

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2014**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 623**

(SENATORS PALUMBO, TUCKER AND SNYDER, *ORIGINAL SPONSORS*)

[PASSED MARCH 8, 2014; IN EFFECT FROM PASSAGE.]

**E N R O L L E D**

COMMITTEE SUBSTITUTE

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(SENATORS PALUMBO, TUCKER AND SNYDER, *original sponsors*)

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[Passed March 8, 2014; in effect from passage.]

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AN ACT to amend and reenact §22A-1A-1 of the Code of West Virginia, 1931, as amended, relating to Office of Miners' Health, Safety and Training administration and substance abuse; and requiring employers to notify the director of a positive drug or alcohol test, refusing to submit a sample, possessing a substituted sample, submitting a substituted sample, possessing an adulterated sample or submitting an adulterated sample.

*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.**

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

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

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

8 (A) Amphetamines;

9 (B) Cannabinoids/THC;

10 (C) Cocaine;

11 (D) Opiates;

12 (E) Phencyclidine (PCP);

13 (F) Benzodiazepines;

14 (G) Propoxyphene;

15 (H) Methadone;

16 (I) Barbiturates; and

17 (J) Synthetic narcotics.

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

23 Training. Collected samples shall be tested by laboratories  
24 certified by the United States Department of Health and  
25 Human Services, Substance Abuse and Mental Health  
26 Services Administration (SAMHSA) for collection and  
27 testing. Notwithstanding the provisions of this subdivision,  
28 the mine operator may implement a more stringent substance  
29 abuse screening policy and program;

30 (2) A random substance abuse testing program covering  
31 the substances referenced in subdivision (1) of this  
32 subsection. "Random testing" means that each person subject  
33 to testing has a statistically equal chance of being selected for  
34 testing at random and at unscheduled times. The selection of  
35 persons for random testing shall be made by a scientifically  
36 valid method, such as a random number table or a computer-  
37 based random number generator that is matched with the  
38 persons' Social Security numbers, payroll identification  
39 numbers or other comparable identifying numbers; and

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

44 (b) For purposes of this subsection, preemployment  
45 testing shall be required upon hiring by a new employer,  
46 rehiring by a former employer following a termination of the  
47 employer/employee relationship or transferring to a West  
48 Virginia mine from an employer's out-of-state mine to the  
49 extent that any substance abuse test required by the employer  
50 in the other jurisdiction does not comply with the minimum  
51 standards for substance abuse testing required by this article.  
52 Furthermore, the provisions of this section apply to all  
53 employers that employ certified persons who work in mines,

54 regardless of whether that employer is an operator,  
55 contractor, subcontractor or otherwise.

56 (c) (1) Every employer shall notify the director, on a form  
57 prescribed by the director, within seven (7) days of any of the  
58 following:

59 (A) A positive drug or alcohol test of a certified person,  
60 whether it be a preemployment test, random test, reasonable  
61 suspicion test or post-accident test;

62 (B) The refusal of a certified person to submit a sample;

63 (C) A certified person possessing a substituted sample or  
64 an adulterated sample; or

65 (D) A certified person submitting a substituted sample or  
66 an adulterated sample.

67 (2) With respect to any certified person subject to a  
68 collective bargaining agreement, the employer shall notify the  
69 director, on a form prescribed by the director, within seven  
70 (7) days of any of the following: *Provided*, That notification  
71 pursuant to this subdivision shall not result in the immediate  
72 temporary suspension, suspension or revocation of any  
73 certificate held by a certified person who is subject to a  
74 collective bargaining agreement unless and until the  
75 arbitration is concluded and the discharge is upheld:

76 (A) A positive drug or alcohol test of a certified person,  
77 whether it be a preemployment test, random test, reasonable  
78 suspicion test or post-accident test;

79 (B) The refusal of a certified person to submit a sample;

80 (C) A certified person possessing a substituted sample or  
81 an adulterated sample; or

82 (D) A certified person submitting a substituted sample or  
83 an adulterated sample.

84 (3) When the employer submits the completed  
85 notification form prescribed by the director, the employer  
86 shall also submit a copy of the laboratory test results showing  
87 the substances tested for and the results of the test.

88 (4) Notice shall result in the immediate temporary  
89 suspension of all certificates held by the certified person who  
90 failed the screening, pending a hearing before the board of  
91 appeals pursuant to section two of this article: *Provided*, That  
92 notification pursuant to this subsection shall not result in the  
93 immediate temporary suspension of any certificate held by a  
94 certified person who is subject to a collective bargaining  
95 agreement unless and until the arbitration is concluded and  
96 the discharge is upheld, and no certificate held by a certified  
97 person who is subject to a collective bargaining agreement  
98 shall be suspended or revoked unless the discharge is upheld  
99 in arbitration: *Provided, however*, That if the certified person  
100 terminates his or her employment or voluntarily removes  
101 himself or herself from the grievance or arbitration  
102 procedure, the certified person may be immediately,  
103 temporarily decertified pursuant to this article.

104 (d) Suspension or revocation of a certified person's  
105 certificate as a miner or other miner specialty in another  
106 jurisdiction by the applicable regulatory or licensing authority  
107 for substance abuse-related matters shall result in the director  
108 immediately and temporarily suspending the certified  
109 person's West Virginia certificate until such time as the  
110 certified person's certification is reinstated in the other  
111 jurisdiction.

112 (e) The provisions of this article shall not be construed to  
113 preclude an employer from developing or maintaining a drug  
114 and alcohol abuse policy, testing program or substance abuse  
115 program that exceeds the minimum requirements set forth in  
116 this section. The provisions of this article shall also not be  
117 construed to require an employer to alter, amend, revise or  
118 otherwise change, in any respect, a previously established  
119 substance abuse screening policy and program that meets or  
120 exceeds the minimum requirements set forth in this section.  
121 The provisions of this article shall require an employer to  
122 subject its employees who as part of their employment are  
123 regularly present at a mine and who are employed in a safety-  
124 sensitive position to preemployment and random substance  
125 abuse tests: *Provided*, That each employer shall retain the  
126 discretion to establish the parameters of its substance abuse  
127 screening policy and program so long as it meets the  
128 minimum requirements of this article. For purposes of this  
129 section, a “safety-sensitive position” means an employment  
130 position where the employee’s job responsibilities include  
131 duties and activities that involve the personal safety of the  
132 employee or others working at a mine.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this  
the ..... Day of ....., 2014.

.....  
*Governor*