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**Senate Bill No. 448**

(By Senators Kessler (Mr. President) and Hall,

By Request of the Executive)

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[Introduced January 30, 2012; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

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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 and reenact §22A-1-4 of  
said code; to amend said code by adding thereto a new section,  
designated §22A-1-13a; to amend and reenact §22A-1-14 of said  
code; to amend said code by adding thereto a new article,  
designated §22A-1A-1, §22A-1A-2, §22A-1A-3 and §22A-1A-4; to  
amend and reenact §22A-2-2, §22A-2-12, §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 a new section, designated §22A-2-43a;  
to amend said code by adding thereto a new section, designated  
§22A-6-13; and to amend said code by adding thereto a new  
section, designated §22A-7-5a, all relating to mine safety

1 generally; requiring coal mine operators to provide reports to  
2 and notify certain entities in the event of an emergency;  
3 establishing a mine safety anonymous tip hotline; exempting  
4 information provided to the hotline from the Freedom of  
5 Information Act; permitting the Director of the Office of  
6 Miners' Health, Safety and Training to share information  
7 regarding certification suspensions or revocations with other  
8 states and to promulgate certain legislative rules; requiring  
9 a study be conducted regarding mine inspector qualifications,  
10 compensation, training and inspections; creating a criminal  
11 offense and establishing criminal penalties for providing  
12 advance notice of an inspection or an inspector's presence at  
13 a mine; requiring operators to conduct substance abuse testing  
14 during inspections or investigations upon reasonable  
15 suspicion; providing for suspension of mining certificates if  
16 substance abuse testing refused; requiring coal mining  
17 operators to implement substance abuse screening policy and  
18 program for certified persons; providing procedures and  
19 minimum requirements of substance abuse screening policy and  
20 program; requiring substance abuse screening upon  
21 preemployment, rehiring or transfer of certified person;  
22 requiring coal mine operators to notify the Director of the

1 Office of Miners' Health, Safety and Training of failed  
2 screening tests and certain screening policy violations;  
3 requiring immediate suspension of miner certificates as a  
4 result of suspensions or revocations for substance abuse in  
5 other jurisdictions; providing procedure for board of appeals  
6 hearings on certification suspensions and judicial review of  
7 board decisions; requiring certified persons to report certain  
8 criminal convictions to the Office of Miners' Health, Safety  
9 and Training; providing exemptions from and exceptions to the  
10 disclosure of substance abuse screening results; providing  
11 procedure for approval, review, comment and enforcement of  
12 mine ventilation plans; increasing the number of days an  
13 apprentice must work within sight and sound of mine foreman or  
14 experienced miner; requiring methane detectors be maintained  
15 in accordance with manufacturer specifications; expanding  
16 scope of preshift examinations and requiring supplemental  
17 examinations in certain instances; increasing the percentage  
18 of rock dust to be maintained in coal mines and providing  
19 certain information upon request; prescribing actions required  
20 to detect and respond to excess methane gas levels in coal  
21 mines; prescribing requirements for persons to operate or  
22 repair mining machinery; providing for increased training

1        regarding the use of self-contained self-rescue devices;  
2        providing additional notification by coal mine operators in  
3        the event of an accident; requiring study of and report on the  
4        safety of working or traveling in bleeder or gob areas of  
5        certain coal mines; and requiring study of and report on  
6        education, training and examination associated with certifying  
7        miners.

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

9        That §15-5B-3 of the Code of West Virginia, 1931, as amended,  
10 be amended and reenacted; that said code be amended by adding  
11 thereto a new section, designated §15-5B-6; that §22A-1-4 of said  
12 code be amended and reenacted; that said code be amended by adding  
13 thereto a new section, designated §22A-1-13a; that §22A-1-14 of  
14 said code be amended and reenacted; that said code be amended by  
15 adding thereto a new article, designated §22A-1A-1, §22A-1A-2,  
16 §22A-1A-3 and §22A-1A-4; that §22A-2-2, §22A-2-12, §22A-2-20,  
17 §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code be  
18 amended and reenacted; that said code be amended by adding thereto  
19 a new section, designated §22A-2-43a; that said code be amended by  
20 adding thereto a new section, designated §22A-6-13; and that said  
21 code be amended by adding thereto a new section, designated  
22 §22A-7-5a, all to read as follows:

1                                   **CHAPTER 15. PUBLIC SAFETY.**

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

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

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

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

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

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

1 regional office or district; and

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

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

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

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

16       (3) Local emergency service personnel in the area in which the  
17 accident occurred.

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

21       (d) In the event that an emergency call regarding any  
22 accident, as defined in section sixty-six, article two, chapter

1 twenty-two-a of this code, in or about any mine, is initially  
2 received by a county answering point, as defined in article six,  
3 chapter twenty-four of this code, the call shall be immediately  
4 forwarded to the Mine and Industrial Accident Emergency Operations  
5 Center.

6 (e) Nothing in this section shall be construed to relieve an  
7 operator, as defined in section two, article one, chapter  
8 twenty-two-a of this code, from any reporting or notification  
9 obligation under section sixty-six, article two, chapter  
10 twenty-two-a of this code and under federal law.

11 (f) The Mine and Industrial Accident Rapid Response System and  
12 the emergency operations center are designed and intended to  
13 provide communications assistance to emergency responders and other  
14 responsible persons. Nothing in this section shall be construed to  
15 conflict with the responsibility and authority of an operator to  
16 provide mine rescue coverage in accordance with the provisions of  
17 section thirty-five, article one, chapter twenty-two-a of this code  
18 or the authority of the Director of the Office of Miners' Health,  
19 Safety and Training to assign mine rescue teams under the  
20 provisions of subsection (d) of said section or to exercise any  
21 other authority provided in chapter twenty-two-a of this code.

22 **§15-5B-6. Mine Safety Anonymous Tip Hotline.**

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

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

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

18                       **ADMINISTRATION; ENFORCEMENT.**

19 **§22A-1-4. Powers and duties of the Director of the Office of**  
20                       **Miners' Health, Safety and Training**

21       (a) The Director of the Office of Miners' Health, Safety and  
22 Training is hereby empowered and it is his or her duty to



1 administer and enforce ~~such~~ the provisions of this chapter relating  
2 to health and safety inspections and enforcement and training in  
3 surface and underground coal mines, underground clay mines, open  
4 pit mines, cement manufacturing plants and underground limestone  
5 and sandstone mines.

