

COMMITTEE SUBSTITUTE

FOR

**H. B. 4351**

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

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(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, §22A-1-15, 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 and §22A-1A-3; 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 time;

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

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

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

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

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

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

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



41 (d) In the event that an emergency call regarding any  
42 accident, as defined in section sixty-six, article two, chapter  
43 twenty-two-a of this code, in or about any mine, is initially  
44 received by a county answering point, as defined in article  
45 six, chapter twenty-four of this code, the call shall be  
46 immediately forwarded to the Mine and Industrial Accident  
47 Emergency Operations Center.

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

53 (f) The Mine and Industrial Accident Rapid Response  
54 System and the emergency operations center are designed  
55 and intended to provide communications assistance to  
56 emergency responders and other responsible persons.  
57 Nothing in this section shall be construed to conflict with the  
58 responsibility and authority of an operator to provide mine

59 rescue coverage in accordance with the provisions of section  
60 thirty-five, article one, chapter twenty-two-a of this code or  
61 the authority of the Director of the Office of Miners' Health,  
62 Safety and Training to assign mine rescue teams under the  
63 provisions of subsection (d) of said section or to exercise any  
64 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  
3 that allows callers to report mine safety violations and  
4 hazardous coal mining conditions and practices. The  
5 information collected shall be provided to the Office of  
6 Miners' Health, Safety and Training. No information may be  
7 submitted to the Office of Miners' Health, Safety and  
8 Training that would allow identification of the person placing  
9 the call. The calls are confidential and any documentation  
10 thereof or related thereto is not subject to release and is  
11 exempt from the provisions of article one, chapter

12 twenty-nine-b of this code. The director shall distribute  
13 printed information to all state mining operations alerting  
14 miners to the existence of the toll free line. Each mining  
15 operation shall post this notice at the location used to post  
16 notices pursuant to section eighteen, article one, chapter  
17 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  
19 as may be necessary to fully and effectively carry out the  
20 provisions of this law, including the training of inspectors for  
21 the specialized requirements of surface mining, shaft and slope  
22 sinking and surface installations and to supervise and direct  
23 ~~such~~ 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 of  
66 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, which  
71 shall be paid out of the State Treasury upon a requisition upon  
72 the State Auditor, properly certified by ~~such~~ the witness.

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

79 (11) Share information regarding any discharge of any  
80 person employed at a mine, as defined in article one-a of this

81 chapter, and suspension or revocation of a certificate for  
82 violation of the substance abuse provisions of article one-a of  
83 this chapter with other states that subject miners to  
84 disciplinary action for violation of a substance abuse policy.

85       ~~(11)~~ (12) Perform all other duties which are expressly  
86 imposed upon him or her by the provisions of this chapter.

87       ~~(12)~~ (13) Impose reasonable fees upon applicants taking  
88 tests administered pursuant to the requirements of this  
89 chapter.

90       ~~(13)~~ (14) Impose reasonable fees for the issuance of  
91 certifications required under this chapter.

92       ~~(14)~~ (15) Prepare study guides and other forms of  
93 publications relating to mine safety and charge a reasonable  
94 fee for the sale of the publications.

95       ~~(15)~~ (16) Make all records of the office open for  
96 inspection of interested persons and the public.

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



100 Mine Safety Technology Task Force, has thirty days to  
101 approve or amend the list as provided in section four, article  
102 thirteen-bb, chapter eleven of this code. At the expiration of  
103 the time period, the director shall publish the list of approved  
104 innovative mine safety technologies as provided in section  
105 four, article thirteen-bb, chapter eleven of this code.

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

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

12 proper mine ventilation. Further the office shall perform an  
13 assessment of the resources and qualification of inspectors  
14 necessary to approve mine ventilation plans. By December  
15 31, 2012, the Office of Miners' Health, Safety and Training  
16 shall report to the Legislature's Joint Committee on  
17 Government and Finance with recommendations regarding  
18 the implementation of its 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, have  
11 reason to believe, at any time, that dangerous conditions are  
12 existing or that the law is not being complied with, they may  
13 request the director to have an immediate investigation made.

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

28 mine. No other person shall, with the intent of undermining  
29 the integrity of an unannounced mine inspection, provide  
30 advance notice of any inspection or of an inspector's  
31 presence at a mine to any person at that mine. Any person  
32 who, with the requisite intent, knowingly causes or conspires  
33 to provide advance notice of any inspection or of an  
34 inspector's presence at a mine is guilty of a felony and, upon  
35 conviction thereof, shall be fined not more than \$15,000 or  
36 imprisoned in a state correctional facility not less than one  
37 year and not more than five years, or both fined and  
38 imprisoned.

39 (d) In addition to the other duties imposed by this article and  
40 article two of this chapter, it is the duty of each inspector to note  
41 each violation he or she finds and issue a finding, order, or  
42 notice, as appropriate for each violation so noted. During the  
43 investigation of any accident, any violation may be noted  
44 whether or not the inspector actually observes the violation and  
45 whether or not the violation exists at the time the inspector

46 notes the violation, so long as the inspector has clear and  
47 convincing evidence the violation has occurred or is occurring.

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

58 (f) The mine inspector shall visit the scene of each fatal  
59 accident occurring in any mine within his or her district and  
60 shall make an examination into the particular facts of ~~such~~  
61 the accident; make a report to the director, setting forth the  
62 results of ~~such~~ the examination, including the condition of  
63 the mine and the cause or causes of ~~such~~ the fatal accident,

64 if known, and all ~~such~~ the reports shall be made available to  
65 the interested parties, upon written requests.

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

**§22A-1-15. Findings, orders and notices.**

1 (a) If upon any inspection of a coal mine an authorized  
2 representative of the director finds that an imminent danger  
3 exists, the representative shall determine the area throughout  
4 which the danger exists and shall immediately issue an order  
5 requiring the operator of the mine or the operator's agent to  
6 cause immediately all persons, except those referred to in  
7 subdivisions (1), (2), (3) and (4), subsection (e) of this  
8 section, to be withdrawn from and to be prohibited from  
9 entering the area until an authorized representative of the

10 director determines that the imminent danger no longer  
11 exists.

