust shall be removed from the mine, and all  
3 dry and dusty operating sections and haulageways and

4 conveyors and back entries shall be rock dusted or dust  
5 allayed by ~~such~~ other methods as may be approved by the  
6 director.

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

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

23 ~~return entries shall not be less than eighty percent. The~~  
24 ~~incombustible content of mine dust in return entries shall also~~  
25 ~~be equal to or greater than eighty percent.~~

26 (d) Rock dust shall not contain more than five percent by  
27 volume of quartz or free silica particles and shall be  
28 pulverized so that one hundred percent will pass through a  
29 twenty mesh screen and seventy percent or more will pass  
30 through a two hundred mesh screen.

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

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

1 The following actions are required to detect and respond  
2 to excess methane:

3 (a) Hand Held Testing required. -- In any mine, no  
4 electrical equipment or permissible diesel powered  
5 equipment may be brought in by the last open crosscut until  
6 a qualified person tests for methane. If one percent or more

7 methane is present, the equipment may not be taken into the  
8 area until the methane concentration is reduced to less than  
9 one percent. Thereafter, subsequent methane examinations  
10 shall be made at least every twenty minutes while any  
11 electrical or diesel powered equipment is present and energized.

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

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

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

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

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

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

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

34 (A) Except for the mine foreman, assistant mine foreman,  
35 or individuals authorized by the mine foreman or assistant  
36 mine foreman, all individuals shall be withdrawn from the  
37 affected area. If a federal or state mine inspector is present  
38 in the area of the mine where one and five-tenths percent or  
39 more of methane is detected, the federal or state mine  
40 inspector and the miners' representative, if any, may remain  
41 in the area with the mine foreman, assistant mine foreman or  
42 other individuals authorized by the mine foreman or assistant  
43 mine foreman.

44 (B) Except for intrinsically safe AMS, electrically  
45 powered equipment in the affected area shall be disconnected  
46 at the power source.

47 (d) Return air split.--

48 (1) When one percent or more methane is present in a  
49 return air split between the last working place on a working  
50 section and where that split of air meets another split of air or  
51 the location at which the split is used to ventilate seals or  
52 worked-out areas, changes or adjustments shall be made at  
53 once to the ventilation system to reduce the concentration of  
54 methane in the return air to less than one percent.

55 (2) When one and five-tenths percent or more methane  
56 is present in a return air split between the last working place  
57 on a working section and where that split of air meets  
58 another split of air or the location where the split is used to  
59 ventilate seals or worked-out areas, except for the mine  
60 foreman, assistant mine foreman or individuals authorized  
61 by the mine or assistant mine foreman, all individuals shall  
62 be withdrawn from the affected area. If a federal or state



63 mine inspector is present in the area of the mine where one  
64 and five-tenths percent or more of methane is detected, the  
65 federal or state mine inspector and the miners'  
66 representative, if any, may remain in the area with the mine  
67 foreman, assistant mine foreman or other individuals  
68 authorized by the mine foreman or assistant mine foreman.

69 (3) Other than intrinsically safe AMS, equipment in the  
70 affected area shall be de-energized, electric power shall be  
71 disconnected at the power source and other mechanized  
72 equipment shall be shut off.

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

76 (e) Return air split alternative. --

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

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

82        (B) The methane content of the air in the split is  
83        continuously monitored during mining operations by an AMS  
84        that gives a visual and audible signal on the working section  
85        when the methane in the return air reaches one and five-tenths  
86        percent and the methane content is monitored as specified in the  
87        approved ventilation plan.

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

92        (2) When one and five-tenths percent or more methane is  
93        present in a return air split between a point in the return  
94        opposite the section loading point and where that split of air  
95        meets another split of air or where the split of air is used to  
96        ventilate seals or worked-out areas:

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

100       (B) Except for the mine foreman, assistant mine foreman  
101       or individuals authorized by the mine foreman or assistant  
102       mine foreman, all individuals shall be withdrawn from the  
103       affected area. If a federal or state mine inspector is present  
104       in the area of the mine where one and five-tenths percent or  
105       more of methane is detected, the federal or state mine  
106       inspector and the miners' representative, if any, may remain  
107       in the area with the mine foreman, assistant mine foreman or  
108       other individuals authorized by the mine foreman or assistant  
109       mine foreman.

110       (C) Except for intrinsically safe AMS, equipment in the  
111       affected area shall be de-energized, electric power shall be  
112       disconnected at the power source and other mechanized  
113       equipment shall be shut off.