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

9 (1) Supervise and direct the execution and enforcement of the  
10 provisions of this article.

11 (2) Employ such assistants, clerks, stenographers and other  
12 employees as may be necessary to fully and effectively carry out  
13 his or her responsibilities and fix their compensation, except as  
14 otherwise provided in this article.

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

22 (4) Suspend, for good cause, any ~~such~~ mine inspector without

1 compensation for a period not exceeding thirty days in any calendar  
2 year.

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

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

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

12 (8) Make annually a full and complete written report of the  
13 administration of the office to the Governor and the Legislature of  
14 the state for the year ending June 30. The report shall include  
15 the number of visits and inspections of mines in the state by mine  
16 inspectors, the quantity of coal, coke and other minerals  
17 (excluding oil and gas) produced in the state, the number of  
18 individuals employed, number of mines in operation, statistics with  
19 regard to health and safety of persons working in the mines  
20 including the causes of injuries and deaths, improvements made,  
21 prosecutions, the total funds of the office from all sources  
22 identifying each source of ~~such~~ the funds, the expenditures of the

1 office, the surplus or deficit of the office at the beginning and  
2 end of the year, the amount of fines collected, the amount of fines  
3 imposed, the value of fines pending, the number and type of  
4 violations found, the amount of fines imposed, levied and turned  
5 over for collection, the total amount of fines levied but not paid  
6 during the prior year, the titles and salaries of all inspectors  
7 and other officials of the office, the number of inspections made  
8 by each inspector, the number and type of violations found by each  
9 inspector. However, no inspector may be identified by name in this  
10 report. Such reports shall be filed with the Governor and the  
11 Legislature on or before December 31 of the same year for which it  
12 was made, and shall upon proper authority be printed and  
13 distributed to interested persons.

14 (9) Call or subpoena witnesses, for the purpose of conducting  
15 hearings into mine fires, mine explosions or any mine accident; to  
16 administer oaths and to require production of any books, papers,  
17 records or other documents relevant or material to any hearing,  
18 investigation or examination of any mine permitted by this chapter.  
19 Any witness so called or subpoenaed shall receive \$40 per diem and  
20 shall receive mileage at the rate of \$.15 for each mile actually  
21 traveled, which shall be paid out of the State Treasury upon a  
22 requisition upon the State Auditor, properly certified by ~~such~~ the

1 witness.

2 (10) Institute civil actions for relief, including permanent  
3 or temporary injunctions, restraining orders, or any other  
4 appropriate action in the appropriate federal or state court  
5 whenever any operator or the operator's agent violates or fails or  
6 refuses to comply with any lawful order, notice or decision issued  
7 by the director or his or her representative.

8 (11) Share information regarding suspension or revocation of  
9 a certified person's, as defined in section two of this article,  
10 certificate for violation of the substance abuse provisions of  
11 section fourteen, article one of this chapter or article one-a of  
12 this chapter with other states that subject miners to disciplinary  
13 action for violation of a substance abuse policy.

14 ~~(11)~~ (12) Perform all other duties which are expressly imposed  
15 upon him or her by the provisions of this chapter.

16 ~~(12)~~ (13) Impose reasonable fees upon applicants taking tests  
17 administered pursuant to the requirements of this chapter.

18 ~~(13)~~ (14) Impose reasonable fees for the issuance of  
19 certifications required under this chapter.

20 ~~(14)~~ (15) Prepare study guides and other forms of publications  
21 relating to mine safety and charge a reasonable fee for the sale of  
22 the publications.

1       ~~(15)~~ (16) Make all records of the office open for inspection  
2 of interested persons and the public.

3       (c) The Director of the Office of Miners' Health, Safety and  
4 Training, or his or her designee, upon receipt of the list of  
5 approved innovative mine safety technologies from the Mine Safety  
6 Technology Task force, has thirty days to approve or amend the list  
7 as provided in section four, article thirteen-bb, chapter eleven of  
8 this code. At the expiration of the time period, the director  
9 shall publish the list of approved innovative mine safety  
10 technologies as provided in section four, article thirteen-bb,  
11 chapter eleven of this code.

12 **§22A-1-13a. Study of mine inspector qualification, compensation,**  
13 **training and inspection programs.**

14       The Office of Miners' Health, Safety and Training is directed  
15 to conduct a study of the minimum qualifications for underground  
16 and surface mine inspectors, the minimum compensation paid to  
17 underground and surface mine inspectors and the overall training  
18 program established for underground and surface mine inspectors.  
19 The study shall identify ways to attract and retain new, qualified  
20 underground and surface mine inspectors to minimize the effect of  
21 the anticipated retirement of a significant number of current  
22 inspectors. Additionally, the study shall examine ways to improve

1 the training programs for underground and surface mine inspectors  
2 by focusing on technological advances in coal mining techniques,  
3 best practices used in modern coal mines and proper mine  
4 ventilation. Further the office shall perform an assessment of the  
5 resources and qualification of inspectors necessary to approve mine  
6 ventilation plans. Finally, the study shall make recommendations  
7 on how to reassess mine inspection priorities to ensure that the  
8 mines having a history of numerous safety violations are inspected  
9 more frequently than mines having a history of comparatively few  
10 safety violations. By December 31, 2012, the Office of Miners'  
11 Health, Safety and Training shall report to the Legislature's Joint  
12 Committee on Government and Finance with recommendations regarding  
13 the implementation of its findings.

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

18 (a) The director, or his or her authorized representative, has  
19 authority to visit, enter, and examine any mine, whether  
20 underground or on the surface, and may call for the assistance of  
21 any district mine inspector or inspectors whenever ~~such~~ assistance  
22 is necessary in the examination of any mine. The operator of every

1 coal mine shall furnish the director or his or her authorized  
2 representative proper facilities for entering ~~such~~ the mine and  
3 making examination or obtaining information.