12 (b) If upon any inspection of a coal mine an authorized  
13 representative of the director finds that there has been a  
14 violation of the law, but the violation has not created an  
15 imminent danger, he or she shall issue a notice to the  
16 operator or the operator's agent fixing a reasonable time for  
17 the abatement of the violation. If upon the expiration of the  
18 period of time, as originally fixed or subsequently extended,  
19 an authorized representative of the director finds that the  
20 violation has not been totally abated, and if the director also  
21 finds that the period of time should not be further extended,  
22 the director shall find the extent of the area affected by the  
23 violation and shall promptly issue an order requiring the  
24 operator of the mine or the operator's agent to cause  
25 immediately all persons, except those referred to in  
26 subdivisions (1), (2), (3) and (4), subsection (e) of this  
27 section, to be withdrawn from and to be prohibited from

28 entering the area until an authorized representative of the  
29 director determines that the violation has been abated.

30 (c) If upon any inspection of a coal mine an authorized  
31 representative of the director finds that an imminent danger  
32 exists in an area of the mine, in addition to issuing an order  
33 pursuant to subsection (a) of this section, the director shall  
34 review the compliance record of the mine.

35 (1) A review of the compliance record conducted in  
36 accordance with this subsection shall, at a minimum, include  
37 a review of the following:

38 (A) Any closure order issued pursuant to subsection (a)  
39 of this section;

40 (B) Any closure order issued pursuant to subsection (b)  
41 of this section;

42 (C) Any enforcement measures taken pursuant to this  
43 chapter, other than those authorized under subsections (a)  
44 and (b) of this section;

45 (D) Any evidence of the operator's lack of good faith in  
46 abating violations at the mine;



47 (E) Any accident, injury or illness record that  
48 demonstrates a serious safety or health management problem  
49 at the mine;

50 (F) The number of employees at the mine, the size, layout  
51 and physical features of the mine and the length of time the  
52 mine has been in operation; and

53 (G) Any mitigating circumstances.

54 (2) If, after review of the mine's compliance record, the  
55 director determines that the mine has a history of repeated  
56 significant and substantial violations of a particular standard  
57 caused by unwarrantable failure to comply or a history of  
58 repeated significant and substantial violations of standards  
59 related to the same hazard caused by unwarrantable failure to  
60 comply and the history or histories demonstrate the  
61 operator's disregard for the health and safety of miners, the  
62 director shall issue a closure order for the entire mine and  
63 shall immediately issue an order requiring the operator of the  
64 mine or the operator's agent to cause immediately all persons,

65 except those referred to in subdivisions (1), (2), (3) and (4),  
66 subsection (e) of this section, to be withdrawn from and to be  
67 prohibited from entering the mine until a thorough inspection  
68 of the mine has been conducted by the office and the director  
69 determines that the operator has abated all violations related  
70 to the imminent danger and any violations unearthed in the  
71 course of the inspection.

72 (d) All employees on the inside and outside of a mine  
73 who are idled as a result of the posting of a withdrawal order  
74 by a mine inspector shall be compensated by the operator at  
75 their regular rates of pay for the period they are idled ~~but not~~  
76 ~~more than the balance of the shift~~ during the balance of that  
77 shift. If the order is not terminated prior to the next working  
78 shift, all the employees on that shift who are idled by the  
79 order are entitled to full compensation by the operator at their  
80 regular rates of pay for the period they are idled ~~but for not~~  
81 ~~more than four hours of the shift~~ during that shift and the  
82 eight hours of the next working shift. If the operator refuses

83 to comply or abate the hazard or condition causing the  
84 withdrawal order, employees on the inside and outside of a  
85 mine who are idled as a result of the posting of a withdrawal  
86 order are entitled to full compensation by the operator at their  
87 regular rates of pay for the period they are idled, up to ten  
88 days.

89 (e) The following persons are not required to be  
90 withdrawn from or prohibited from entering any area of the  
91 coal mine subject to an order issued under this section:

92 (1) Any person whose presence in the area is necessary,  
93 in the judgment of the operator or an authorized  
94 representative of the director, to eliminate the condition  
95 described in the order;

96 (2) Any public official whose official duties require him  
97 or her to enter the area;

98 (3) Any representative of the miners in the mine who is,  
99 in the judgment of the operator or an authorized  
100 representative of the director, qualified to make coal mine  
101 examinations or who is accompanied by such a person and

102 whose presence in the area is necessary for the investigation  
103 of the conditions described in the order; and

104 (4) Any consultant to any of the persons set forth in this  
105 subsection.

106 (f) Notices and orders issued pursuant to this section shall  
107 contain a detailed description of the conditions or practices  
108 which cause and constitute an imminent danger or a violation of  
109 any mandatory health or safety standard and, where appropriate,  
110 a description of the area of the coal mine from which persons  
111 must be withdrawn and prohibited from entering.

112 (g) Each notice or order issued under this section shall be  
113 given promptly to the operator of the coal mine or the  
114 operator's agent by an authorized representative of the  
115 director issuing the notice or order and all the notices and  
116 orders shall be in writing and shall be signed by the  
117 representative and posted on the bulletin board at the mine.

118 (h) A notice or order issued pursuant to this section may  
119 be modified or terminated by an authorized representative of  
120 the director.

121 (i) Each finding, order and notice made under this section  
122 shall promptly be given to the operator of the mine to which  
123 it pertains by the person making the finding, order or notice.

124 (j) *Definitions.* -- For the purposes of this section only,  
125 the following terms have the following meanings:

126 (1) "Unwarrantable failure" means aggravated conduct,  
127 constituting more than ordinary negligence, by a mine  
128 operator in relation to a violation of this chapter of the code;  
129 and

130 (2) "Significant and substantial violation" ~~shall have~~ has  
131 the same meaning as that established in 6 FMSHRC 1  
132 (1984).