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

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

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

122 (g) Machine mounted methane monitors. --

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

127 (2) The sensing device for methane monitors on longwall  
128 shearing machines shall be installed at the return air end of  
129 the longwall face. An additional sensing device also shall be  
130 installed on the longwall shearing machine, downwind and as  
131 close to the cutting head as practicable. An alternative  
132 location or locations for the sensing device required on the  
133 longwall shearing machine may be approved in the  
134 ventilation plan.

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

137       (4) Methane monitors shall be maintained in permissible  
138       and proper operating condition and shall be calibrated with  
139       a known air-methane mixture at least once every fifteen days  
140       and a record of the calibration shall be recorded with ink or  
141       indelible pencil by the person performing the calibration in  
142       a book prescribed by the director and maintained on the  
143       surface. Calibration records shall be retained for inspection  
144       for at least one year from the date of the test. To assure that  
145       methane monitors are properly maintained and calibrated, the  
146       operator shall use persons properly trained in the  
147       maintenance, calibration, and permissibility of methane  
148       monitors to calibrate and maintain the devices.

149       (h) Automatic de-energization of extraction apparatus. --  
150       When the methane concentration at any machine-mounted  
151       methane monitor reaches one percent, the monitor shall give a  
152       warning signal. The warning signal device of the methane  
153       monitor shall be visible to a person operating the equipment on  
154       which the monitor is mounted. The methane monitor shall  
155       automatically de-energize the extraction apparatus on the

156 machine on which it is mounted, but not the machine as a whole  
157 to facilitate proper mining procedures, when:

158 (1) The methane concentration at any machine-mounted  
159 methane monitor reaches one and twenty-five one hundredths  
160 percent for a sustained period; or

161 (2) The monitor is not operating properly.

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

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

166 Within one hundred twenty days of the effective date of the  
167 amendments to this section, the Board of Coal Mine Health and  
168 Safety shall promulgate legislative rules pursuant to article three,  
169 chapter twenty-nine-a of this code establishing calibration  
170 procedures, defining the term "sustained period" for purposes of  
171 implementing this section, and establishing a compliance  
172 schedule setting forth the time frame in which all new and  
173 existing face cutting machines, continuous miners, longwall face

174 equipment and other mechanized equipment used to extract coal  
175 or load coal within the working place shall be refitted with  
176 methane monitors. Enforcement of subsections (g) and (h) of  
177 this section shall not commence until after the time frame is  
178 established rule.

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

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

8 (b) Operation of mining machines. -- Machine operators and  
9 helpers shall use care while operating mining machines. They  
10 shall examine the roof of the working place to see that it is safe  
11 before starting to operate the machine. They shall not move the

12 machine while the cutter chain is in motion. Additionally, no  
13 person shall operate the cutterhead on any continuous miner  
14 while the machine is moving from place to place underground:  
15 Provided, That a cutterhead may be operated during clean up or  
16 when the machine is extracting coal.

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

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

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



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

32 (A) Opening the circuit breaker for the affected machinery,  
33 provided no energized parts or conductors are exposed, and  
34 placing the run selector switch for startup of the machinery in  
35 the “off” position. On longwall machinery, this would include  
36 placing the lockout switch in the lockout position in the area  
37 were the repair or maintenance is being performed. A qualified  
38 electrician is required to de-energize a circuit breaker if there are  
39 exposed energized parts or conductors; or

40 (B) Opening the circuit breaker at the power center that  
41 supplies power for the affected machinery and disengaging the  
42 power cable coupler that supplies power to the machinery; or

43 (C) Opening a manual visible disconnect switch, either  
44 within the circuit or onboard the machinery, and securing the  
45 switch against reenergization, as required by law. A control  
46 circuit start-stop switch does not constitute a manual disconnect;  
47 or

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

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

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

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

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

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

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

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

28 (2) In addition to the requirements of subdivision (1) of this  
29 subsection, the operator shall also provide caches of additional

30 self-contained self-rescue devices throughout the mine in  
31 accordance with a plan approved by the director. Each additional  
32 self-contained self-rescue device shall be adequate to protect a  
33 miner for one hour or longer. The total number of additional  
34 self-contained self-rescue devices, the total number of storage  
35 caches and the placement of each cache throughout the mine shall  
36 be established by rule pursuant to subsection (i) of this section. A  
37 luminescent sign with the words “**SELF-CONTAINED**  
38 **SELF-RESCUER**” or “**SELF-CONTAINED**  
39 **SELF-RESCUERS**” shall be conspicuously posted at each cache  
40 and luminescent direction signs shall be posted leading to each  
41 cache. Lifeline cords or other similar device, with reflective material  
42 at twenty-five foot intervals, shall be attached to each cache from  
43 the last open crosscut to the surface. The operator shall conduct  
44 weekly inspections of each cache and each lifeline cord or other  
45 similar device to ensure operability.

