

COMMITTEE SUBSTITUTE

FOR

**H. B. 2888**

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(BY DELEGATES HAMILTON, BARKER, M. POLING,  
MAHAN, MARSHALL, MOORE, D. POLING, CAPUTO,  
LONGSTRETH, ELLEM AND SAVILLA)

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(Originating in the House Committee on the Judiciary)  
[February 24, 2011]

A BILL to amend and reenact §22A-1-22 of the Code of West Virginia, 1931, as amended, relating to the strengthening of protections for whistleblowers of unsafe working conditions in mine; directing the Office of Miners' Health, Safety and Training to conduct a study and report to the Legislature.

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

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

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

**§22A-1-22. Discrimination.**

1 (a) No person shall discharge or in any other way  
2 discriminate against or cause to be discharged or discriminated  
3 against any miner or any authorized representative of miners by  
4 reason of the fact that the person believes or knows that such  
5 miner or representative (1) has notified the director, his or her  
6 authorized representative, or an operator, directly or indirectly,  
7 of any alleged violation or danger, (2) has filed, instituted or  
8 caused to be filed or instituted any proceeding under this law, (3)  
9 has testified or is about to testify in any proceeding resulting  
10 from the administration or enforcement of the provisions of this  
11 law. No miner or representative shall be discharged or in any  
12 other way discriminated against or caused to be discriminated  
13 against because a miner or representative has done (1), (2) or  
14 (3) above.

15 (b) Any miner or a representative of miners who believes  
16 that he or she has been discharged or otherwise discriminated  
17 against, or any miner who has not been compensated by an  
18 operator for lost time due to the posting of a withdrawal  
19 order, may, within thirty days after such violation occurs,  
20 apply to the appeals board for a review of such alleged  
21 discharge, discrimination or failure to compensate. A copy  
22 of the application shall be sent to such person who shall be  
23 the respondent. Upon receipt of such application, the appeals  
24 board shall cause such investigation to be made as it deems  
25 appropriate. Such investigation shall provide an opportunity  
26 for a public hearing at the request of any party to enable the  
27 parties to present information relating to such violation. The  
28 parties shall be given written notice of the time and place of  
29 the hearing at least five days prior to the hearing. Mailing of  
30 the notice of hearing to the charged party at the party's last  
31 address of record as reflected in the records of the office is  
32 adequate notice to the charged party. Such notice shall be by  
33 certified mail, return receipt requested. Any such hearing

34 shall be of record. Upon receiving the report of such  
35 investigation, the board shall make findings of fact. If it  
36 finds that such violation did occur, it shall issue a decision  
37 within forty-five days, incorporating an order therein,  
38 requiring the person committing such violation to take such  
39 affirmative action to abate the violation as the board deems  
40 appropriate, including, but not limited to, the rehiring or  
41 reinstatement of the miner or representative of miners to his  
42 or her former position with back pay, and also pay  
43 compensation for the idle time as a result of a withdrawal  
44 order. If it finds that there was no such violation, it shall  
45 issue an order denying the application. Such order shall  
46 incorporate the board's finding therein. If the proceedings  
47 under this section relative to discharge are not completed  
48 within forty-five days of the date of discharge due to delay  
49 caused by the operator, the miner shall be automatically  
50 reinstated until the final determination. If such proceedings  
51 are not completed within forty-five days of the date of  
52 discharge due to delay caused by the board, then the board

53 may, at its option, reinstate the miner until the final  
54 determination. If such proceedings are not completed within  
55 forty-five days of the date of discharge due to delay caused  
56 by the miner the board shall not reinstate the miner until the  
57 final determination.

58 (c) Whenever an order is issued under this section, at the  
59 request of the applicant, a sum equal to the aggregate amount  
60 of all costs and expenses including the attorney's fees as  
61 determined by the board to have been reasonably incurred by  
62 the applicant for, or in connection with, the institution and  
63 prosecution of such proceedings, shall be assessed against the  
64 person committing such violation.

65 (c) The Office of Miners' Health, Safety and Training is  
66 directed to conduct a study of the need to expand protections  
67 for whistleblowers and other miners who refuse to work in  
68 situations they perceive as unsafe in underground mines. The  
69 office shall study the benefits and appropriateness of  
70 requiring additional protections that will encourage miners to  
71 withdrawal from and report unsafe working conditions. The

72 Office shall investigate whether any pattern of retribution  
73 exists against these persons, and if so to make  
74 recommendations to the Legislature regarding implementing  
75 additional protections. The Office shall report to the  
76 Legislature's Joint Committee on Government and Finance  
77 by December 31, 2011 with recommendations regarding  
78 whether it is appropriate to implement any additional  
79 protections.