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

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

1 advance notice of any inspection or of an inspector's presence at  
2 a mine to any person at that mine. Any person who knowingly causes  
3 or conspires to provide advance notice of any inspection or of an  
4 inspector's presence at a mine is guilty of a felony and, upon  
5 conviction thereof, shall be fined not more than \$15,000 or  
6 imprisoned in a state correctional facility not less than one year  
7 and not more than five years, or both.

8       (d) In addition to the other duties imposed by this article  
9 and article two of this chapter, it is the duty of each inspector  
10 to note each violation he or she finds and issue a finding, order,  
11 or notice, as appropriate for each violation so noted. During the  
12 investigation of any accident, any violation may be noted whether  
13 or not the inspector actually observes the violation and whether or  
14 not the violation exists at the time the inspector notes the  
15 violation, so long as the inspector has clear and convincing  
16 evidence the violation has occurred or is occurring.

17       (e) On or after July 1, 2012, an inspector shall require the  
18 operator or other employer to conduct substance abuse testing as  
19 part of an inspection or complaint investigation if there is  
20 reasonable cause to suspect a certified person's impairment due to  
21 the presence of intoxicants or any controlled substance not used in  
22 accordance with the prescription of a licensed prescriber, or if



1 such impairment has been a contributing factor to any accident in  
2 which a serious personal injury or death occurs at a mine. If  
3 anyone is fatally or seriously injured in an accident, the  
4 inspector shall require substance abuse testing of the certified  
5 person fatally or seriously injured and of any other certified  
6 person who may have contributed to the accident. Any substance  
7 abuse testing required under this section will be paid for by the  
8 Office of Miners' Health, Safety and Training. Refusal by any  
9 person to submit to substance abuse testing under this section, or  
10 the failure to pass the test, shall result in the immediate  
11 temporary suspension of all certificates held by that person,  
12 pending a hearing before the board of appeals pursuant to section  
13 two, article one-a of this chapter. All substance abuse testing  
14 provided in this section shall be conducted in accordance with  
15 article one-a of this chapter.

16       (f) The mine inspector shall visit the scene of each fatal  
17 accident occurring in any mine within his or her district and shall  
18 make an examination into the particular facts of ~~such~~ the accident;  
19 make a report to the director, setting forth the results of ~~such~~  
20 the examination, including the condition of the mine and the cause  
21 or causes of ~~such~~ the fatal accident, if known, and all ~~such~~ the  
22 reports shall be made available to the interested parties, upon

1 written requests.

2       (g) At the commencement of any inspection of a coal mine by an  
3 authorized representative of the director, the authorized  
4 representative of the miners at the mine at the time of ~~such~~ the  
5 inspection shall be given an opportunity to accompany the  
6 authorized representative of the director on ~~such~~ the inspection.

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

8                               **ADMINISTRATION; SUBSTANCE ABUSE.**

9 **§22A-1A-1. Substance abuse screening of certified persons; minimum**  
10                               **requirements; standards and procedures for screening.**

11       (a) Beginning July 1, 2012, every employer of certified  
12 persons, as defined in article one of this chapter, who work in  
13 underground mines, surface mines ~~and~~ or preparation plants shall  
14 implement a substance abuse screening policy and program for all  
15 miner specialties requiring certification under article seven of  
16 this chapter or any other provision of this code that shall, at a  
17 minimum, include:

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

21       A. Amphetamines,

22       B. Cannabinoids/THC,

- 1 C. Cocaine,
- 2 D. Opiates,
- 3 E. Phencyclidine (PCP),
- 4 F. Benzodiazepines,
- 5 G. Propoxyphene,
- 6 H. Methadone,
- 7 I. Barbiturates, and
- 8 J. Synthetic narcotics.

9 Samples shall be collected by providers who are certified as  
10 complying with standards and procedures set out in the United  
11 States Department of Transportation's rule, 49 CFR Part 40.  
12 Collected samples shall be tested by laboratories certified by the  
13 United States Department of Health and Human Services, Substance  
14 Abuse and Mental Health Services Administration (SAMHSA) for  
15 collection and testing. Notwithstanding the provisions of this  
16 subdivision, the mine operator may implement a more stringent  
17 substance abuse screening policy and program;

18 (2) A random substance abuse testing program covering the  
19 substances referenced in subdivision (1) of this subsection shall  
20 be employed to test certified persons. "Random testing" means that  
21 each certified person has a statistically equal chance of being  
22 selected for testing at random and at unscheduled times. The

1 selection of certified persons for random testing shall be made by  
2 a scientifically valid method, such as a random number table or a  
3 computer-based random number generator that is matched with the  
4 certified persons' social security numbers, payroll identification  
5 numbers, or other comparable identifying numbers. The random  
6 testing program shall be designed to annually test a number of  
7 certified persons equal to fifty percent of the certified persons  
8 employed by an employer; and

9       (3) An alcohol testing program where, at minimum, certified  
10 persons are tested for the presence of alcohol if there is  
11 reasonable cause to suspect a certified person's impairment, or if  
12 impairment is suspected to have been a contributing factor to any  
13 accident in which a serious personal injury or death occurs at a  
14 mine. If anyone is fatally or seriously injured in an accident,  
15 the operator shall require alcohol testing of the certified person  
16 fatally or seriously injured and of any other certified person who  
17 may have contributed to the accident. A blood alcohol concentration  
18 in excess of four hundredths of one percent or more, by weight,  
19 shall indicate that the certified person tested is intoxicated for  
20 purposes of this article.

21       (4) Review of the substance abuse screening program with all  
22 miners at the time of employment and annually thereafter.

1           (b) For purposes of this subsection, preemployment testing  
2 shall be required any time a certified person is hired by a new  
3 employer, is rehired by a former employer following a termination  
4 of the employer/employee relationship, or is transferred to a West  
5 Virginia mine from his or her employer's out-of-state mine to the  
6 extent that any substance abuse test required by the employer in  
7 the other jurisdiction does not comply with the minimum standards  
8 for substance abuse testing required by this article. Furthermore,  
9 the provisions of this section apply to all employers that employ  
10 certified persons who work in underground or surface mines,  
11 regardless of whether that employer is an operator, contractor,  
12 subcontractor or otherwise.