**§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  
68 or fails or refuses to comply with any order issued under  
69 section fifteen of this article, or any order incorporated in a  
70 final decision issued under this article, except an order  
71 incorporated in a decision under subsection (a) of this section  
72 or subsection (b), section twenty-two of this article, shall be  
73 assessed a civil penalty by the director under subdivision (5),  
74 subsection (a) of this section of not more than \$5,000 and for  
75 a second or subsequent violation assessed a civil penalty of  
76 not more than \$10,000, unless the director determines that it  
77 is appropriate to impose a special assessment for ~~said~~ the

78 violation, pursuant to the provisions of subdivision (2) of this  
79 subsection.

80 (2) In lieu of imposing a civil penalty pursuant to the  
81 provisions of subsection (a) of this section or subdivision (1)  
82 of this subsection, the director may impose a special  
83 assessment if an operator violates a health or safety provision  
84 of this chapter or health or safety rule promulgated pursuant  
85 to this chapter and the violation is of serious nature and  
86 involves one or more of the following by the operator:

87 (A) Violations involving fatalities and serious injuries;

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

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

91 (D) Violations involving an imminent danger;

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

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

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

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

113 (d) Whoever knowingly makes any false statement,  
114 representation or certification in any application, record,

115 report, plan or other document filed or required to be  
116 maintained pursuant to this law or any order or decision  
117 issued under this law is guilty of a misdemeanor and, upon  
118 conviction thereof, shall be fined not more than ~~\$5,000~~  
119 \$10,000 or ~~imprisoned~~ confined in the jail not more than ~~six~~  
120 ~~months~~ one year, or both fined and ~~imprisoned~~ confined. The  
121 conviction of any person under this subsection shall result in  
122 the revocation of any certifications held by the person under  
123 this chapter which certified or authorized the person to direct  
124 other persons in coal mining by operation of law and bars  
125 that person from being issued any license under this chapter,  
126 except a miner's certification, for a period of not less than  
127 one year or for a longer period as may be determined by the  
128 director.

129 (e) Whoever willfully distributes, sells, offers for sale,  
130 introduces or delivers in commerce any equipment for use in  
131 a coal mine, including, but not limited to, components and  
132 accessories of the equipment, who willfully misrepresents the

133 equipment as complying with the provisions of this law, or  
134 with any specification or rule of the director applicable to the  
135 equipment, and which does not comply with the law,  
136 specification or rule, is guilty of a misdemeanor and, upon  
137 conviction thereof, is subject to the same fine and  
138 ~~imprisonment~~ confinement that may be imposed upon a  
139 person under subsection (d) of this section.

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

147 ~~(f)~~ (g) There is continued in the treasury of the State of  
148 West Virginia a Special Health, Safety and Training Fund.  
149 All civil penalty assessments collected under this section  
150 shall be collected by the director and deposited with the

151 Treasurer of the State of West Virginia to the credit of the  
152 Special Health, Safety and Training Fund. The fund shall be  
153 used by the director who is authorized to expend the moneys  
154 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 with,  
2 or providing a statement to, the director may request to do so on  
3 a confidential basis without the consent, presence, involvement  
4 or knowledge of any third party. Upon such a request, the  
5 director shall keep the identity of any individual providing such  
6 a statement and the statement itself confidential, to the extent  
7 permitted by law, and not subject to release pursuant to article  
8 one, chapter twenty-nine-b of this code. Nothing in this section  
9 precludes a person from being represented when speaking with  
10 the director. Further, nothing in this section precludes a person  
11 under subpoena or who is voluntarily speaking with the director  
12 from authorizing any other person from participation in such  
13 meeting or statement.

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

32        (c) The Director shall, in consultation with the Board of  
33        Coal Mine Health and Safety, develop a list of persons  
34        skilled in the fields of grief and crisis management,  
35        communications and family support. Following any mining  
36        accident involving entrapped miners or fatal injuries, the  
37        Director shall promptly provide the list of such individuals to  
38        the families of the accident victim or victims. The individuals  
39        contained on the list developed by the Director shall be  
40        available as a resource to families of accident victims who  
41        seek their assistance. The list shall also contain a reference  
42        to this code section and a statement that the family has the  
43        right to designate a representative of their choosing  
44        regardless of whether that person is not 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) Beginning January 1, 2013, every employer of  
2        certified persons shall perform drug tests for persons who



3 work as a miner, as defined in section two, article one of this  
4 chapter, shall implement a substance abuse screening policy  
5 and program that shall, at a minimum, include:

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

9 A. Amphetamines,

10 B. Cannabinoids/THC,

11 C. Cocaine,

12 D. Opiates,

13 E. Phencyclidine (PCP),

14 F. Benzodiazepines,

15 G. Propoxyphene,

16 H. Methadone,

17 I. Barbiturates, and

18 J. Synthetic narcotics.

19 Split samples shall be collected by providers who are  
20 certified as complying with standards and procedures set out

21 in the United States Department of Transportation's rule, 49  
22 CFR Part 40, which may be amended from time to time by  
23 legislative rule of the Office. Collected samples shall be  
24 tested by laboratories certified by the United States  
25 Department of Health and Human Services, Substance Abuse  
26 and Mental Health Services Administration (SAMHSA) for  
27 collection and testing. Persons tested shall be provided upon  
28 his or her request, to be provided one of the collected split  
29 samples. Notwithstanding the provisions of this subdivision,  
30 the mine operator may implement a more stringent substance  
31 abuse screening policy and program;

32 (2) A random substance abuse testing program covering  
33 the substances referenced in subdivision (1) of this  
34 subsection. "Random testing" means that each person  
35 subject to testing has a statistically equal chance of being  
36 selected for testing at random and at unscheduled times. The  
37 selection of persons for random testing shall be made by a  
38 scientifically valid method, such as a random number table

39 or a computer-based random number generator that is  
40 matched with the persons' social security numbers, payroll  
41 identification numbers, or other comparable identifying  
42 numbers; and

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

47 (b) The provisions of this section providing for  
48 revocation or suspension of a certification or certifications  
49 shall not be implemented or effective until the Board of Coal  
50 Miners Safety promulgates a rule establishing certifications  
51 subject to suspension or revocation pursuant to study and  
52 implementation to section fourteen, article six of this chapter.

