

**H. B. 4085**

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(By Mr. Speaker Mr. Thompson, and Delegates Marshall, Caputo,  
Boggs, Miley, Butcher, Mahan, Moye, Barker, Sumner and Hamilton)

[Introduced January 16, 2012; referred to the  
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new section, designated §15-5B-6; to amend  
and reenact §22A-1-15, §22A-1-21, §22A-1-22 of said code; to  
amend said code by adding thereto a new section, designated  
§22A-1-40; to amend and reenact §22A-2-2, §22A-2-12,  
§22A-2-16, §22A-2-43 and §22A-2-78 of said code; to amend and  
reenact §22A-7-5 of said code; and to amend said code by  
adding thereto a new article, designated §22A-12-1 and  
§22A-12-2, all relating to miners health and safety; directing  
the creation of a hotline to receive anonymous tips regarding  
mine safety; extending payment of wages period for idled  
miners when operator fails to abate hazardous condition;  
establishing and enhancing criminal and civil penalties for  
certain violations on mining laws and regulations; authorizing  
withdraw by miner from unsafe area or condition and providing

1 process for restatement; allowing persons interviewed in a  
2 mine accident investigation to allow certain persons to be  
3 present; allowing family members of miners to have  
4 representatives attend accident investigations when miner not  
5 available; providing ventilation surveys and review by the  
6 director; directing Board of Miners' Training, Education and  
7 Certification to conduct training at mines where certain  
8 safety violations occur; requiring mine superintendent or  
9 owner-operator to verify all mine reports; requiring that  
10 cutter heads, long wall shears and other mining machines  
11 automatically shut-off when the methane level reaches one and  
12 twenty-five one hundredths percent; establishing an  
13 Underground Mining Accident Investigation Panel when serious  
14 mining accidents occur; directing the Governor to constitute  
15 the panel when an accident occurs; providing membership and  
16 appointment, duties and operation of the panel; and providing  
17 that the Director of the Office of Miners' Health, Safety and  
18 Training undertake a program overview of enforcement laws,  
19 procedures and protocols to make recommendations on how to  
20 better enforce state mining laws.

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

22 That the Code of West Virginia, 1931, as amended, be amended  
23 by adding thereto a new section, designated §15-5b-6; that  
24 §22A-1-15, §22A-1-21, §22A-1-22 be amended and reenacted; that

1 said code be amended by adding thereto a new section, designated  
2 §22A-1-40; that §22A-2-2, §22A-2-12, §22A-2-16, §22A-2-43 and  
3 §22A-2-78 of said code be amended and reenacted; that §22A-7-5 of  
4 said code be amended and reenacted; and that said code be amended  
5 by adding thereto a new article, designated §22A-12-1 and  
6 §22A-12-2, all to read as follows:

7 **CHAPTER 15. PUBLIC SAFETY**

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

9 **§15-5B-6. Mine Safety Anonymous Tip Hotline.**

10 The Director of the Division of Homeland Security and  
11 Emergency Management shall maintain a toll free number that allows  
12 callers to leave electronic messages reporting mine safety  
13 violations, hazardous conditions and practices. The information  
14 collected shall be provided to the Office of Miners Health, Safety  
15 and Training. No information may be submitted to the Office of  
16 Miners Health, Safety and Training that would allow identification  
17 of the person placing the call. The recorded messages are  
18 confidential and not subject to release. The director shall  
19 distribute printed information to all state mining operations,  
20 alerting miners of the existence of the toll free line. Each  
21 mining operation shall post this notice at the location used to  
22 post notices pursuant to section eighteen, article one, chapter  
23 twenty-two-a of this code.

24 **CHAPTER 22A. MINERS' HEALTH, SAFETY & TRAINING.**

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

3 **§22A-1-15. Findings, orders and notices.**

4 (a) If upon any inspection of a coal mine an authorized  
5 representative of the director finds that an imminent danger  
6 exists, the representative shall determine the area throughout  
7 which the danger exists and shall immediately issue an order  
8 requiring the operator of the mine or the operator's agent to cause  
9 immediately all persons, except those referred to in subdivisions  
10 (1), (2), (3) and (4), subsection (e) of this section, to be  
11 withdrawn from and to be prohibited from entering the area until an  
12 authorized representative of the director determines that the  
13 imminent danger no longer exists.