13           (c) The employer or his or her agent shall notify the  
14 director, on a form prescribed by the director, within seven days  
15 of any failure of a preemployment substance abuse screening test  
16 and provide a record of the test showing such failure or violation.  
17 Notice of the failure shall result in the immediate temporary  
18 suspension of all certificates held by the certified person who  
19 failed such screening, pending a hearing before the board of  
20 appeals pursuant to section two of this article.

21           (d) The employer or his or her agent shall notify the  
22 director, on a form prescribed by the director, within seven days

1 of: (1) Discharging a certified person due to violation of the  
2 company's substance or alcohol abuse policies; (2) a certified  
3 person testing positive for intoxication while on duty status; or  
4 (3) a certified person testing positive as using any controlled  
5 substance without the prescription of a licensed prescriber. An  
6 employer having a substance abuse program shall not be required to  
7 notify the director under subdivision (3) of this subsection,  
8 unless the certified person having tested positive fails to  
9 complete the employer's substance abuse program. The notification  
10 shall be accompanied by a record of the test showing positive  
11 results or violation. Notice shall result in the immediate  
12 temporary suspension of all certificates held by the certified  
13 person who failed the screening, pending a hearing before the board  
14 of appeals pursuant to section two of this article.

15 (e) Suspension or revocation of a certified person's  
16 certificate as a miner or other miner specialty in another  
17 jurisdiction by the applicable licensing or regulatory authority  
18 for substance abuse-related matters shall result in the director  
19 immediately and temporarily suspending the certified person's West  
20 Virginia certificate, pending a hearing before the board of appeals  
21 pursuant to section two of this article.

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

5 (a) Any hearing conducted after the temporary suspension of a  
6 certified person's certificate due to: (1) A criminal conviction in  
7 any court of competent jurisdiction for possession or use of any  
8 controlled substance without the prescription of a licensed  
9 prescriber; (2) a failure to pass a substance abuse test required  
10 pursuant to section fourteen, article one of this chapter; (3) a  
11 failure to pass a preemployment or random substance abuse screening  
12 test; (4) a discharge for the violation of the employer's substance  
13 abuse or alcohol abuse policies; (5) a positive test for the use of  
14 any controlled substance without the prescription of a licensed  
15 prescriber; (6) a positive test for intoxication while on duty  
16 status; (7) a failure to complete a substance abuse program  
17 pursuant to subsection (c), section one of this article; or (8)  
18 failure to report a criminal conviction pursuant to section three  
19 of this article, shall be conducted within sixty days of the  
20 temporary suspension. The board of appeals shall make every effort  
21 to hold the hearing within forty days of the temporary suspension.

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

1 section shall be conducted in accordance with the provisions of  
2 subsection (c), section thirty-one, article one of this chapter.  
3 The board of appeals may suspend the certificate or certificates of  
4 a certified person for violation of this article, for the refusal  
5 of any person to submit to substance abuse testing under section  
6 fourteen, article one of this chapter, for the failure of any  
7 substance abuse test administered in accordance with said section  
8 or for any other violation of this chapter pertaining to substance  
9 abuse. The board of appeals shall suspend the certificate or  
10 certificates of a certified person and administer progressive  
11 penalties for repeat violations in accordance with legislative  
12 rules promulgated by the director. The director shall have the  
13 authority to propose legislative rules for promulgation in  
14 accordance with article three, chapter twenty-nine-a of this code  
15 to establish the penalties referenced in this section.

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

20 (d) Any party adversely affected by a final order or decision  
21 issued by the board of appeals hereunder is entitled to judicial  
22 review thereof pursuant to section four, article five, chapter



1 twenty-nine-a of this code.

2 **§22A-1A-3. Certified persons required to report criminal**  
3 **convictions.**

4 Any person holding a certification issued by the Office of  
5 Miners' Health, Safety & Training shall report to the director,  
6 within thirty days, any criminal conviction in any court of  
7 competent jurisdiction for possession or use of any controlled  
8 substance without the prescription of a licensed prescriber. The  
9 conviction or failure to timely report a conviction shall result in  
10 the immediate temporary suspension of all certificates held by the  
11 person, pending a hearing before the board of appeals pursuant to  
12 section two of this article.

13 **§22A-1A-4. Disclosure of records exempt; exceptions.**

14 Records of substance abuse and alcohol screening tests,  
15 written or otherwise, received by the Office of Miners' Health,  
16 Safety and Training, its employees, agents and representatives are  
17 confidential communications and are exempt from disclosure under  
18 article one, chapter twenty-nine-b of the code, except as follows:

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

22 (1) The name of the person who is authorized to obtain the

1 information;

2 (2) The purpose of the disclosure;

3 (3) The precise information to be disclosed;

4 (4) The duration of the consent; and

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

7 (b) Where the release of the information is compelled by the  
8 board of appeals or a court of competent jurisdiction;

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

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

15 (e) Where release of the information is deemed appropriate by  
16 the board of appeals or a court of competent jurisdiction in a  
17 disciplinary proceeding.

18 **ARTICLE 2. UNDERGROUND MINES.**

19 **§22A-2-2. Submittal of detailed ventilation plan to director.**

20 (a) A mine operator shall submit a detailed ventilation plan  
21 and any addendums to the director for review and comment. The mine  
22 operator shall review the plan with the director and address

1 concerns to the extent practicable. The director shall submit any  
2 concern that is not addressed to the United States Department of  
3 Labor - Mine Safety and Health Administration through comments to  
4 the plan. The mine operator shall provide a copy of the plan to  
5 the director and the miners' representative, if any, employed by  
6 the operator at the mine ten days prior to the submittal of the  
7 plan to MSHA.

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

11 (c) In the event of an unforeseen situation requiring  
12 immediate action on a plan revision, the operator shall submit the  
13 proposed revision to the director and the miners' representative,  
14 if any, employed by the operator at the mine when the proposed  
15 revision is submitted to MSHA. The director shall work with the  
16 operator to review and comment on the proposed plan revision to  
17 MSHA as quickly as possible.

