

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 623**

4 (By Senators Palumbo, Tucker and Snyder)

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6 [Originating in the Committee on the Judiciary;

7 reported February 19, 2014.]  
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10  
11 A BILL to amend and reenact §22A-1A-1 of the Code of West Virginia,  
12 1931, as amended, relating to Office of Miners' Health, Safety  
13 and Training administration and substance abuse; and requiring  
14 employers to notify the director of a positive drug or alcohol  
15 test, refusing to submit a sample, possessing a substituted  
16 sample, submitting a substituted sample, possessing an  
17 adulterated sample or submitting an adulterated sample.

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

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

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

22 **ADMINISTRATION; SUBSTANCE ABUSE.**

23 **§22A-1A-1. Substance abuse screening; minimum requirements;**

24 **standards and procedures for screening.**

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

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

- 7 (A) Amphetamines,
- 8 (B) Cannabinoids/THC,
- 9 (C) Cocaine,
- 10 (D) Opiates,
- 11 (E) Phencyclidine (PCP),
- 12 (F) Benzodiazepines,
- 13 (G) Propoxyphene,
- 14 (H) Methadone,
- 15 (I) Barbiturates, and
- 16 (J) Synthetic narcotics.

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

1 Notwithstanding the provisions of this subdivision, the mine  
2 operator may implement a more stringent substance abuse screening  
3 policy and program;

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

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

17 (b) For purposes of this subsection, preemployment testing  
18 shall be required upon hiring by a new employer, rehiring by a  
19 former employer following a termination of the employer/employee  
20 relationship, or transferring to a West Virginia mine from an  
21 employer's out-of-state mine to the extent that any substance abuse  
22 test required by the employer in the other jurisdiction does not  
23 comply with the minimum standards for substance abuse testing  
24 required by this article. Furthermore, the provisions of this

1 section apply to all employers that employ certified persons who  
2 work in mines, regardless of whether that employer is an operator,  
3 contractor, subcontractor or otherwise.

4 (c) The employer or his or her agent shall notify the director  
5 at least quarterly, on a form prescribed by the director, of the  
6 number of preemployment substance abuse screening tests  
7 administered during the prior calendar quarter and the number of  
8 positive test results associated with the substance abuse screening  
9 tests administered.

10 ~~(d) The employer or his or her agent shall notify the~~  
11 ~~director, on a form prescribed by the director, within seven days~~  
12 ~~following completion of an arbitration conducted pursuant to a~~  
13 ~~collective bargaining agreement applicable to the certified person,~~  
14 ~~if any, of discharging a certified person for violation of the~~  
15 ~~employer's substance abuse screening policy and program. Every~~  
16 employer shall notify the director, on a form prescribed by the  
17 director, within seven (7) days of a positive drug or alcohol test  
18 for each certified person failing a random test, pre-employment  
19 test, reasonable suspicion test, post-accident test, refusing to  
20 submit a sample, possessing a substituted sample, submitting a  
21 substituted sample, possessing an adulterated sample or submitting  
22 an adulterated sample. With respect to any certified person  
23 subject to a collective bargaining agreement, the employer shall  
24 notify the director, on a form prescribed by the director, within

1 seven (7) days following the completion of an arbitration conducted  
2 pursuant to a collective bargaining agreement applicable to the  
3 certified person of a positive drug or alcohol test for each person  
4 failing a random test, pre-employment test, reasonable suspicion  
5 test, post-accident test, refusing to submit a sample, possessing  
6 a substituted sample, submitting a substituted sample, possessing  
7 an adulterated sample or submitting an adulterated sample. When  
8 the employer submits the completed form prescribed by the director,  
9 the employer shall also submit a copy of the laboratory test  
10 results showing the substances tested for and the results of the  
11 test. The notification shall be accompanied by a record of the  
12 test showing positive results or other violation. Notice shall  
13 result in the immediate temporary suspension of all certificates  
14 held by the certified person who failed the screening, pending a  
15 hearing before the board of appeals pursuant to section two of this  
16 article.

17 (e) Suspension or revocation of a certified person's  
18 certificate as a miner or other miner specialty in another  
19 jurisdiction by the applicable regulatory or licensing authority  
20 for substance abuse-related matters shall result in the director  
21 immediately and temporarily suspending the certified person's West  
22 Virginia certificate until such time as the certified person's  
23 certification is reinstated in the other jurisdiction.

24 (f) The provisions of this article shall not be construed to

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