14 (b) If upon any inspection of a coal mine an authorized  
15 representative of the director finds that there has been a  
16 violation of the law, but the violation has not created an imminent  
17 danger, he or she shall issue a notice to the operator or the  
18 operator's agent fixing a reasonable time for the abatement of the  
19 violation. If upon the expiration of the period of time, as  
20 originally fixed or subsequently extended, an authorized  
21 representative of the director finds that the violation has not  
22 been totally abated, and if the director also finds that the period  
23 of time should not be further extended, the director shall find the  
24 extent of the area affected by the violation and shall promptly

1 issue an order requiring the operator of the mine or the operator's  
2 agent to cause immediately all persons, except those referred to in  
3 subdivisions (1), (2), (3) and (4), subsection (e) of this section,  
4 to be withdrawn from and to be prohibited from entering the area  
5 until an authorized representative of the director determines that  
6 the violation has been abated.

7 (c) If upon any inspection of a coal mine an authorized  
8 representative of the director finds that an imminent danger exists  
9 in an area of the mine, in addition to issuing an order pursuant to  
10 subsection (a) of this section, the director shall review the  
11 compliance record of the mine.

12 (1) A review of the compliance record conducted in accordance  
13 with this subsection shall, at a minimum, include a review of the  
14 following:

15 (A) Any closure order issued pursuant to subsection (a) of  
16 this section;

17 (B) Any closure order issued pursuant to subsection (b) of  
18 this section;

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

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

24 (E) Any accident, injury or illness record that demonstrates

1 a serious safety or health management problem at the mine;

2 (F) The number of employees at the mine, the size, layout and  
3 physical features of the mine and the length of time the mine has  
4 been in operation; and

5 (G) Any mitigating circumstances.

6 (2) If, after review of the mine's compliance record, the  
7 director determines that the mine has a history of repeated  
8 significant and substantial violations of a particular standard  
9 caused by unwarrantable failure to comply or a history of repeated  
10 significant and substantial violations of standards related to the  
11 same hazard caused by unwarrantable failure to comply and the  
12 history or histories demonstrate the operator's disregard for the  
13 health and safety of miners, the director shall issue a closure  
14 order for the entire mine and shall immediately issue an order  
15 requiring the operator of the mine or the operator's agent to cause  
16 immediately all persons, except those referred to in subdivisions  
17 (1), (2), (3) and (4), subsection (e) of this section, to be  
18 withdrawn from and to be prohibited from entering the mine until a  
19 thorough inspection of the mine has been conducted by the office  
20 and the director determines that the operator has abated all  
21 violations related to the imminent danger and any violations  
22 unearthed in the course of the inspection.

23 (d) All employees on the inside and outside of a mine who are  
24 idled as a result of the posting of a withdrawal order by a mine

1 inspector shall be compensated by the operator at their regular  
2 rates of pay for the period they are idled ~~but not more than the~~  
3 ~~balance of the shift~~ during the balance of that shift. If the  
4 order is not terminated prior to the next working shift, all the  
5 employees on that shift who are idled by the order are entitled to  
6 full compensation by the operator at their regular rates of pay for  
7 the period they are idled ~~but for not more than four hours of the~~  
8 ~~shift~~ during the eight hours of the next working shift. If the  
9 operator refuses to comply or abate the hazard or condition causing  
10 the withdrawal order, employees on the inside and outside of a mine  
11 who are idled as a result of the posting of a withdrawal order are  
12 entitled to full compensation by the operator at their regular  
13 rates of pay for the period they are idled, up to ten days.

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

17 (1) Any person whose presence in the area is necessary, in the  
18 judgment of the operator or an authorized representative of the  
19 director, to eliminate the condition described in the order;

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

22 (3) Any representative of the miners in the mine who is, in  
23 the judgment of the operator or an authorized representative of the  
24 director, qualified to make coal mine examinations or who is

1 accompanied by such a person and whose presence in the area is  
2 necessary for the investigation of the conditions described in the  
3 order; and

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

6 (f) Notices and orders issued pursuant to this section shall  
7 contain a detailed description of the conditions or practices which  
8 cause and constitute an imminent danger or a violation of any  
9 mandatory health or safety standard and, where appropriate, a  
10 description of the area of the coal mine from which persons must be  
11 withdrawn and prohibited from entering.

12 (g) Each notice or order issued under this section shall be  
13 given promptly to the operator of the coal mine or the operator's  
14 agent by an authorized representative of the director issuing the  
15 notice or order and all the notices and orders shall be in writing  
16 and shall be signed by the representative and posted on the  
17 bulletin board at the mine.