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

1 **§22A-2-12. Instruction of employees and supervision of**  
2 **apprentices; annual examination of persons using**  
3 **approved methane detectors; records of**  
4 **examination; maintenance of methane detectors,**  
5 **etc.**

6 (a) The Office of Miners' Health, Safety and Training shall  
7 prescribe and establish a course of instruction in mine safety and  
8 particularly in dangers incident to ~~such~~ employment in mines and in  
9 mining laws and rules, which course of instruction shall be  
10 successfully completed within twelve weeks after any person is  
11 first employed as a miner. It is further the duty and  
12 responsibility of the office of miners' health, safety and training  
13 to see that ~~such~~ the course is given to all persons as above  
14 provided after their first being employed in any mine in this  
15 state.

16 (b) It is the duty of the mine foreman or the assistant mine  
17 foreman of every coal mine in this state to see that every person  
18 employed to work in ~~such~~ the mine is, before beginning work  
19 therein, instructed in the particular danger incident to his or her  
20 work in ~~such~~ the mine, and furnished a copy of the mining laws and  
21 rules of ~~such~~ the mine. It is the duty of every mine operator who  
22 employs apprentices, as that term is used in sections three and

1 four, article eight of this chapter to ensure that the apprentices  
2 are effectively supervised with regard to safety practices and to  
3 instruct apprentices in safe mining practices. Every apprentice  
4 shall work under the direction of the mine foreman or his or her  
5 assistant mine foreman and they are responsible for his or her  
6 safety. The mine foreman or assistant mine foreman may delegate  
7 the supervision of an apprentice to an experienced miner, but the  
8 foreman and his or her assistant mine foreman remain responsible  
9 for the apprentice. During the first ~~ninety~~ one hundred-twenty  
10 days of employment in a mine, the apprentice shall work within  
11 sight and sound of the mine foreman, assistant mine foreman, or an  
12 experienced miner, and in ~~such~~ a location that the mine foreman,  
13 assistant mine foreman or experienced miner can effectively respond  
14 to cries for help of the apprentice. ~~Such~~ The location shall be on  
15 the same side of any belt, conveyor or mining equipment.

16 (c) Persons whose duties require them to use ~~a flame safety~~  
17 ~~lamp or other~~ an approved methane ~~detectors~~ detector shall be  
18 examined at least annually as to their competence by a qualified  
19 official from the Office of Miners' Health, Safety and Training and  
20 a record of ~~such~~ the examination shall be kept by the operator and  
21 the office. ~~Flame safety lamps and other~~ Approved methane detectors  
22 shall be given proper maintenance and shall be tested before each

1 working shift. Each operator shall provide for the proper  
2 maintenance and care of the ~~permissible flame safety lamp or any~~  
3 ~~other~~ approved device for detecting methane and oxygen deficiency  
4 by a person trained in ~~such~~ proper maintenance, and, before each  
5 shift, care shall be taken to ensure that ~~such~~ the lamp or other  
6 device is in a permissible condition and maintained according to  
7 manufacturer's specifications.

8 **§22A-2-20. Preparation of danger signal by fire boss or certified**  
9 **person acting as such prior to examination; report;**  
10 **records open for inspection.**

11 (a) It ~~shall be~~ is the duty of the fire boss, or a certified  
12 person acting as such, to prepare a danger signal (a separate  
13 signal for each shift) with red color at the mine entrance at the  
14 beginning of his or her shift or prior to his or her entering the  
15 mine to make his or her examination and, except for those persons  
16 already on assigned duty, no person except the mine owner, operator  
17 or agent, and only then in the case of necessity, shall pass beyond  
18 this danger signal until the mine has been examined by the fire  
19 boss or other certified person and the mine or certain parts  
20 thereof reported by him or her to be safe. When reported by him or  
21 her to be safe, the danger sign or color thereof shall be changed  
22 to indicate that the mine is safe in order that employees going on

1 shift may begin work. Each person designated to make ~~such~~ the fire  
2 boss examinations shall be assigned a definite underground area of  
3 ~~such~~ the mine, and, in making his or her examination shall examine  
4 all active working places in the assigned area and make tests with  
5 an approved device for accumulations of methane and oxygen  
6 deficiency; examine seals and doors; examine and test the roof,  
7 face and ribs in the working places and on active roadways and  
8 travelways, approaches to abandoned workings, ~~and~~ accessible falls  
9 in active sections and areas where any person is scheduled to work  
10 or travel underground. He or she shall place his or her initials  
11 and the date at or near the face of each place he or she examines.  
12 Should he or she find a condition which he or she considers  
13 dangerous to persons entering ~~such~~ the areas, he or she shall place  
14 a conspicuous danger sign at all entrances to ~~such~~ the place or  
15 places. Only persons authorized by the mine management may enter  
16 ~~such~~ the places while the sign is posted and only for the purpose  
17 of eliminating the dangerous condition. Upon completing his or her  
18 examination he or she shall report by suitable communication system  
19 or in person the results of this examination to a certified person  
20 designated by mine management to receive and record ~~such~~ the  
21 report, at a designated station on the surface of the premises of  
22 the mine or underground, before other persons enter the mine to

1 work in ~~such~~ coal-producing shifts. He or she shall also record the  
2 results of his or her examination with ink or indelible pencil in  
3 a book prescribed by the director, kept for ~~such~~ the purpose at a  
4 place on the surface of the mine designated by mine management. All  
5 records of daily and weekly reports, as prescribed herein, shall be  
6 open for inspection by interested persons.

7 (b) Supplemental Examination. -- When it becomes necessary to  
8 have workers enter areas of the mine not covered during the  
9 preshift examination, a supplemental examination shall be performed  
10 by a fire boss or certified person acting as such within three  
11 hours before any person enters the area. The fire boss or  
12 certified person acting as such shall examine the area for  
13 hazardous conditions, determine if air is traveling in its proper  
14 direction and test for oxygen deficiency and methane.

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

17 (d) The results of the examination shall be recorded with ink  
18 or indelible pencil by the examiner in the book referenced in  
19 subsection (a) of this section before he or she leaves the mine on  
20 that shift.

21 **§22A-2-24. Control of coal dust; rock dusting.**

22 (a) In all mines, dangerous accumulations of fine, dry coal



1 and coal dust shall be removed from the mine, and all dry and dusty  
2 operating sections and haulageways and conveyors and back entries  
3 shall be rock dusted or dust allayed by ~~such~~ other methods as may  
4 be approved by the director.