53 (c) For purposes of this subsection, preemployment  
54 testing shall be required upon hiring by a new employer,  
55 rehiring by a former employer following a termination of the  
56 employer/employee relationship, or transferring to a West

57 Virginia mine from an employer's out-of-state mine to the  
58 extent that any substance abuse test required by the employer  
59 in the other jurisdiction does not comply with the minimum  
60 standards for substance abuse testing required by this article.  
61 Furthermore, the provisions of this section apply to all  
62 employers that employ certified persons who work in mines,  
63 regardless of whether that employer is an operator,  
64 contractor, subcontractor or otherwise. all employees of the  
65 employer employed at a mine are subject to testing.

66 (d) The employer or his or her agent shall notify the  
67 director at least quarterly, on a form prescribed by the  
68 director, of the number of pre-employment substance abuse  
69 screening tests administered during the prior calendar quarter  
70 and the number of positive test results associated with the  
71 substance abuse screening tests administered.

72 (e) The employer or his or her agent shall notify the  
73 director, on a form prescribed by the director, within seven  
74 days following completion of an arbitration conducted

75 pursuant to a collective bargaining agreement applicable to  
76 the certified person, if any, of discharging a certified person  
77 for violation of the employer's substance abuse screening  
78 policy and program. The notification shall be accompanied  
79 by a record of the test showing positive results or other  
80 violation. Notice shall result in the immediate temporary  
81 suspension of all certificates held by the certified person who  
82 failed the screening, pending a hearing before the board of  
83 appeals pursuant to section two of this article.

84 (f) Suspension or revocation of a certified person's  
85 certificate as a miner or other miner specialty in another  
86 jurisdiction by the applicable regulatory or licensing  
87 authority for substance abuse-related matters shall result in  
88 the director immediately and temporarily suspending the  
89 certified person's West Virginia certificate until such time as  
90 the certified person's certification is reinstated in the other jurisdiction.

91 (g) The provisions of this article shall not be construed  
92 to preclude an employer from developing or maintaining a

93 drug and alcohol abuse policy, testing program or substance  
94 abuse program that exceeds the minimum requirements set  
95 forth in this section. The provisions of this article shall also  
96 not be construed to require an employer to alter, amend,  
97 revise or otherwise change, in any respect, a previously  
98 established substance abuse screening policy and program  
99 that meets or exceeds the minimum requirements set forth in  
100 this section. The provisions of this article shall require an  
101 employer to administer pre-employment and random  
102 substance abuse tests to all of its employees who as part of  
103 their employment are regularly present at a mine: *Provided,*  
104 That each employer shall retain the discretion to establish the  
105 parameters of its substance abuse screening policy and  
106 program so long as it meets the minimum requirements of  
107 this article.

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

1 (a) Any hearing conducted after the temporary  
2 suspension of a employee pursuant to this article, shall be

3 conducted within sixty days of the temporary suspension.

4 The board of appeals shall make every effort to hold the

5 hearing within forty days of the temporary suspension.

6 (b) All hearings of the board of appeals pursuant to this

7 section shall be conducted in accordance with the provisions

8 of subsection (c), section thirty-one, article one of this chapter.

9 The board of appeals may suspend the certificate or

10 certificates of a certified person for violation of this article or

11 for any other violation of this chapter pertaining to substance

12 abuse. The board of appeals may impose further disciplinary

13 actions for repeat violations. The director shall have the

14 authority to propose legislative rules for promulgation in

15 accordance with article three, chapter twenty-nine-a of this

16 code to establish the disciplinary actions referenced in this

17 section following the receipt of recommendations from the

18 Board of Coal Mine Health and Safety following completion

19 of the study required pursuant to section fourteen, article six of

20 this chapter. The legislative rules authorized by this subsection

21 shall not, however, include any provisions requiring an  
22 employer to take or refrain from taking any specific personnel  
23 action or mandating any employer to establish or maintain an  
24 employer-funded substance abuse rehabilitation program.

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

29 (d) Any party adversely affected by a final order or  
30 decision issued by the board of appeals hereunder is entitled  
31 to judicial review thereof pursuant to section four, article  
32 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.

**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 a copy of the operator's proposed  
7 annual ventilation plan at least ten days prior to the date of  
8 submission. The miners' representative shall be afforded the  
9 opportunity to submit written comments to the operator prior  
10 to such submission; in addition the miners' representative  
11 may submit written comments to the director. The director  
12 shall submit any concern that is not addressed to the United  
13 States Department of Labor - Mine Safety and Health  
14 Administration through comments to the plan. The mine

15 operator shall provide a copy of the plan to the director and  
16 the miners' representative, if any, employed by the operator  
17 at the mine ten days prior to the submittal 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  
23 submit 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 and the superintendent or  
2 owner-operator of the mine shall, ~~also~~ each day, read carefully  
3 and countersign with ink or indelible pencil all reports entered  
4 in the record book of the fire bosses. ~~and he~~ The mine foreman  
5 shall supervise the fire boss or fire bosses, except as ~~hereinafter~~  
6 provided in section twenty-one of this article.

**§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  
6 those persons already on assigned duty, no person except the  
7 mine 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 or assigned to work  
24 or travel underground. He or she shall place his or her initials  
25 and the date at or near the face of each place he or she  
26 examines. Should he or she find a condition which he or she  
27 considers dangerous to persons entering ~~such~~ the areas, he or  
28 she shall place a conspicuous danger sign at all entrances to  
29 ~~such~~ the place or places. Only persons authorized by the  
30 mine management may enter ~~such~~ the places while the sign  
31 is posted and only for the purpose of eliminating the  
32 dangerous condition. Upon completing his or her  
33 examination he or she shall report by suitable communication  
34 system or in person the results of this examination to a  
35 certified person designated by mine management to receive  
36 and record ~~such~~ the report, at a designated station on the  
37 surface of the premises of the mine or underground, before  
38 other persons enter the mine to work in ~~such~~ coal-producing  
39 shifts. He or she shall also record the results of his or her  
40 examination with ink or indelible pencil in a book prescribed

41 by the director, kept for ~~such~~ the purpose at a place on the  
42 surface of the mine designated by mine management. All  
43 records of daily and weekly reports, as prescribed herein,  
44 shall be open 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 shall  
57 report by suitable communication system or in person the  
58 results of this examination to a certified person designated by  
59 mine management to receive and record ~~such~~ the report, at a

60 designated station on the surface of the premises of the mine  
61 or underground, before other persons enter the mine to work in  
62 coal-producing shifts. The results of the examination shall be  
63 recorded with ink or indelible pencil by the examiner in the  
64 book referenced in subsection (a) of this section before he or  
65 she leaves the mine 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  
25 also 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) Testing required. -- In any mine, no electrical  
4 equipment or permissible diesel powered equipment may be  
5 brought in by the last open crosscut until a qualified person  
6 tests for methane. If one percent or more methane is present,  
7 the equipment may not be taken into the area until the  
8 methane concentration is reduced to less than one percent.  
9 Thereafter, subsequent methane examinations shall be made  
10 at least every twenty minutes while any electrical or diesel  
11 powered equipment is present and energized.