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

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

24 (j) *Definitions.* -- For the purposes of this section only, the



1 following terms have the following meanings:

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

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

7 **§22A-1-21. Penalties.**

8 (a) (1) Any operator of a coal mine in which a violation  
9 ~~occurs~~ of any health or safety rule occurs or who violates any  
10 other provisions of this chapter shall be assessed a civil penalty  
11 by the director under subdivision (3) of this subsection, which  
12 shall be not more than ~~\$3,000~~ \$10,000, for each violation, unless  
13 the director determines that it is appropriate to impose a special  
14 assessment for ~~said~~ the violation, pursuant to the provisions of  
15 subdivision (2), subsection (b) of this section. Each violation  
16 constitutes a separate offense. In determining the amount of the  
17 penalty, the director shall consider the operator's history of  
18 previous violations, whether the operator was negligent, the  
19 appropriateness of the penalty to the size of the business of the  
20 operator charged, the gravity of the violation and the demonstrated  
21 good faith of the operator charged in attempting to achieve rapid  
22 compliance after notification of a violation.

23 (2) Revisions to the assessment of civil penalties shall be  
24 proposed as legislative rules in accordance with the provisions of

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

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

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

18       (5) If the person against whom a civil penalty is assessed  
19 fails to pay the penalty within the time prescribed in the order,  
20 the director may file a petition for enforcement of the order in  
21 any appropriate circuit court. The petition shall designate the  
22 person against whom the order is sought to be enforced as the  
23 respondent. A copy of the petition shall immediately be sent by  
24 certified mail, return receipt requested, to the respondent and to

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

19 (b) (1) Any operator who knowingly violates a health or safety  
20 provision of this chapter or health or safety rule promulgated  
21 pursuant to this chapter, or knowingly violates or fails or refuses  
22 to comply with any order issued under section fifteen of this  
23 article, or any order incorporated in a final decision issued under  
24 this article, except an order incorporated in a decision under

1 subsection (a) of this section or subsection (b), section  
2 twenty-two of this article, shall be assessed a civil penalty by  
3 the director under subdivision (5), subsection (a) of this section  
4 of not more than \$5,000 and for a second or subsequent violation  
5 assessed a civil penalty of not more than \$10,000, unless the  
6 director determines that it is appropriate to impose a special  
7 assessment for ~~said~~ the violation, pursuant to the provisions of  
8 subdivision (2) of this subsection.

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

16 (A) Violations involving fatalities and serious injuries;

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

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

20 (D) Violations involving an imminent danger;

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

23 (F) A discrimination violation under section twenty-two of  
24 this article.

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

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

17 (d) Whoever knowingly makes any false statement,  
18 representation or certification in any application, record, report,  
19 plan or other document filed or required to be maintained pursuant  
20 to this law or any order or decision issued under this law is  
21 guilty of a misdemeanor and, upon conviction thereof, shall be  
22 fined not more than ~~\$5,000~~ \$10,000 or ~~imprisoned~~ confined in the  
23 jail not more than ~~six months~~ one year, or both fined and  
24 ~~imprisoned~~ confined. The conviction of any person under this

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

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

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

24 ~~(f)~~ (g) There is continued in the treasury of the State of

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

8 **§22A-1-22. Discrimination.**

9 (a) No person ~~shall~~ may discharge or in any other way  
10 discriminate against or cause to be discharged or discriminated  
11 against any miner or any authorized representative of miners by  
12 reason of the fact that the person believes or knows that ~~such~~ the  
13 miner or representative: (1) Has notified the director, his or her  
14 authorized representative, or an operator, directly or indirectly,  
15 of any alleged violation or danger; (2) has filed, instituted or  
16 caused to be filed or instituted any proceeding under this law; or  
17 (3) has testified or is about to testify in any proceeding  
18 resulting from the administration or enforcement of the provisions  
19 of this law. No miner or representative ~~shall~~ may be discharged or  
20 in any other way discriminated against or caused to be  
21 discriminated against because a miner or representative has in good  
22 faith, done (1), (2) or (3) above.

23 (b) No person may discharge, discipline or in any manner  
24 discriminate against a miner for refusing to work in an area or

1 under conditions which he or she believes in good faith to be  
2 unsafe. The miner to qualify for this protection must communicate  
3 or attempt to communicate the safety or health concern to the  
4 operator.