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

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

1 (d) Rock dust shall not contain more than five percent by  
2 volume of quartz or free silica particles and shall be pulverized  
3 so that one hundred percent will pass through a twenty mesh screen  
4 and seventy percent or more will pass through a two hundred mesh  
5 screen.

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

10 **§22A-2-43. Actions to detect and respond to excess methane.**

11 The following actions are required to detect and respond to  
12 excess methane:

13 (a) *Testing required.* -- In any mine, no electrical equipment  
14 or permissible diesel powered equipment may be brought in by the  
15 last open crosscut until a qualified person tests for methane. If  
16 one percent or more methane is present, the equipment may not be  
17 taken into the area until the methane concentration is reduced to  
18 less than one percent. Thereafter, subsequent methane examinations  
19 shall be made at least every twenty minutes while any electrical or  
20 diesel powered equipment is present and energized.

21 (b) *Location of tests.* -- Tests for methane concentrations  
22 under this section shall be made at least twelve inches from the

1 roof, face, ribs and floor.

2 (c) *Working places and intake air courses.* --

3 (1) When one percent or more methane is present in a working  
4 place or an intake air course, including an air course in which a  
5 belt conveyor is located or in an area where mechanized mining  
6 equipment is being installed or removed:

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

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

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

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

19 (A) Except for federal or state mine inspectors, the mine  
20 foreman or assistant mine foreman or individuals authorized by the  
21 mine foreman or assistant mine foreman, all individuals shall be  
22 withdrawn from the affected area.

1           (B) Except for intrinsically safe AMS, electrically powered  
2 equipment in the affected area shall be disconnected at the power  
3 source.

4           (d) *Return air split.*--

5           (1) When one percent or more methane is present in a return  
6 air split between the last working place on a working section and  
7 where that split of air meets another split of air or the location  
8 at which the split is used to ventilate seals or worked-out areas,  
9 changes or adjustments shall be made at once to the ventilation  
10 system to reduce the concentration of methane in the return air to  
11 less than one percent.

12           (2) When one and five tenths percent or more methane is  
13 present in a return air split between the last working place on a  
14 working section and where that split of air meets another split of  
15 air or the location where the split is used to ventilate seals or  
16 worked-out areas, except for federal or state mine inspectors, the  
17 mine foreman, assistant mine foreman or individuals authorized by  
18 the mine foreman or assistant mine foreman, all individuals shall  
19 be withdrawn from the affected area.

20           (3) Other than intrinsically safe AMS, equipment in the  
21 affected area shall be de-energized, electric power shall be  
22 disconnected at the power source and other mechanized equipment

1 shall be shut off.

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

5       (e) *Return air split alternative.* --

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

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

11       (B) The methane content of the air in the split is  
12 continuously monitored during mining operations by an AMS that  
13 gives a visual and audible signal on the working section when the  
14 methane in the return air reaches one and five tenths percent and  
15 the methane content is monitored as specified in the approved  
16 ventilation plan.

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

20       (2) When one and five tenths percent or more methane is  
21 present in a return air split between a point in the return  
22 opposite the section loading point and where that split of air

1 meets another split of air or where the split of air is used to  
2 ventilate seals or worked-out areas:

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

6 (B) Except for federal or state mine inspectors, the mine  
7 foreman, assistant mine foreman or individuals authorized by the  
8 mine foreman or assistant mine foreman, all individuals shall be  
9 withdrawn from the affected area.

10 (C) Except for intrinsically safe AMS, equipment in the  
11 affected area shall be de-energized, electric power shall be  
12 disconnected at the power source and other mechanized equipment  
13 shall be shut off.

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

17 (f) *Methane monitors.* --

18 (1) Approved methane monitors shall be installed and  
19 maintained on all face cutting machines, continuous miners,  
20 longwall face equipment, loading machines and other mechanized  
21 equipment used to extract coal or load coal within the working  
22 place.

1           (2) The sensing device for methane monitors on longwall  
2 shearing machines shall be installed at the return air end of the  
3 longwall face. An additional sensing device also shall be  
4 installed on the longwall shearing machine, downwind and as close  
5 to the cutting head as practicable. An alternative location or  
6 locations for the sensing device required on the longwall shearing  
7 machine may be approved in the ventilation plan.

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

10          (4) Methane monitors shall be maintained in permissible and  
11 proper operating condition and shall be calibrated with a known  
12 air-methane mixture at least once every fifteen days and a record  
13 of the calibration shall be recorded with ink or indelible pencil  
14 by the person performing the calibration in a book prescribed by  
15 the director and maintained on the surface. Calibration records  
16 shall be retained for inspection for at least one year from the  
17 date of the test. To assure that methane monitors are properly  
18 maintained and calibrated, the operator shall use persons properly  
19 trained in the maintenance, calibration, and permissibility of  
20 methane monitors to calibrate and maintain the devices.

21          (g) *Automatic de-energization of extraction apparatus.* --

22          When the methane concentration at any machine-mounted methane

1 monitor reaches one percent, the monitor shall give a warning  
2 signal. The warning signal device of the methane monitor shall be  
3 visible to a person operating the equipment on which the monitor is  
4 mounted. The methane monitor shall automatically de-energize the  
5 extraction apparatus on the machine on which it is mounted, but not  
6 the machine as a whole to facilitate proper mining procedures,  
7 when:

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

10       (2) The monitor is not operating properly.

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

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

15       Within one hundred twenty days of the effective date of the  
16 amendments to this section, the Board of Coal Mine Health and  
17 Safety shall promulgate legislative rules pursuant to article  
18 three, chapter twenty-nine-a of this code establishing a compliance  
19 schedule setting forth the timeframe in which all new and existing  
20 face cutting machines, continuous miners, longwall face equipment,  
21 loading machines and other mechanized equipment used to extract  
22 coal or load coal within the working place shall be refitted with



1 methane monitors. Enforcement of subsections (f) and (g) of this  
2 section shall not commence until after the timeframe is established  
3 rule.

4 **§22A-2-43a. Operation of cutting and mining machines; repair and**  
5 **maintenance of same.**

6 (a) *Qualified person to operate cutting machine.* -- No person  
7 shall be placed in charge of a coal-cutting machine in any mine who  
8 is not a qualified person, capable of determining the safety of the  
9 roof and sides of the working places and of detecting the presence  
10 of explosive gas, unless they are accompanied by a certified or  
11 qualified person who has passed a qualifying examination.