46 (3) Any person that, without the authorization of the operator or  
47 the director, knowingly removes or attempts to remove any  
48 self-contained self-rescue device or lifeline cord from the mine or

49 mine site with the intent to permanently deprive the operator of the  
50 device or lifeline cord or knowingly tampers with or attempts to  
51 tamper with ~~such~~ the device or lifeline cord shall be guilty of a  
52 felony and, upon conviction thereof, shall be imprisoned in a state  
53 correctional facility for not less than one year nor more than ten  
54 years or fined not less than \$10,000 nor more than \$100,000, or  
55 both.

56 (g) (1) A wireless emergency communication device  
57 approved by the director and provided by the operator shall be  
58 worn by each person underground. The wireless emergency  
59 communication device shall, at a minimum, be capable of  
60 receiving emergency communications from the surface at any  
61 location throughout the mine. Each operator shall train each  
62 miner in the use of the device and provide refresher training  
63 courses for all underground employees during each calendar  
64 year. The operator shall install in or around the mine any and all  
65 equipment necessary to transmit emergency communications  
66 from the surface to each wireless emergency communication  
67 device at any location throughout the mine.

68 (2) Any person that, without the authorization of the  
69 operator or the director, knowingly removes or attempts to  
70 remove any wireless emergency communication device or  
71 related equipment, from the mine or mine site with the intent to  
72 permanently deprive the operator of the device or equipment or  
73 knowingly tampers with or attempts to tamper with the device  
74 or equipment shall be guilty of a felony and, upon conviction  
75 thereof, shall be imprisoned in a state correctional facility for not  
76 less than one year nor more than ten years or fined not less than  
77 \$10,000 nor more than \$100,000, or both.

78 (h) (1) A wireless tracking device approved by the director  
79 and provided by the operator shall be worn by each person  
80 underground. In the event of an accident or other emergency, the  
81 tracking device shall, at a minimum, be capable of providing  
82 real-time monitoring of the physical location of each person  
83 underground: *Provided*, That no person shall discharge or  
84 discriminate against any miner based on information gathered by  
85 a wireless tracking device during nonemergency monitoring.  
86 Each operator shall train each miner in the use of the device and

87 provide refresher training courses for all underground employees  
88 during each calendar year. The operator shall install in or around  
89 the mine all equipment necessary to provide real-time  
90 emergency monitoring of the physical location of each person  
91 underground.

92 (2) Any person that, without the authorization of the  
93 operator or the director, knowingly removes or attempts to  
94 remove any wireless tracking device or related equipment,  
95 approved by the director, from a mine or mine site with the intent  
96 to permanently deprive the operator of the device or equipment or  
97 knowingly tampers with or attempts to tamper with the device or  
98 equipment shall be guilty of a felony and, upon conviction thereof,  
99 shall be imprisoned in a state correctional facility for not less than  
100 one year nor more than ten years or fined not less than \$10,000  
101 nor more than \$100,000, or both.

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

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

1 (a) For the purposes of this section, the term "accident"  
2 means:

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

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

6 (3) The entrapment of an individual;

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

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

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

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

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

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



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

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

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

28 (b) Whenever any accident occurs in or about any coal mine  
29 or the machinery connected therewith, it is the duty of the  
30 operator or the mine foreman in charge of the mine to give  
31 notice, within fifteen minutes of ascertaining the occurrence of  
32 an accident, to the Mine and Industrial Accident Emergency  
33 Operations Center at the statewide telephone number established  
34 by the Director of the Division of Homeland Security and  
35 Emergency Management pursuant to the provisions of article  
36 five-b, chapter fifteen of this code stating the particulars of the  
37 accident: *Provided*, That the operator or the mine foreman in