5       ~~(b)~~ (c) Any miner or a representative of miners who believes  
6 that he or she has been ~~discharged or otherwise~~ discriminated  
7 against or any miner who has not been compensated by an operator  
8 for lost time due to the posting of a withdrawal order, may, within  
9 thirty days after ~~such~~ the alleged violation occurs, apply to the  
10 appeals board as provided by article five of this chapter, for a  
11 review of ~~such alleged discharge,~~ the discrimination or failure to  
12 compensate. Any miner or who believes that he or she has been  
13 disciplined, or in any manner discriminated against because of a  
14 refusal to work in an area or under conditions which he or she  
15 believes to be unsafe pursuant to subsection (b) of this section,  
16 may file a complaint with the board within ninety days from the  
17 date of after the alleged violation occurred or when the miner knew  
18 or should have know the violation occurred. If a the miner or  
19 representative of miners has been discharged pursuant to an alleged  
20 violation of this section, the complaint shall be filed with the  
21 Director of the Office of Miners' Health, Safety and Training, who  
22 shall cause the alleged violation to be given to the board. A copy  
23 of the application shall be sent to such person who shall be the  
24 respondent. Upon receipt of ~~such~~ the application, the appeals



1 board shall cause ~~such~~ an investigation to be made, as it ~~deems~~  
2 considers appropriate. ~~Such~~ The investigation shall provide an  
3 opportunity for a public hearing at the request of any party to  
4 enable the parties to present information relating to ~~such~~ the  
5 violation. The parties shall be given written notice of the time  
6 and place of the hearing at least five days prior to the hearing.  
7 Mailing of the notice of hearing to the charged party at the  
8 party's last address of record as reflected in the records of the  
9 office is adequate notice to the charged party. ~~Such~~ The notice  
10 shall be by certified mail, return receipt requested. Any ~~such~~  
11 hearing held shall be of record. Upon receiving the report of ~~such~~  
12 the investigation, the board shall make findings of fact. If it  
13 finds that ~~such~~ the violation did occur, it shall issue a decision  
14 within forty-five days, incorporating an order therein, requiring  
15 the person committing such violation to take such affirmative  
16 action to abate the violation ~~as~~ the board ~~deems~~ considers  
17 appropriate, including, but not limited to, the rehiring or  
18 reinstatement of the miner or representative of miners to his or  
19 her former position with back pay, and also pay compensation for  
20 the idle time as a result of a withdrawal order. If it finds that  
21 there was no ~~such~~ violation, it shall issue an order denying the  
22 application. ~~Such~~ The order shall incorporate the board's finding  
23 therein. If the proceedings under this section relative to  
24 discharge are not completed within forty-five days of the date of

1 discharge due to delay caused by the operator, the miner shall be  
 2 automatically reinstated until the final determination. If ~~such~~  
 3 the proceedings are not completed within forty-five days of the  
 4 date of discharge due to delay caused by the board, then the board  
 5 may, at its option, reinstate the miner until the final  
 6 determination. If ~~such~~ the proceedings are not completed within  
 7 forty-five days of the date of discharge due to delay caused by the  
 8 miner the board ~~shall~~ may not reinstate the miner until the final  
 9 determination.

10 ~~(c)~~ (d) Whenever an order is issued under this section, at the  
 11 request of the applicant, a sum equal to the aggregate amount of  
 12 all costs and expenses including the attorney's fees as determined  
 13 by the board to have been reasonably incurred by the applicant for,  
 14 or in connection with, the institution and prosecution of ~~such~~ the  
 15 proceedings, shall be assessed against the person committing ~~such~~  
 16 the violation.

17 **§22A-1-40. Reporting violations, accident investigations; witness**  
 18 **interviews.**

19 (a) Any person subject to a subpoena pursuant to section four  
 20 of this article, or any other person voluntarily meeting with or  
 21 providing a statement to the director may do so without the  
 22 consent, presence, involvement or knowledge of the operator or of  
 23 the operator's agents or attorneys. The director shall keep the  
 24 identity of any individual providing such a statement confidential,

1 to the extent permitted by law. Nothing in this section precludes  
 2 a person under subpoena or voluntarily speaking with the director  
 3 from authorizing a operator or his agent of the operator's agents  
 4 or attorneys, or a representative of a labor organization  
 5 representing miners, to participate in such meeting or statement.