12 (b) *Operation of mining machines.* -- Machine operators and  
13 helpers shall use care while operating mining machines. They shall  
14 examine the roof of the working place to see that it is safe before  
15 starting to operate the machine. They shall not move the machine  
16 while the cutter chain is in motion. Additionally, no person  
17 shall operate the cutterhead on any continuous miner while the  
18 machine is moving from place to place underground: *Provided, That*  
19 a cutterhead may be operated during clean up or when the machine  
20 is extracting coal.

21 (c) *Repair and maintenance of mining machines.* -- (1) Repairs  
22 or maintenance shall not be performed on mining machines until the

1 power is off and the machinery is blocked against motion, except  
2 where machinery motion is necessary to make adjustments. For  
3 purposes of this subsection, the following terms shall have the  
4 following meanings:

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

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

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

12 (A) Opening the circuit breaker for the affected machinery,  
13 provided no energized parts or conductors are exposed, and placing  
14 the run selector switch for startup of the machinery in the "off"  
15 position. On longwall machinery, this would include placing the  
16 lockout switch in the lockout position in the area where the repair  
17 or maintenance is being performed. A qualified electrician is  
18 required to de-energize a circuit breaker if there are exposed  
19 energized parts or conductors; or

20 (B) Opening the circuit breaker at the power center that  
21 supplies power for the affected machinery and disengaging the power  
22 cable coupler that supplies power to the machinery; or

1 (C) Opening a manual visible disconnect switch, either within  
2 the circuit or onboard the machinery, and securing the switch  
3 against reenergization. A control circuit start-stop switch does  
4 not constitute a manual disconnect; or

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

11 **§22A-2-55. Protective equipment and clothing.**

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

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

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

22 (d) Safety hats and safety-toed shoes shall be worn by all

1 persons while in or around a mine: *Provided*, That metatarsal guards  
2 are not required to be worn by persons when working in those areas  
3 of underground mine workings which average less than forty-eight  
4 inches in height as measured from the floor to the roof of the  
5 underground mine workings.

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

8 (f) (1) A self-contained self-rescue device approved by the  
9 director shall be worn by each person underground or kept within  
10 his or her immediate reach and the device shall be provided by the  
11 operator. The self-contained self-rescue device shall be adequate  
12 to protect a miner for one hour or longer. Each operator shall  
13 train each miner in the use of ~~such~~ the device and refresher  
14 training courses for all underground employees shall be held ~~during~~  
15 ~~each calendar year~~ once each quarter. Quarters shall be based on  
16 a calendar year.

17 (2) In addition to the requirements of subdivision (1) of this  
18 subsection, the operator shall also provide caches of additional  
19 self-contained self-rescue devices throughout the mine in  
20 accordance with a plan approved by the director. Each additional  
21 self-contained self-rescue device shall be adequate to protect a  
22 miner for one hour or longer. The total number of additional

1 self-contained self-rescue devices, the total number of storage  
2 caches and the placement of each cache throughout the mine shall be  
3 established by rule pursuant to subsection (i) of this section. A  
4 luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or  
5 "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at  
6 each cache and luminescent direction signs shall be posted leading  
7 to each cache. Lifeline cords or other similar device, with  
8 reflective material at twenty-five foot intervals, shall be  
9 attached to each cache from the last open crosscut to the surface.  
10 The operator shall conduct weekly inspections of each cache and  
11 each lifeline cord or other similar device to ensure operability.

12 (3) Any person that, without the authorization of the operator  
13 or the director, knowingly removes or attempts to remove any  
14 self-contained self-rescue device or lifeline cord from the mine or  
15 mine site with the intent to permanently deprive the operator of  
16 the device or lifeline cord or knowingly tampers with or attempts  
17 to tamper with ~~such~~ the device or lifeline cord shall be guilty of  
18 a felony and, upon conviction thereof, shall be imprisoned in a  
19 state correctional facility for not less than one year nor more  
20 than ten years or fined not less than \$10,000 nor more than  
21 \$100,000, or both.

22 (g) (1) A wireless emergency communication device approved by

1 the director and provided by the operator shall be worn by each  
2 person underground. The wireless emergency communication device  
3 shall, at a minimum, be capable of receiving emergency  
4 communications from the surface at any location throughout the  
5 mine. Each operator shall train each miner in the use of the device  
6 and provide refresher training courses for all underground  
7 employees during each calendar year. The operator shall install in  
8 or around the mine any and all equipment necessary to transmit  
9 emergency communications from the surface to each wireless  
10 emergency communication device at any location throughout the mine.

11 (2) Any person that, without the authorization of the operator  
12 or the director, knowingly removes or attempts to remove any  
13 wireless emergency communication device or related equipment, from  
14 the mine or mine site with the intent to permanently deprive the  
15 operator of the device or equipment or knowingly tampers with or  
16 attempts to tamper with the device or equipment shall be guilty of  
17 a felony and, upon conviction thereof, shall be imprisoned in a  
18 state correctional facility for not less than one year nor more  
19 than ten years or fined not less than \$10,000 nor more than  
20 \$100,000, or both.

21 (h) (1) A wireless tracking device approved by the director  
22 and provided by the operator shall be worn by each person

1 underground. In the event of an accident or other emergency, the  
2 tracking device shall, at a minimum, be capable of providing  
3 real-time monitoring of the physical location of each person  
4 underground: *Provided*, That no person shall discharge or  
5 discriminate against any miner based on information gathered by a  
6 wireless tracking device during nonemergency monitoring. Each  
7 operator shall train each miner in the use of the device and  
8 provide refresher training courses for all underground employees  
9 during each calendar year. The operator shall install in or around  
10 the mine all equipment necessary to provide real-time emergency  
11 monitoring of the physical location of each person underground.

12 (2) Any person that, without the authorization of the operator  
13 or the director, knowingly removes or attempts to remove any  
14 wireless tracking device or related equipment, approved by the  
15 director, from a mine or mine site with the intent to permanently  
16 deprive the operator of the device or equipment or knowingly  
17 tampers with or attempts to tamper with the device or equipment  
18 shall be guilty of a felony and, upon conviction thereof, shall be  
19 imprisoned in a state correctional facility for not less than one  
20 year nor more than ten years or fined not less than \$10,000 nor  
21 more than \$100,000, or both.