12 (b) Location of tests. -- Tests for methane concentrations  
13 under this section shall be made at least twelve inches from  
14 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 course  
18 in which a belt conveyor is located or in an area where  
19 mechanized mining equipment is being installed or removed:

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

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

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

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

34 (A) Except for federal or state mine inspectors, the mine  
35 foreman, assistant mine foreman, miners representative or  
36 individuals authorized by the mine foreman or assistant mine  
37 foreman, all individuals shall be withdrawn from the affected  
38 area.

39 (B) Except for intrinsically safe AMS, electrically  
40 powered equipment in the affected area shall be disconnected  
41 at the power source.

42 (d) Return air split.--

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

50 (2) When one and five tenths percent or more methane is  
51 present in a return air split between the last working place on

52 a working section and where that split of air meets another  
53 split of air or the location where the split is used to ventilate  
54 seals or worked-out areas, except for federal or state mine  
55 inspectors, the mine foreman, assistant mine foreman or  
56 individuals authorized by the mine foreman, miners  
57 representative, or assistant mine foreman, all individuals  
58 shall be withdrawn from the affected area.

59 (3) Other than intrinsically safe AMS, equipment in the  
60 affected area shall be de-energized, electric power shall be  
61 disconnected at the power source and other mechanized  
62 equipment shall be shut off.

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

65 (e) Return air split alternative. --

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

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



71 (B) The methane content of the air in the split is  
72 continuously monitored during mining operations by an AMS  
73 that gives a visual and audible signal on the working section  
74 when the methane in the return air reaches one and five  
75 tenths percent and the methane content is monitored as  
76 specified in the approved ventilation plan.

77 (C) Rock dust is continuously applied with a mechanical  
78 duster to the return air course during coal production at a  
79 location in the air course immediately out by the most in by  
80 monitoring point.

81 (2) When one and five tenths percent or more methane is  
82 present in a return air split between a point in the return  
83 opposite the section loading point and where that split of air  
84 meets another split of air or where the split of air is used to  
85 ventilate seals or worked-out areas:

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

89 (B) Except for federal or state mine inspectors, the mine  
90 foreman, assistant mine foreman, miners representative or  
91 individuals authorized by the mine foreman or assistant mine  
92 foreman, all individuals shall be withdrawn from the affected area.

93 (C) Except for intrinsically safe AMS, equipment in the  
94 affected area shall be de-energized, electric power shall be  
95 disconnected at the power source and other mechanized  
96 equipment shall be shut off.

97 (D) No other work shall be permitted in the affected area  
98 until the methane concentration in the return air is less than  
99 one and five tenths percent.

100 (f) Methane monitors. --

101 (1) Approved methane monitors shall be installed and  
102 maintained on all face cutting machines, continuous miners,  
103 longwall face equipment, loading machines and other  
104 mechanized equipment used to extract coal or load coal  
105 within the working place.

106 (2) The sensing device for methane monitors on longwall  
107 shearing machines shall be installed at the return air end of

108 the longwall face. An additional sensing device also shall be  
109 installed on the longwall shearing machine, downwind and  
110 as close to the cutting head as practicable. An alternative  
111 location or locations for the sensing device required on the  
112 longwall shearing machine may be approved in the  
113 ventilation plan.

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

116 (4) Methane monitors shall be maintained in permissible  
117 and proper operating condition and shall be calibrated with  
118 a known air-methane mixture at least once every fifteen days  
119 and a record of the calibration shall be recorded with ink or  
120 indelible pencil by the person performing the calibration in  
121 a book prescribed by the director and maintained on the  
122 surface. Calibration records shall be retained for inspection  
123 for at least one year from the date of the test. To assure that  
124 methane monitors are properly maintained and calibrated, the  
125 operator shall use persons properly trained in the

126 maintenance, calibration, and permissibility of methane  
127 monitors to calibrate and maintain the devices.

128 (g) Automatic de-energization of extraction apparatus. --

129 When the methane concentration at any machine-mounted  
130 methane monitor reaches one percent, the monitor shall give a  
131 warning signal. The warning signal device of the methane  
132 monitor shall be visible to a person operating the equipment on  
133 which the monitor is mounted. The methane monitor shall  
134 automatically de-energize the extraction apparatus on the  
135 machine on which it is mounted, but not the machine as a whole  
136 to facilitate proper mining procedures, when:

137 (1) The methane concentration at any machine-mounted  
138 methane monitor reaches one and twenty-five one hundredths  
139 percent; or

140 (2) The monitor is not operating properly.

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

144 (h) Compliance schedule for machine refit.--

145 Within one hundred twenty days of the effective date of  
146 the amendments to this section, the Board of Coal Mine  
147 Health and Safety shall promulgate legislative rules pursuant  
148 to article three, chapter twenty-nine-a of this code  
149 establishing a compliance schedule setting forth the time  
150 frame in which all new and existing face cutting machines,  
151 continuous miners, longwall face equipment, loading  
152 machines and other mechanized equipment used to extract  
153 coal or load coal within the working place shall be refitted  
154 with methane monitors. Enforcement of subsections (f) and  
155 (g) of this section shall not commence until after the time  
156 frame is 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  
3 any mine who is not a properly trained person, capable of  
4 determining the safety of the roof and sides of the working

5 places and of detecting the presence of explosive gas, unless  
6 they are accompanied by a certified or properly trained.

