

Senate Bill No. 624

(By Senator Yost)

[Introduced February 17, 2014; referred to the Committee on
Energy, Industry and Mining; and then to the Committee on the
Judiciary.]

A BILL to amend and reenact §22A-1A-1 of the Code of West Virginia,
1931, as amended, relating to employers' substance abuse
screening policies and programs for safety-sensitive positions
in mining operations; and providing for certificate suspension
and revocation proceedings when a certified individual is
denied employment, withdraws an application for employment, is
discharged or resigns for violation of the employer's
substance abuse screening policy and program.

Be it enacted by the Legislature of West Virginia:

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

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

1 **§22A-1A-1. Substance abuse screening; minimum requirements;**
2 **standards and procedures for 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

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

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

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

20 (b) For purposes of this subsection, preemployment testing
21 shall be required upon hiring by a new employer, rehiring by a
22 former employer following a termination of the employer/employee
23 relationship, or transferring to a West Virginia mine from an

1 employer's out-of-state mine to the extent that any substance abuse
2 test required by the employer in the other jurisdiction does not
3 comply with the minimum standards for substance abuse testing
4 required by this article. Furthermore, the provisions of this
5 section apply to all employers that employ certified persons who
6 work in mines, regardless of whether that employer is an operator,
7 contractor, subcontractor or otherwise.

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

14 (d) The employer or his or her agent shall notify the
15 director, on a form prescribed by the director, within seven days
16 ~~following completion of an arbitration conducted pursuant to a~~
17 ~~collective bargaining agreement applicable to the certified person,~~
18 ~~if any, of discharging a certified person for violation of the~~
19 ~~employer's substance abuse screening policy and program.~~ after the
20 occurrence of any of the following events:

21 (1) Discharge of a certified person, following completion of
22 an arbitration conducted pursuant to a collective bargaining
23 agreement applicable to the certified person, if any, for violation

1 of the employer's substance abuse screening policy and program;

2 (2) Resignation or voluntary withdrawal from employment by a
3 certified person as a result of violation of the employer's
4 substance abuse screening policy and program; or

5 (3) Refusal to hire, or denial of an application for
6 employment of, a certified person for violation of the employer's
7 substance abuse screening policy and program.

8 The notification shall be accompanied by a record of the test
9 showing positive results or other violation. Notice shall result in
10 the immediate temporary suspension of all certificates held by the
11 certified person who failed the screening, pending a hearing before
12 the board of appeals pursuant to section two of this article.

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

20 (f) The provisions of this article shall not be construed to
21 preclude an employer from developing or maintaining a drug and
22 alcohol abuse policy, testing program or substance abuse program
23 that exceeds the minimum requirements set forth in this section.

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

NOTE: The purpose of this bill is to establish additional circumstances which would provide for certificate suspension and revocation proceedings when a certified individual is denied employment, withdraws an application for employment, is discharged or resigns for violation of the employer's substance abuse screening policy and program.

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

be added.