22 (i) The director may promulgate emergency and legislative

1 rules to implement and enforce this section pursuant to the  
2 provisions of article three, chapter twenty-nine-a of this code.

3 **§22A-2-66. Accident; notice; investigation by Office of Miners'**

4 **Health, Safety and Training.**

5 (a) For the purposes of this section, the term "accident"  
6 means:

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

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

10 (3) The entrapment of an individual;

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

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

13 (6) The unplanned ignition or explosion of a blasting agent or  
14 an explosive;

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

17 (8) An unplanned roof fall at or above the anchorage zone in  
18 active workings where roof bolts are in use or an unplanned roof or  
19 rib fall in active workings that impairs ventilation or impedes  
20 passage;

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



1           (10) An unstable condition at an impoundment, refuse pile or  
2 culm bank which requires emergency action in order to prevent  
3 failure, or which causes individuals to evacuate an area, or the  
4 failure of an impoundment, refuse pile or culm bank;

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

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

10          (b) Whenever any accident occurs in or about any coal mine or  
11 the machinery connected therewith, it is the duty of the operator  
12 or the mine foreman in charge of the mine to give notice, within  
13 fifteen minutes of ascertaining the occurrence of an accident, to  
14 the Mine and Industrial Accident Emergency Operations Center at the  
15 statewide telephone number established by the Director of the  
16 Division of Homeland Security and Emergency Management pursuant to  
17 the provisions of article five-b, chapter fifteen of this code  
18 stating the particulars of the accident: *Provided*, That the  
19 operator or the mine foreman in charge of the mine may comply with  
20 this notice requirement by immediately providing notice to the  
21 appropriate local organization for emergency services as defined in  
22 section eight, article five of said chapter, or the appropriate

1 local emergency telephone system operator as defined in article  
2 six, chapter twenty-four of this code: Provided, however, That if,  
3 immediately upon ascertaining the occurrence of an accident, the  
4 operator or the mine foreman in charge of the mine provides notice  
5 to the local organization for emergency services as defined in  
6 section eight, article five, chapter fifteen of this code, or the  
7 appropriate local emergency telephone system operator as defined in  
8 article six, chapter twenty-four of this code, then, in order to  
9 comply with this subsection, the operator or mine foreman in charge  
10 of the mine shall also give notice to the Mine and Industrial  
11 Accident Emergency Operations Center at the statewide number  
12 identified in this subsection within fifteen minutes of completing  
13 the telephone call to the local organization for emergency services  
14 or the appropriate local emergency telephone system operator, as  
15 applicable: Provided, ~~however~~ further, That nothing in this  
16 subsection shall be construed to relieve the operator from any  
17 reporting or notification requirement under federal law.

18 (c) The Director of the Office of Miners' Health, Safety and  
19 Training shall impose, pursuant to rules authorized in this  
20 section, a civil administrative penalty of \$100,000 on the operator  
21 if it is determined that the operator or the mine foremen in charge  
22 of the mine failed to give immediate notice as required in this

1 section: *Provided*, That the director may waive imposition of the  
2 civil administrative penalty at any time if he or she finds that  
3 the failure to give immediate notice was caused by circumstances  
4 wholly outside the control of the operator.

5 (d) If anyone is ~~killed~~ fatally injured, the inspector shall  
6 immediately go to the scene of the accident and make  
7 recommendations and render assistance as he or she may deem  
8 necessary for the future safety of the men and investigate the  
9 cause of the explosion or accident and make a record. He or she  
10 shall preserve the record with the other records in his or her  
11 office. The cost of the investigation records shall be paid by the  
12 Office of Miners' Health, Safety and Training. A copy shall be  
13 furnished to the operator and other interested parties. To enable  
14 him or her to make an investigation, he or she has the power to  
15 compel the attendance of witnesses and to administer oaths or  
16 affirmations. The director has the right to appear and testify and  
17 to offer any testimony that may be relevant to the questions and to  
18 cross-examine witnesses.

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

20 **§22A-6-13. Study of ingress and egress to bleeder and gob areas**  
21 **of longwall panels and pillar sections.**

22 The Board of Coal Mine Health and Safety is directed to study

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

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

14 **§22A-7-5a. Study of miner training and education.**

15 The board is directed to conduct a study of the overall  
16 program of education, training and examination associated with the  
17 various miner specialties requiring certification under this  
18 article or any other provision of this code. The study shall  
19 identify ways to enhance miner education and training to adequately  
20 reflect technological advances in coal mining techniques and best  
21 practices used in modern coal mines, and improve supervision of  
22 apprentice miners. Furthermore, the board shall place particular

1 emphasis in its study on ways to improve education and training in  
2 the areas of proper mine ventilation, methane monitoring and  
3 equipment de-energization, fire-boss procedures and overall core  
4 mining competencies. By December 31, 2012, the board shall report  
5 to the Legislature's Joint Committee on Government and Finance with  
6 recommendations regarding the implementation of the findings of  
7 this study.

NOTE: The purpose of this bill is to improve mine safety in the State of West Virginia by 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; permitting the Director of the Office of Miners' Health, Safety and Training to share information regarding certification suspensions or revocations with other states; 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; 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; requiring coal mining operators to implement substance abuse screening policy and program for certified persons; requiring substance abuse screening upon preemployment, rehiring or transfer of certified person; providing procedure for board of appeals hearings on certification suspensions and judicial review of board decisions; providing procedure for approval, review, comment and enforcement of mine ventilation plans; 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; expanding scope of preshift examinations and requiring supplemental examinations in certain instances; increasing the percentage of rock dust to be maintained in coal mines; 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; requiring study of and report on the safety of working or traveling in bleeder or gob areas of certain coal mines; and requiring study of and report on education, training and examination associated with certifying miners.

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

§22A-2-2 and §22A-2-43 have been completely rewritten. Article 22A-1A-1 *et seq.* and §§15-5B-6; 22A-1-13a; 22A-2-43a; 22A-6-13; and 22A-7-5a are new. Therefore, strike throughs and underscoring have been omitted.