6 (b) If any miner is entrapped, killed or otherwise prevented,  
 7 as the result of an accident, from participation in an accident  
 8 investigation, the miner's closest relative may designate a  
 9 representative to attend witness interviews and hearings regarding  
 10 the accident. The representative must be a licenced attorney or a  
 11 representative of a labor organization representing miners.

12 **ARTICLE 2. MINERS' HEALTH, SAFETY AND TRAINING.**

13 **§22A-2-2. Plan of ventilation; approval by Director of the Office**  
 14 **of Miners' Health, Safety and Training.**

15 Every operator of a coal mine, before making any new or  
 16 additional openings, shall submit to the director, for his or her  
 17 information and approval, a general plan showing the proposed  
 18 system of ventilation and ventilating equipment of the openings,  
 19 with their location and relative positions to adjacent  
 20 developments; no such new or additional openings ~~shall~~ may be made  
 21 until approved by the director. The operator shall deliver to the  
 22 miners' representative employed by the operator at the mine a copy  
 23 of the operator's proposed annual ventilation plan at least ten  
 24 days prior to the date of submission. The miners' representative

1 shall be afforded the opportunity to submit written comments to the  
2 operator prior to ~~such~~ the submission; in addition the miners'  
3 representative may submit written comments to the director. Prior  
4 to approval of the ventilation plan, the director shall conduct a  
5 ventilation survey of the mine to establish the necessary minimum  
6 requirements to properly ventilate the mine. The director shall  
7 promptly approve any such plans submitted, if the proposed system  
8 of ventilation and ventilating equipment meet the requirements of  
9 this article. When an operator repeatedly submits amendments to a  
10 ventilation plan which the director rejects as being inadequate, or  
11 when the submissions exhibit a pattern of failure to use proper  
12 ventilation engineering design standards, the director shall revoke  
13 the ventilation plan, and order withdraw of the mine until proper  
14 plans are approved by the director are implemented.

15 **§22A-2-12. Instruction of employees and supervision of**  
16 **apprentices; annual examination of persons using**  
17 **flame safety lamps; records of examination;**  
18 **maintenance of methane detectors, etc.**

19 The Office of Miners' Health, Safety and Training shall  
20 prescribe and establish a course of instruction in mine safety and  
21 particularly in dangers incident to ~~such~~ employment in mines and in  
22 mining laws and rules, which course of instruction shall be  
23 successfully completed within twelve weeks after any person is  
24 first employed as a miner. It is further the duty and

1 responsibility of the Office of Miners' Health, Safety and Training  
2 to see that ~~such~~ the course is given to all persons as above  
3 provided after their first being employed in any mine in this  
4 state. Upon a finding by the director that a pattern of violations  
5 is occurring at a mine that would benefit by additional safety  
6 training of miners and other employees at the mine, the director  
7 shall notify the Board of Miners' Training, Education and  
8 Certification, which shall cause additional training to occur at  
9 the mine addressing the safety issue or issues, pursuant to article  
10 seven of this chapter.

11       It is the duty of the mine foreman or the assistant mine  
12 foreman of every coal mine in this state to see that every person  
13 employed to work in ~~such~~ the mine is, before beginning work  
14 therein, instructed in the particular danger incident to his or her  
15 work in ~~such~~ the mine, and furnished a copy of the mining laws and  
16 rules of ~~such~~ the mine. It is the duty of every mine operator who  
17 employs apprentices, as that term is used in sections three and  
18 four, article eight of this chapter to ensure that the apprentices  
19 are effectively supervised with regard to safety practices and to  
20 instruct apprentices in safe mining practices. Every apprentice  
21 shall work under the direction of the mine foreman or his or her  
22 assistant mine foreman and they are responsible for his or her  
23 safety. The mine foreman or assistant mine foreman may delegate  
24 the supervision of an apprentice to an experienced miner, but the

1 foreman and his or her assistant mine foreman remain responsible  
2 for the apprentice. During the first ninety days of employment in  
3 a mine, the apprentice shall work within sight and sound of the  
4 mine foreman, assistant mine foreman, or an experienced miner, and  
5 in ~~such~~ a location that the mine foreman, assistant mine foreman or  
6 experienced miner can effectively respond to cries for help of the  
7 apprentice. ~~Such~~ The location shall be on the same side of any  
8 belt, conveyor or mining equipment.

