

1 **H. B. 4241**

2 (By Delegates Frich, Phillips, R.,
3 Smith, R., Andes, Skaff, Shott,
4 Phillips, L., Marshall, Barill, Arvon
5 and Poling, D.)
6

7 [Introduced January 21, 2014; referred to the
8 Committee on Industry and Labor then the Judiciary.]
9

10 A BILL to amend and reenact §22A-1A-1 of the Code of West Virginia,
11 1931, as amended, requiring employers subject to the
12 jurisdiction of the Office of Miner's Health, Safety and
13 Training to implement an alcohol abuse policy and program;
14 requiring preemployment, random and annual testing;
15 establishing a threshold level for alcohol abuse; requiring
16 the alcohol abuse screening program to be reviewed; permitting
17 employers to implement a more stringent program; providing for
18 suspensions and review; requiring failed preemployment drug
19 and alcohol tests be reported to the director; and defining a
20 term.

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

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

24 **ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING**
25 **ADMINISTRATION; SUBSTANCE AND ALCOHOL ABUSE.**

26 **§22A-1A-1. Substance abuse and alcohol screening; minimum**

1 **requirements; standards and procedures for**
2 **screening.**

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

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

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

19 Split samples shall be collected by providers who are
20 certified as complying with standards and procedures set out in the
21 United States Department of Transportation's rule, 49 CFR Part 40,
22 which may be amended from time to time by legislative rule of the
23 Office of Miners' Health, Safety and Training. Collected samples
24 shall be tested by laboratories certified by the United States

1 Department of Health and Human Services, Substance Abuse and Mental
2 Health Services Administration (SAMHSA) for collection and testing.
3 Notwithstanding the provisions of this subdivision, the mine
4 operator may implement a more stringent substance abuse screening
5 policy and program;

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

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

19 (b) Every employer of certified persons, as defined in section
20 two, article one of this chapter, shall implement an alcohol abuse
21 screening policy and program that shall, at a minimum, include:

22 (1) A preemployment alcohol test for a concentration of four
23 hundredths of one gram or more by weight of alcohol per two hundred
24 ten liters of an individual's breath;

1 (2) A random alcohol abuse testing program covering the
2 concentration of alcohol referenced in subdivision (1) of this
3 subsection. "Random testing" has the same meaning as that term is
4 defined in subdivision (2), subsection (a) of this section; and

5 (3) Review of the alcohol abuse screening program with all
6 persons required to be tested at the time of employment, upon a
7 change in the program and annually thereafter.

8 ~~(b)~~ (c) For purposes of this subsection, preemployment testing
9 shall be required upon hiring by a new employer, rehiring by a
10 former employer following a termination of the employer/employee
11 relationship, or transferring to a West Virginia mine from an
12 employer's out-of-state mine to the extent that any substance abuse
13 or alcohol abuse test required by the employer in the other
14 jurisdiction does not comply with the minimum standards for
15 substance abuse and alcohol abuse testing required by this article.
16 Furthermore, ~~the provisions of this section apply~~ applies to all
17 employers that employ certified persons who work in mines,
18 regardless of whether that employer is an operator, contractor,
19 subcontractor or otherwise.

20 ~~(c)~~ (d) The employer or his or her agent shall notify the
21 director at least quarterly, on a form prescribed by the director,
22 of the number of preemployment substance abuse screening and
23 alcohol abuse screening tests administered during the prior
24 calendar quarter and the number of positive test results associated

1 with the substance abuse and alcohol abuse screening tests
2 administered.

3 ~~(d)~~ (e) (1) The employer or his or her agent shall notify the
4 director, on a form prescribed by the director, within seven days
5 following completion of an arbitration conducted pursuant to a
6 collective bargaining agreement applicable to the certified person,
7 if any, of discharging a certified person for violation of the
8 employer's substance and alcohol abuse screening policy and
9 program. The notification shall be accompanied by a record of the
10 test showing positive results or other violation. Notice shall
11 result in the immediate temporary suspension of all certificates
12 held by the certified person who failed the screening, pending a
13 hearing before the board of appeals pursuant to section two of this
14 article.

15 (2) The prospective employer or his or her agent shall notify
16 the director, on a form prescribed by the director, within seven
17 days following a prospective employee's positive results from the
18 preemployment substance abuse screening and alcohol abuse screening
19 required by subdivision (1), subsection (a) and subdivision (1),
20 subsection (b), respectively, of this section. The notification
21 shall be accompanied by a record of the test showing positive
22 results.

23 ~~(e)~~ (f) Suspension or revocation of a certified person's
24 certificate as a miner or other miner specialty in another

1 jurisdiction by the applicable regulatory or licensing authority
2 for substance and alcohol abuse-related matters shall result in the
3 director immediately and temporarily suspending the certified
4 person's West Virginia certificate until such time as the certified
5 person's certification is reinstated in the other jurisdiction.

6 ~~(f) The provisions of this article shall~~ (g) This article may
7 not be construed to preclude an employer from developing or
8 maintaining a drug and alcohol abuse policy, testing program or
9 substance and alcohol abuse program that exceeds the minimum
10 requirements set forth in this section. ~~The provisions of this~~
11 ~~article shall~~ This article may also not be construed to require an
12 employer to alter, amend, revise or otherwise change, in any
13 respect, a previously established substance and alcohol abuse
14 screening policy and program that meets or exceeds the minimum
15 requirements set forth in this section. ~~The provisions of this~~
16 ~~article shall require~~ This article requires an employer to subject
17 its employees who as part of their employment are regularly present
18 at a mine and who are employed in a safety-sensitive position to
19 preemployment and random substance abuse and alcohol abuse tests:
20 *Provided*, That each employer shall retain the discretion to
21 establish the parameters of its substance and alcohol abuse
22 screening policy and program so long as it meets the minimum
23 requirements of this article. For purposes of this section, a
24 "safety-sensitive position" means an employment position where the

1 employee's job responsibilities include duties and activities that
2 involve the personal safety of the employee or others working at a
3 mine.

NOTE: The purpose of this bill is to require employers subject to the jurisdiction of the Office of Miner's Health, Safety and Training to implement an alcohol abuse policy and program. The bill requires preemployment, random and annual testing for alcohol. The bill establishes a threshold level for alcohol abuse. The bill requires the alcohol abuse screening program to be reviewed. The bill permits employers to implement a more stringent program. The bill provides for suspensions and review. The bill requires failed preemployment drug or alcohol tests be reported to the director. The bill also defines a term.

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