7 (b) Operation of mining machines. -- Machine operators  
8 and helpers shall use care while operating mining machines.  
9 They shall examine the roof of the working place to see that  
10 it is safe before starting to operate the machine. They shall  
11 not move the machine while the cutter chain is in motion.  
12 Additionally, no person shall operate the cutterhead on any  
13 continuous miner while the machine is moving from place to  
14 place underground: Provided, That a cutterhead may be  
15 operated during clean up or when the machine is extracting  
16 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 locked and tagged and the  
20 machinery is blocked against motion, except where  
21 machinery motion is necessary to make adjustments. For  
22 purposes of this subsection, the following terms shall have  
23 the following meanings:

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

28 (B) “Repair” means to fix, mend, or restore to good  
29 working order, pursuant manufacturer specifications.

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

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

41 (B) Opening the circuit breaker at the power center that  
42 supplies power for the affected machinery and disengaging

43 the power cable coupler that supplies power to the  
44 machinery; or

45 (C) Opening a manual visible disconnect switch, either  
46 within the circuit or onboard the machinery, and locking and  
47 tagging the switch against reenergization. A control circuit  
48 start-stop switch does not constitute a manual disconnect; or

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

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

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



5 (b) Employees engaged in haulage operations and all  
6 other persons employed around moving equipment on the  
7 surface and 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  
14 in those areas of underground mine workings which average  
15 less than forty-eight inches in height as measured from the  
16 floor to 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

23 device shall be adequate to protect a miner for one hour or  
24 longer. Each operator shall train each miner in the use of  
25 ~~such~~ the device and refresher training courses for all  
26 underground employees shall be held ~~during each calendar~~  
27 ~~year~~ once each quarter. Quarters shall be based on a calendar  
28 year.

29 (2) In addition to the requirements of subdivision (1) of  
30 this subsection, the operator shall also provide caches of  
31 additional self-contained self-rescue devices throughout the  
32 mine in accordance with a plan approved by the director.  
33 Each additional self-contained self-rescue device shall be  
34 adequate to protect a miner for one hour or longer. The total  
35 number of additional self-contained self-rescue devices, the  
36 total number of storage caches and the placement of each  
37 cache throughout the mine shall be established by rule  
38 pursuant to subsection (I) of this section. A luminescent sign  
39 with the words "SELF-CONTAINED SELF-RESCUER" or  
40 "SELF-CONTAINED SELF-RESCUERS" shall be  
41 conspicuously posted at each cache and luminescent

42 direction signs shall be posted leading to each cache. Lifeline  
43 cords or other similar device, with reflective material at  
44 twenty-five foot intervals, shall be attached to each cache  
45 from the last open crosscut to the surface. The operator shall  
46 conduct weekly inspections of each cache and each lifeline  
47 cord or other similar device to ensure operability.

48 (3) Any person that, without the authorization of the  
49 operator or the director, knowingly removes or attempts to  
50 remove any self-contained self-rescue device or lifeline cord  
51 from the mine or mine site with the intent to permanently  
52 deprive the operator of the device or lifeline cord or  
53 knowingly tampers with or attempts to tamper with ~~such~~ the  
54 device or lifeline cord shall be guilty of a felony and, upon  
55 conviction thereof, shall be imprisoned in a state correctional  
56 facility for not less than one year nor more than ten years or  
57 fined not less than \$10,000 nor more than \$100,000, or both.

58 (g) (1) A wireless emergency communication device  
59 approved by the director and provided by the operator shall  
60 be worn by each person underground. The wireless

61 emergency communication device shall, at a minimum, be  
62 capable of receiving emergency communications from the  
63 surface at any location throughout the mine. Each operator  
64 shall train each miner in the use of the device and provide  
65 refresher training courses for all underground employees  
66 during each calendar year. The operator shall install in or  
67 around the mine any and all equipment necessary to transmit  
68 emergency communications from the surface to each wireless  
69 emergency communication device at any location throughout  
70 the mine.

71 (2) Any person that, without the authorization of the  
72 operator or the director, knowingly removes or attempts to  
73 remove any wireless emergency communication device or  
74 related equipment, from the mine or mine site with the intent  
75 to permanently deprive the operator of the device or  
76 equipment or knowingly tampers with or attempts to tamper  
77 with the device or equipment shall be guilty of a felony and,  
78 upon conviction thereof, shall be imprisoned in a state

79 correctional facility for not less than one year nor more than  
80 ten years or fined not less than \$10,000 nor more than  
81 \$100,000, or both.

82 (h) (1) A wireless tracking device approved by the  
83 director and provided by the operator shall be worn by each  
84 person underground. In the event of an accident or other  
85 emergency, the tracking device shall, at a minimum, be  
86 capable of providing real-time monitoring of the physical  
87 location of each person underground: *Provided*, That no  
88 person shall discharge or discriminate against any miner  
89 based on information gathered by a wireless tracking device  
90 during nonemergency monitoring. Each operator shall train  
91 each miner in the use of the device and provide refresher  
92 training courses for all underground employees during each  
93 calendar year. The operator shall install in or around the  
94 mine all equipment necessary to provide real-time emergency  
95 monitoring of the physical location of each person  
96 underground.

97 (2) Any person that, without the authorization of the  
98 operator or the director, knowingly removes or attempts to  
99 remove any wireless tracking device or related equipment,  
100 approved by the director, from a mine or mine site with the  
101 intent to permanently deprive the operator of the device or  
102 equipment or knowingly tampers with or attempts to tamper  
103 with the device or equipment shall be guilty of a felony and,  
104 upon conviction thereof, shall be imprisoned in a state  
105 correctional facility for not less than one year nor more than  
106 ten years or fined not less than \$10,000 nor more than  
107 \$100,000, or both.