38 charge of the mine may comply with this notice requirement by  
39 immediately providing notice to the appropriate local  
40 organization for emergency services as defined in section eight,  
41 article five of said chapter, or the appropriate local emergency  
42 telephone system operator as defined in article six, chapter  
43 twenty-four of this code: Provided, however, That if,  
44 immediately upon ascertaining the occurrence of an accident, the  
45 operator or the mine foreman in charge of the mine provides  
46 notice to the local organization for emergency services as  
47 defined in section eight, article five, chapter fifteen of this code,  
48 or the appropriate local emergency telephone system operator as  
49 defined in article six, chapter twenty-four of this code, then, in  
50 order to comply with this subsection, the operator or mine  
51 foreman in charge of the mine shall also give notice to the Mine  
52 and Industrial Accident Emergency Operations Center at the  
53 statewide number identified in this subsection within fifteen  
54 minutes of completing the telephone call to the local  
55 organization for emergency services or the appropriate local  
56 emergency telephone system operator, as applicable: Provided,

57 ~~however~~ further, That nothing in this subsection shall be  
58 construed to relieve the operator from any reporting or  
59 notification requirement under federal law.

60 (c) The Director of the Office of Miners' Health, Safety and  
61 Training shall impose, pursuant to rules authorized in this  
62 section, a civil administrative penalty of \$100,000 on the  
63 operator if it is determined that the operator or the mine foremen  
64 in charge of the mine failed to give immediate notice as required  
65 in this section: *Provided*, That the director may waive imposition  
66 of the civil administrative penalty at any time if he or she finds  
67 that the failure to give immediate notice was caused by  
68 circumstances wholly outside the control of the operator;  
69 *Provided, however, That the assessment of the civil*  
70 *administrative penalty set forth in this subsection may be*  
71 *appealed to the Board of Appeals, and the Board of Appeals*  
72 *may, by unanimous vote, reduce the amount of the civil*  
73 *administrative penalty upon a finding of mitigating*  
74 *circumstances warranting the imposition of a lesser amount.*

75 (d) If anyone is ~~killed~~ fatally injured, the inspector shall  
76 immediately go to the scene of the accident and make  
77 recommendations and render assistance as he or she may deem  
78 necessary for the future safety of the men and investigate the  
79 cause of the explosion or accident and make a record. He or she  
80 shall preserve the record with the other records in his or her  
81 office. The cost of the investigation records shall be paid by the  
82 Office of Miners' Health, Safety and Training. A copy shall be  
83 furnished to the operator and other interested parties. To enable  
84 him or her to make an investigation, he or she has the power to  
85 compel the attendance of witnesses and to administer oaths or  
86 affirmations. The director has the right to appear and testify and  
87 to offer any testimony that may be relevant to the questions and  
88 to cross-examine witnesses.

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

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

1 (a) The board shall adopt as standard rules the “coal mine  
2 health and safety provisions of this chapter”. Such standard rules  
3 and any other rules shall be adopted by the board without regard to

4 the provisions of chapter twenty-nine-a of this code. The Board of  
5 Coal Mine Health and Safety shall devote its time toward  
6 promulgating rules in those areas specifically directed by this  
7 chapter and those necessary to prevent fatal accidents and injuries.

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

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

17 (1) Upon consideration of the latest available scientific data  
18 in the field, the technical feasibility of standards, and experience  
19 gained under this and other safety statutes, such rules may  
20 expand protections afforded by this chapter notwithstanding  
21 specific language therein, and such rules may deal with subject

22 areas not covered by this chapter to the end of affording the  
23 maximum possible protection to the health and safety of miners.

24 (2) No rules promulgated by the board shall reduce or  
25 compromise the level of safety or protection afforded miners  
26 below the level of safety or protection afforded by this chapter.

27 (3) Any miner or representative of any miner, or any coal  
28 operator has the power to petition the circuit court of Kanawha  
29 County for a determination as to whether any rule promulgated  
30 or revised reduces the protection afforded miners below that  
31 provided by this chapter, or is otherwise contrary to law:

32 *Provided,* That any rule properly promulgated by the board  
33 pursuant to the terms and conditions of this chapter creates a  
34 rebuttable presumption that said rule does not reduce the  
35 protection afforded miners below that provided by this chapter.

36 (4) The director shall cause proposed rules and a notice  
37 thereof to be posted as provided in section eighteen, article one  
38 of this chapter. The director shall deliver a copy of such  
39 proposed rules and accompanying notice to each operator  
40 affected. A copy of such proposed rules shall be provided to any

41 individual by the director's request. The notice of proposed rules  
42 shall contain a summary in plain language explaining the effect  
43 of the proposed rules.