9       Persons whose duties require them to use a flame safety lamp  
10 or other approved methane detectors shall be examined at least  
11 annually as to their competence by a qualified official from the  
12 Office of Miners' Health, Safety and Training and a record of ~~such~~  
13 the examination shall be kept by the operator and the office.  
14 Flame safety lamps and other approved methane detectors shall be  
15 given proper maintenance and shall be tested before each working  
16 shift. Each operator shall provide for the proper maintenance and  
17 care of the permissible flame safety lamp or any other approved  
18 device for detecting methane and oxygen deficiency by a person  
19 trained in ~~such~~ the maintenance, and, before each shift, care shall  
20 be taken to ensure that ~~such~~ the lamp or other device is in a  
21 permissible condition.

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

23       The mine foreman and the superintendent or owner-operator of  
24 the mine shall, ~~also~~ each day, read carefully and countersign with

1 ink or indelible pencil all reports entered in the record book of  
2 the fire bosses. ~~and he~~ The mine foreman shall supervise the fire  
3 boss or fire bosses, except as ~~hereinafter~~ provided in section  
4 twenty-one of this article.

5 **§22A-2-43. Electric equipment in mines.**

6 (a) *Methane.* -- Electric equipment ~~shall~~ may not be taken into  
7 or operated in any place where methane can be detected with a flame  
8 safety lamp or other approved methane detector at one percent or  
9 more at any point not less than twelve inches from the roof, face  
10 or rib.

11 (b) *Return air.* -- In all mines, electric haulage locomotives  
12 operated from trolley wire and other electrical equipment or  
13 devices which may ignite gas ~~shall~~ may not be used in return air,  
14 unless permission is granted by the director for a specified area.  
15 For the purpose of this provision, air used to ventilate a section  
16 of a mine ~~shall~~ may not be considered return air until ~~such time as~~  
17 the air has ventilated all of the workings in the section.

18 (c) *Qualified person to operate cutting machine.* -- No person  
19 ~~shall~~ may be placed in charge of a coal-cutting machine in any mine  
20 who is not a qualified person, capable of determining the safety of  
21 the roof and sides of the working places and of detecting the  
22 presence of explosive gas, unless they are accompanied by a  
23 certified or qualified person who has passed such an examination.

24 (d) *Inspections.* -- In any mine no machine ~~shall~~ may be

1 brought in by the last breakthrough next to the working face until  
2 the machine man ~~shall have~~ has made an inspection for gas in the  
3 place where the machine is to work. If explosive gas in excess of  
4 one percent is found in the place, the machine ~~shall~~ may not be  
5 taken in until the danger is removed.

6 (e) *Indication of gas.* -- In working places a suitable  
7 approved apparatus for the detection of explosive gas, shall be  
8 provided for use with each mining machine when working, and should  
9 any indication of explosive gas in excess of one percent appear on  
10 any apparatus used for the detection of explosive gas, the person  
11 in charge shall immediately stop the machine, cut off the current  
12 at the nearest switch and report the condition to the mine foreman  
13 or supervisor. The machine ~~shall~~ may not again be started in ~~such~~  
14 that place until the condition found has been corrected and been  
15 pronounced safe by a certified person.

16 (f) *Periodic gas examinations.* -- No electric equipment ~~shall~~  
17 may be operated in a mine for a longer period than twenty minutes  
18 without an examination as above described being made for gas; and  
19 if gas is found in excess of one percent, the current shall at once  
20 be switched off the machine, and the trailing cable shall forthwith  
21 be disconnected from the power supply until the place is pronounced  
22 safe.

23 (g) *Operation of mining machines.* -- Machine runners and  
24 helpers shall use care while operating mining machines. They shall



1 examine the roof of the working place to see that it is safe before  
2 starting to operate the machine. They ~~shall~~ may not move the  
3 machine while the cutter chain is in motion.

4 (h) Automatic shut-down of mining machines. -- Mining machine  
5 extraction apparatus, including, but not limited to, long wall  
6 sheers and cutter heads, are required to be equipped with an  
7 automatic shut-off device that will cut off power to the machine's  
8 extraction apparatus, but not to the machine as a whole to  
9 facilitate proper mining procedures, if the methane level in the  
10 mine reaches one and twenty-five one hundredths percent. The  
11 machine's apparatus may not again be started in that place until  
12 the condition found has been corrected and been pronounced safe by  
13 a certified person.