108 (i) The director may promulgate emergency and  
109 legislative rules to implement and enforce this section  
110 pursuant to the provisions of article three, chapter  
111 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  
8 gas;
- 9 (5) The unplanned ignition or explosion of gas or dust;
- 10 (6) The unplanned ignition or explosion of a blasting  
11 agent or an explosive;
- 12 (7) An unplanned fire in or about a mine not extinguished  
13 within five minutes of ignition;
- 14 (8) An unplanned roof fall at or above the anchorage  
15 zone in active workings where roof bolts are in use or an  
16 unplanned roof or rib fall in active workings that impairs  
17 ventilation or impedes passage;
- 18 (9) A coal or rock outburst that causes withdrawal of  
19 miners or which disrupts regular mining activity for more  
20 than one hour;

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

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

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

31 (b) Whenever any accident occurs in or about any coal  
32 mine or the machinery connected therewith, it is the duty of  
33 the operator or the mine foreman in charge of the mine to  
34 give notice, within fifteen minutes of ascertaining the  
35 occurrence of an accident, to the Mine and Industrial  
36 Accident Emergency Operations Center at the statewide  
37 telephone number established by the Director of the Division  
38 of Homeland Security and Emergency Management pursuant



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

57 at the statewide number identified in this subsection within  
58 fifteen minutes of completing the telephone call to the local  
59 organization for emergency services or the appropriate local  
60 emergency telephone system operator, as applicable:

61 *Provided, ~~however~~ further,* That nothing in this subsection  
62 shall be construed to relieve the operator from any reporting  
63 or notification requirement under federal law.

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

75 subsection may be appealed to the Board of Appeals, and the  
76 Board of Appeals may, by unanimous vote, reduce the  
77 amount of the civil administrative penalty upon a finding of  
78 mitigating circumstances warranting the imposition of a  
79 lesser amount.

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

93 and to offer any testimony that may be relevant to the  
94 questions and 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  
3 rules and any other rules shall be adopted by the board  
4 without regard to the provisions of chapter twenty-nine-a of  
5 this code. The Board of Coal Mine Health and Safety shall  
6 devote its time toward promulgating rules in those areas  
7 specifically directed by this chapter and those necessary to  
8 prevent fatal accidents and injuries.

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

13 (c) The board shall develop, promulgate and revise, as  
14 may be appropriate, rules as are necessary and proper to

15 effectuate the purposes of article two of this chapter and to  
16 prevent the circumvention and evasion thereof, all without  
17 regard to the provisions of chapter twenty-nine-a of this  
18 code:

19 (1) Upon consideration of the latest available scientific  
20 data in the field, the technical feasibility of standards, and  
21 experience gained under this and other safety statutes, such  
22 rules may expand protections afforded by this chapter  
23 notwithstanding specific language therein, and such rules  
24 may deal with subject areas not covered by this chapter to the  
25 end of affording the maximum possible protection to the  
26 health and safety of miners.

27 (2) No rules promulgated by the board shall reduce or  
28 compromise the level of safety or protection afforded miners  
29 below the level of safety or protection afforded by this  
30 chapter.

31 (3) Any miner or representative of any miner, or any coal  
32 operator has the power to petition the circuit court of

33 Kanawha County for a determination as to whether any rule  
34 promulgated or revised reduces the protection afforded  
35 miners below that provided by this chapter, or is otherwise  
36 contrary to law: *Provided*, That any rule properly  
37 promulgated by the board pursuant to the terms and  
38 conditions of this chapter creates a rebuttable presumption  
39 that said rule does not reduce the protection afforded miners  
40 below that provided by this chapter.

41 (4) The director shall cause proposed rules and a notice  
42 thereof to be posted as provided in section eighteen, article  
43 one of this chapter. The director shall deliver a copy of such  
44 proposed rules and accompanying notice to each operator  
45 affected. A copy of such proposed rules shall be provided to  
46 any individual by the director's request. The notice of  
47 proposed rules shall contain a summary in plain language  
48 explaining the effect of the proposed rules.

49 (5) The board shall afford interested persons a period of  
50 not less than thirty days after releasing proposed rules to

51 submit written data or comments. The board may, upon the  
52 expiration of such period and after consideration of all  
53 relevant matters presented, promulgate such rules with such  
54 modifications as it may deem appropriate.

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

64 (7) Promptly after any such notice is released by the  
65 board under subdivision (6) of this section, the board shall  
66 issue notice of, and hold a public hearing for the purpose of  
67 receiving relevant evidence. Within sixty days after  
68 completion of the hearings, the board shall make findings of

69 fact which shall be public, and may promulgate such rules  
70 with such modifications as it deems appropriate. In the event  
71 the board determines that a proposed rule should not be  
72 promulgated or should be modified, it shall within a  
73 reasonable time publish the reasons for its determination.

74 (8) All rules promulgated by the board shall be published  
75 in the state register and continue in effect until modified or  
76 superseded in accordance with the provisions of this chapter.

77 (d) To carry out its duties and responsibilities, the board  
78 is authorized to employ such personnel, including legal  
79 counsel, experts and consultants, as it deems necessary. In  
80 addition, the board, within the appropriations provided for by  
81 the Legislature, may conduct or contract for research and  
82 studies and is entitled to the use of the services, facilities and  
83 personnel of any agency, institution, school, college or  
84 university of this state.

85 (e) The director shall within sixty days of a coal mining  
86 serious accident, fatality or fatalities provide the board with



87 all available reports regarding such serious accident, fatality  
88 or fatalities.

89 The board shall review all reports and any recommended  
90 rules submitted by the director, receive any additional  
91 information it requests, and may, on its own initiative,  
92 investigate the circumstances surrounding a serious coal  
93 mining accident, fatality or fatalities and ascertain the cause  
94 or causes of such coal mining fatality or fatalities. In order  
95 to investigate a serious coal mining accident, fatality or  
96 fatalities, a majority of the board must vote in favor of  
97 commencing an investigation: *Provided, That in the event of*  
98 a tie vote, the Health and Safety Administrator, as established  
99 in article six of this chapter, shall cast a vote resolving the  
100 tie. Within ninety days of the receipt of the Federal Mine  
101 Safety and Health Administration's fatal accident report and  
102 the director's report and recommended rules, the board shall  
103 review and consider the presentation of said report and rules  
104 and the results of its own investigation, if any, and, if a

105 majority of all voting board members determines that  
106 additional rules can assist in the prevention of the specific  
107 type of fatality, the board shall either accept and promulgate  
108 the director's recommended rules, amend the director's  
109 recommended rules or draft new rules, as are necessary to  
110 prevent the recurrence of such fatality. If the board chooses  
111 to amend the director's recommended rules or draft its own  
112 rules, a vote is required within one hundred twenty days as to  
113 whether to promulgate the amended rule or the rule drafted  
114 by the board: *Provided, ~~however,~~* That the board may, by  
115 majority vote, find that exceptional circumstances exist and  
116 the deadline cannot be met: *Provided, ~~however~~ further,* That  
117 under no circumstances shall such deadline be extended by  
118 more than a total of ninety days. A majority vote of the board  
119 is required to promulgate any such rule.