44 (5) The board shall afford interested persons a period of not  
45 less than thirty days after releasing proposed rules to submit  
46 written data or comments. The board may, upon the expiration  
47 of such period and after consideration of all relevant matters  
48 presented, promulgate such rules with such modifications as it  
49 may deem appropriate.

50 (6) On or before the last day of any period fixed for the  
51 submission of written data or comments under subdivision (5) of  
52 this section, any interested person may file with the board  
53 written objections to a proposed rule, stating the grounds  
54 therefor and requesting a public hearing on such objections. As  
55 soon as practicable after the period for filing such objections has  
56 expired, the board shall release a notice specifying the proposed  
57 rules to which objections have been filed and a hearing  
58 requested.

59 (7) Promptly after any such notice is released by the board  
60 under subdivision (6) of this section, the board shall issue notice  
61 of, and hold a public hearing for the purpose of receiving  
62 relevant evidence. Within sixty days after completion of the  
63 hearings, the board shall make findings of fact which shall be  
64 public, and may promulgate such rules with such modifications  
65 as it deems appropriate. In the event the board determines that a  
66 proposed rule should not be promulgated or should be modified,  
67 it shall within a reasonable time publish the reasons for its  
68 determination.

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

72 (d) To carry out its duties and responsibilities, the board is  
73 authorized to employ such personnel, including legal counsel,  
74 experts and consultants, as it deems necessary. In addition, the  
75 board, within the appropriations provided for by the Legislature,  
76 may conduct or contract for research and studies and is entitled



77 to the use of the services, facilities and personnel of any agency,  
78 institution, school, college or university of this state.

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

82 The board shall review all reports and any recommended  
83 rules submitted by the director, receive any additional  
84 information it requests, and may, on its own initiative,  
85 investigate the circumstances surrounding a coal mining fatality  
86 or fatalities and ascertain the cause or causes of such coal mining  
87 fatality or fatalities. In order to investigate a coal mining fatality  
88 or fatalities, a majority of the board must vote in favor of  
89 commencing an investigation. Within ninety days of the receipt  
90 of the Federal Mine Safety and Health Administration's fatal  
91 accident report and the director's report and recommended rules,  
92 the board shall review and consider the presentation of said  
93 report and rules and the results of its own investigation, if any,  
94 and, if a majority of all voting board members determines that

95 additional rules can assist in the prevention of the specific type of  
96 fatality, the board shall either accept and promulgate the director's  
97 recommended rules, amend the director's recommended rules or  
98 draft new rules, as are necessary to prevent the recurrence of such  
99 fatality. If the board chooses to amend the director's recommended  
100 rules or draft its own rules, a vote is required within one hundred  
101 twenty days as to whether to promulgate the amended rule or the  
102 rule drafted by the board: *Provided*, That the board may, by  
103 majority vote, find that exceptional circumstances exist and the  
104 deadline cannot be met: *Provided, however* That under no  
105 circumstances shall such deadline be extended by more than a total  
106 of ninety days. A majority vote of the board is required to  
107 promulgate any such rule.

108 The board shall annually, not later than July 1, review the  
109 major causes of coal mining injuries during the previous  
110 calendar year, reviewing the causes in detail, and shall  
111 promulgate such rules as may be necessary to prevent the  
112 recurrence of such injuries.

113 Further, the board shall, on or before January 10, of each  
114 year, submit a report to the Governor, President of the Senate  
115 and Speaker of the House, which report shall include, but is not  
116 limited to:

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

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

122 (3) What rules the board intends to promulgate during the  
123 current calendar year;

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

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

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

131 (7) In addition to the report by the board, as herein  
132 contained, each individual member of said board has the right to  
133 submit a separate report, setting forth any views contrary to the  
134 report of the board, and the separate report, if any, shall be  
135 appended to the report of the board and be considered a part  
136 thereof.

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

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

12 Joint Committee on Government and Finance with  
13 recommendations regarding implementation of the findings of  
14 this study.