14 **§22A-2-78. Examinations to determine compliance with permits.**

15 (a) Whenever permits are issued by the Office of Miners'  
16 Health, Safety and Training, frequent examinations shall be made by  
17 the mine inspector during the tenure of the permit to determine  
18 that the requirements and limitations of the permit are complied  
19 with.

20 (b) Any person who knowingly causes or conspires to cause  
21 advanced notice of examinations of permit compliance by a mine  
22 inspector is guilty of a felony and, upon conviction thereof, shall  
23 be fined not more than \$15,000 or imprisoned in a state  
24 correctional facility not less than one year and not more than five

1 years, or both fined and imprisoned.

2 **ARTICLE 7. BOARD OF MINERS TRAINING, EDUCATION AND CERTIFICATION.**

3 **§22A-7-5. Board powers and duties.**

4 (a) The board shall establish criteria and standards for a  
5 program of education, training and examination to be required of  
6 all prospective miners and miners prior to their certification in  
7 any of the various miner specialties requiring certification under  
8 this article or any other provision of this code. The specialties  
9 include, but are not limited to, underground miner, surface miner,  
10 apprentice, underground mine foreman-fire boss, assistant  
11 underground mine foreman-fire boss, shotfirer, mine electrician and  
12 belt examiner. Notwithstanding the provisions of this section, the  
13 director may by rule further subdivide the classifications for  
14 certification.

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

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

1           (d) The board shall set minimum standards for a program of  
2 continuing education and training of certified persons and other  
3 miners on an annual basis: *Provided*, That the standards shall be  
4 consistent with the provisions of section seven of this article.  
5 Prior to issuing the standards, the board shall conduct public  
6 hearings at which the parties who may be affected by its actions  
7 may be heard. The education and training shall be provided in a  
8 manner determined by the director to be sufficient to meet the  
9 standards established by the board.

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

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

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

21           (h) The board may, upon its own motion or whenever requested  
22 to do so by the director, consider two certificates issued by this  
23 state to be of equal value or consider training provided or  
24 required by federal agencies to be sufficient to meet training and

1 education requirements set by it, the director, or by the  
2 provisions of this code.

3 (i) The board shall establish an education and training  
4 program for all miners that provides a minimum of one hour of  
5 instruction on miners rights as they relate to unsafe conditions  
6 and machinery and his or her right to withdrawal from unsafe  
7 conditions. If the Office of Miners' Health, Safety and Training  
8 recommends to the board, or the board identifies a pattern of  
9 conduct that is creating a hazardous condition at a mine, the  
10 office may require more instruction and training on proper safety  
11 procedures.

12 **ARTICLE 12. UNDERGROUND ACCIDENT INVESTIGATIONS.**

13 **§22A-12-1. Underground Mining Accident Investigative Panel.**

14 (a) There is established the "Underground Mining Accident  
15 Investigative Panel" to conduct independent investigations of  
16 serious mining accidents, for the purpose of undertaking to make  
17 findings and recommendations to the Legislature and the Board of  
18 Coal Mine Health and Safety regarding causes of serious mining  
19 accidents, to recommend actions to reduce further similar accidents  
20 and to encourage proper investigation and enforcement of existing  
21 mining laws and regulations when accidents occur. To help  
22 facilitate an informed and impartial investigation panel, staff and  
23 any consultants assisting the panel shall be free from conflicts of  
24 interest with regard to any investigation.

1       (b) For purposes of this section a "serious mining accident"  
2 is any accident that causes the death of three or more miners or if  
3 the accident is of such severity or scale for potential or actual  
4 harm that, when three or more deaths are caused in an mining  
5 accident or in the opinion of the Governor a serious accident  
6 merits an independent investigation by the panel.

7       (c) The panel is to be constituted by the Governor upon the  
8 occurrence of a serious mining accident. The panel is to  
9 investigate the cause of the accident, whether there was a  
10 violation or violations of law, a mandatory health and safety  
11 regulation or other lawful requirement, and if a violation is  
12 found, whether enforcement actions have been undertaken to assure  
13 proper enforcement of administrative, civil and criminal laws.