120 The board shall annually, not later than July 1, review the  
121 major causes of coal mining injuries during the previous  
122 calendar year, reviewing the causes in detail, and shall

123 promulgate such rules as may be necessary to prevent the  
124 recurrence of such injuries.

125 Further, the board shall, on or before January 10, of each  
126 year, submit a report to the Governor, President of the Senate  
127 and Speaker of the House, which report shall include, but is  
128 not limited to:

129 (1) The number of fatalities during the previous calendar  
130 year, the apparent reason for each fatality as determined by  
131 the Office of Miners' Health, Safety and Training and the  
132 action, if any, taken by the board to prevent such fatality;

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

134 (3) What rules the board intends to promulgate during the  
135 current calendar year;

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

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

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

142 (7) In addition to the report by the board, as herein  
143 contained, each individual member of said board has right to  
144 submit a separate report, setting forth any views contrary to  
145 the report of the board, and the separate report, if any, shall  
146 be appended to the report of the board and be considered a  
147 part 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  
3 areas of a longwall panel or pillar section of a mine where  
4 only one travelable entry in and out of the area exists. The  
5 study shall consider what additional roof control or other  
6 measures, if any, should be implemented to ensure that  
7 underground miners who work or travel in bleeder or gob  
8 areas of a longwall panel or pillar section having only one  
9 travelable entry in and out of the areas are at least as safe as  
10 miners working in comparable areas with multiple travelable

11 entries in and out of the areas. By December 31, 2012, the  
12 board shall report to the Legislature's Joint Committee on  
13 Government and Finance with recommendations regarding  
14 implementation of the findings of 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  
4 make recommendations to the Director regarding (a)  
5 establishment of guidelines to be employed by the Board of  
6 Appeals when administering disciplinary actions to certified  
7 persons pursuant article one-a of this chapter, (b) requiring  
8 certification by the Office of Miners' Health, Safety and  
9 Training of persons who regularly work at mines who are not  
10 presently required to obtain certification, and (c)  
11 establishment of additional minimum requirements and  
12 protocols to be integrated into the substance abuse screening  
13 policy and program requirements of article one-a of this

14 chapter. In completing this study, the board shall consider the  
15 ratio of positive test results to the number of pre-employment  
16 substance abuse screening tests administered pursuant to  
17 section one, article one-a of this chapter and reported to the  
18 Director accordingly. By December 31, 2012, the board shall  
19 submit its report to the Director with recommendations for  
20 promulgations of legislative rules pursuant to article three,  
21 chapter twenty-nine-a regarding the implementation of the  
22 findings of this study.

**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  
3 required of all prospective miners and miners prior to their  
4 certification in any of the various miner specialties requiring  
5 certification under this article or any other provision of this  
6 code. The specialties include, but are not limited to,  
7 underground miner, surface miner, apprentice, underground

8 mine foreman-fire boss, assistant underground mine  
9 foreman-fire boss, shotfirer, mine electrician and belt  
10 examiner. Notwithstanding the provisions of this section, the  
11 director may by rule further subdivide the classifications for  
12 certification.

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

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

24 (d) The board shall set minimum standards for a program  
25 of continuing education and training of certified persons and

26 other miners on an annual basis: *Provided*, That the  
27 standards shall be consistent with the provisions of section  
28 seven of this article. Prior to issuing the standards, the board  
29 shall conduct public hearings at which the parties who may  
30 be affected by its actions may be heard. The education and  
31 training shall be provided in a manner determined by the  
32 director to be sufficient to meet the standards established by  
33 the board.

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

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



43 (g) Nothing in this article empowers the board to revoke  
44 or suspend any certificate issued by the director of the Office  
45 of Miners' Health, Safety and Training.

46 (h) The board may, upon its own motion or whenever  
47 requested to do so by the director, consider two certificates  
48 issued by this state to be of equal value or consider training  
49 provided or required by federal agencies to be sufficient to  
50 meet training and education requirements set by it, the  
51 director, or by the provisions of this code.

52 (i) The board shall establish an education and training  
53 program for all miners that provides a minimum of one hour  
54 of instruction on miners' rights as they relate to the operation  
55 of unsafe equipment which includes but is not limited to the  
56 provisions of section seventy-one of article two of this  
57 chapter, his or her right to withdrawal from unsafe conditions  
58 as provided in section seventy-one-a of article two of this  
59 chapter and his or her rights under section twenty-two, article  
60 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  
3        with the various miner specialties requiring certification  
4        under this article or any other provision of this code. The  
5        study shall identify ways to enhance miner education and  
6        training to adequately reflect technological advances in coal  
7        mining techniques and best practices used in modern coal  
8        mines, and improve supervision of apprentice miners.  
9        Furthermore, the board shall place particular emphasis in its  
10       study on ways to improve education and training in the areas  
11       of proper mine ventilation, methane monitoring and  
12       equipment de-energization, fire-boss procedures and overall  
13       core mining competencies. By December 31, 2012, the  
14       board shall report to the Legislature's Joint Committee on  
15       Government and Finance with recommendations regarding  
16       the implementation of the findings 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  
3        state's underground mine safety enforcement procedures.  
4        The director shall initiate the study using appropriate  
5        academic resources and mining safety organizations to  
6        conduct a program review of state enforcement procedures to  
7        evaluate what reforms will assure that mining operations  
8        follow state mandated safety protocols. The report shall  
9        include recommended legislation, rules and policies, consider  
10       various options for improving inspections, accountability and  
11       equitable and timely administrative procedures that cause  
12       remediation of hazardous working conditions.