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

1 The Board of Coal Mine Health and Safety is directed to  
2 study the mandatory substance abuse screening policy and  
3 program requirements of article one-a of this chapter and make  
4 recommendations to the director regarding (a) establishment of  
5 guidelines to be employed by the Board of Appeals when  
6 administering disciplinary actions to certified persons pursuant  
7 to article one-a of this chapter, (b) requiring certification by the  
8 Office of Miners' Health, Safety and Training of persons who  
9 regularly work at mines who are not presently required to obtain  
10 certification, and (c) establishment of additional minimum  
11 requirements, parameters, methodologies and protocols to be  
12 integrated into the substance abuse screening policy and  
13 program requirements of article one-a of this chapter. By the  
14 thirty-first day of August, two thousand and twelve, the board  
15 shall submit its report to the director. The director is authorized  
16 to propose for legislative promulgation, legislative rules

17 pursuant to article three, chapter twenty-nine-a of this code  
18 regarding the implementation of the findings of this study.  
19 These rules shall be initially promulgated as emergency rules by  
20 the director pursuant to the provisions of section fifteen, article  
21 three, chapter twenty-nine-a of the code by the thirty-first day of  
22 December, two thousand and twelve, and shall include the  
23 establishment of certification requirements recommended by the  
24 board for persons who regularly work at mines that are not  
25 presently required to obtain certification and establishment of  
26 guidelines to be employed by the Board of Appeals when  
27 administering disciplinary actions to certified persons pursuant  
28 to article one-a of this chapter.

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

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

1 (a) The board shall establish criteria and standards for a  
2 program of education, training and examination to be required  
3 of all prospective miners and miners prior to their certification  
4 in any of the various miner specialties requiring certification  
5 under this article or any other provision of this code. The

6 specialties include, but are not limited to, underground miner,  
7 surface miner, apprentice, underground mine foreman-fire boss,  
8 assistant underground mine foreman-fire boss, shotfirer, mine  
9 electrician and belt examiner. Notwithstanding the provisions  
10 of this section, the director may by rule further subdivide the  
11 classifications for certification.

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

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

22 (d) The board shall set minimum standards for a program of  
23 continuing education and training of certified persons and other  
24 miners on an annual basis: *Provided*, That the standards shall be

25 consistent with the provisions of section seven of this article.  
26 Prior to issuing the standards, the board shall conduct public  
27 hearings at which the parties who may be affected by its actions  
28 may be heard. The education and training shall be provided in  
29 a manner determined by the director to be sufficient to meet the  
30 standards established by the board.

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

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

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

43 (h) The board may, upon its own motion or whenever  
44 requested to do so by the director, consider two certificates



45 issued by this state to be of equal value or consider training  
46 provided or required by federal agencies to be sufficient to meet  
47 training and education requirements set by it, the director, or by  
48 the provisions of this code.

49 (i) As part of the annual training required by this section, the  
50 board shall include training of certified persons and other  
51 miners, instruction on miners' rights as they relate to the  
52 operation of unsafe equipment as provided in section seventy-  
53 one of article two of this chapter, his or her right to withdrawal  
54 from unsafe conditions as provided in section seventy-one-a of  
55 article two of this chapter and his or her rights under section  
56 twenty-two, article one of this chapter.

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

1 The board is directed to conduct a study of the overall  
2 program of education, training and examination associated with  
3 the various miner specialties requiring certification under this  
4 article or any other provision of this code. The study shall  
5 identify ways to enhance miner education and training to  
6 adequately reflect technological advances in coal mining

7 techniques and best practices used in modern coal mines, and  
8 improve supervision of apprentice miners. Furthermore, the  
9 board shall place particular emphasis in its study on ways to  
10 improve education and training in the areas of proper mine  
11 ventilation, methane monitoring and equipment de-energization,  
12 fire-boss procedures and overall core mining competencies. By  
13 December 31, 2012, the board shall report to the Legislature's  
14 Joint Committee on Government and Finance with  
15 recommendations regarding the implementation of the findings  
16 of this study.

**ARTICLE 12. UNDERGROUND ACCIDENT INVESTIGATIONS.**

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

1 The director shall, by December 31, 2013, report to the  
2 Legislature and Governor on the need for revisions in the state's  
3 underground mine safety enforcement procedures. The director  
4 shall initiate the study using appropriate academic resources and  
5 mining safety organizations to conduct a program review of state  
6 enforcement procedures to evaluate what reforms will assure

7 that mining operations follow state mandated safety protocols.  
8 The report shall include recommended legislation, rules and  
9 policies, consider various options for improving inspections,  
10 accountability and equitable and timely administrative  
11 procedures that cause remediation of hazardous working  
12 conditions.