14       (d) The panel shall consist of five persons. The chairperson  
15 of the Board of Coal Mine Health and Safety shall be the  
16 chairperson of the panel. The second member of the panel shall be  
17 a designee of the National Institute for Occupational Safety and  
18 Health Office of Mine Safety. The remainder of the appointees  
19 shall be appointed as follows:

20       (1) The Governor shall appoint one member whom represents the  
21 viewpoint of coal operators in this state. The Governor shall  
22 request from the major trade association representing operators in  
23 this state a list of three nominees for the position on the panel.  
24 All the nominees shall be persons with special experience and

1 competence in health and safety, who are not currently holding a  
2 mining permit or otherwise active in mining activities. There  
3 shall be submitted with the list a summary of the qualifications of  
4 each nominee. If the full lists of nominees are submitted in  
5 accordance with the provisions of this subdivision, the Governor  
6 shall make the appointments from the persons so nominated. For  
7 purposes of this subdivision, the major trade associations  
8 representing operators in this state are an association which  
9 represents operators accounting for over one half of the coal  
10 produced in mines within this state in the year prior to the year  
11 in which the appointment is to be made.

12       (2) The Governor shall appoint one member who can reasonably  
13 be expected to represent the viewpoint of the working miners of  
14 this state. The Governor shall request from the major employee  
15 organization representing coal miners within this state a list of  
16 three nominees. The highest ranking official within the major  
17 employee organization representing coal miners within this state  
18 shall submit a list of three nominees for each such position on the  
19 board. The nominee shall have a background in health and safety.  
20 The Governor shall make the appointments from the requested list of  
21 nominees.

22       (3) The final member shall be selected by the Governor as an  
23 objective expert in the field of mining health and safety, and with  
24 expertise in conducting mine accident investigations. This

1 appointee is prohibited from retaining current employment within  
2 the mining industry or be a member of any labor organization  
3 representing miners.

4 (4) The panel shall be constituted upon declaration by the  
5 Governor that a serious mining accident occurred.

6 (e) The Director of the Office of Miners' Health, Safety and  
7 Training shall provide staffing and meeting facilities for the  
8 panel to allow it to carry out its duties and responsibilities.  
9 The panel may employ personnel, including legal counsel, experts  
10 and consultants, it considers necessary.

11 (f) The director may extend to panel members the per diem  
12 compensation, milage reimbursement, and authorization to use the  
13 state government discount rate received by state legislators, for  
14 the duration of his or her duties on the Mine Safety Investigative  
15 Panel.

16 (g) In addition to the report by the panel, as provided in  
17 this section, each individual member of the panel has a right to  
18 submit a separate report, setting forth any views contrary to the  
19 report of the panel, and the separate report, if any, shall be  
20 appended to the report of the panel and be considered a part of the  
21 report.

22 (h) The director shall order the Mine Safety Investigative  
23 Panel to dissolve upon reception of the panel's findings and  
24 recommendations.

1 **§22A-12-2. Report on enforcement procedures.**

2       The director shall, by December 31, 2013, report to the  
3 Legislature and Governor on the need for revisions in the state's  
4 underground mine safety enforcement procedures. The director shall  
5 initiate the study using appropriate academic resources and mining  
6 safety organizations to conduct a program review of state  
7 enforcement procedures to evaluate what reforms will assure that  
8 mining operations follow state mandated safety protocols. The  
9 report shall include recommended legislation, regulations and  
10 policies, consider various options for improving inspections,  
11 accountability and equitable and timely administrative procedures  
12 that cause remediation of hazardous working conditions.

NOTE: The purpose of this bill is to implement mining safety reforms to address the tragic deaths that occurred on April 5th, 2010 at the Upper Big Branch Mine in Raleigh County, West Virginia, by implementing comprehensive reforms recommended by mine safety teams investigating causes of that disaster intended to prevent future mining fatalities; establishing toll-free number for miners to make anonymous tips on mining violations; increasing penalties for violating underground mining safety requirements; enhancing penalties for intentional violations of mine safety laws; encouraging miners to withdraw from unsafe working conditions; establishing additional miner safety training, including additional training related to repeated violations; extending miners' pay for periods of being idled by mining companies failure to remediate hazardous safety violations; providing opportunity for miners families to participate in mine accident investigations; providing for shut-off of underground equipment when dangerous methane levels are detected; allowing miners discretion in allowing company representatives and others from participation in accident investigation interviews; establishing the Underground Mining Accident Investigation Panel to be constituted following a serious mine accident; and providing that a study be conducted to assess



the need to revise administrative enforcement processes and policies to promote timely and effective enforcement of mining safety laws.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§15-5B-6, §22A-1-40, §22A-12-1 and §22A-12-2 are new; therefore, they have been completely underscored.