

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 623

(By Senators Palumbo, Tucker and Snyder)

[Originating in the Committee on the Judiciary;
reported February 19, 2014.]

A BILL 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 CFR 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) The employer or his or her agent shall notify the
57 director at least quarterly, on a form prescribed by the
58 director, of the number of preemployment substance abuse
59 screening tests administered during the prior calendar quarter
60 and the number of positive test results associated with the
61 substance abuse screening tests administered.

62 ~~(d) The employer or his or her agent shall notify the~~
63 ~~director, on a form prescribed by the director, within seven~~
64 ~~days following completion of an arbitration conducted~~
65 ~~pursuant to a collective bargaining agreement applicable to~~
66 ~~the certified person, if any, of discharging a certified person~~
67 ~~for violation of the employer's substance abuse screening~~

68 ~~policy and program.~~ Every employer shall notify the
69 director, on a form prescribed by the director, within seven
70 (7) days of a positive drug or alcohol test for each certified
71 person failing a random test, pre-employment test, reasonable
72 suspicion test, post-accident test, refusing to submit a sample,
73 possessing a substituted sample, submitting a substituted
74 sample, possessing an adulterated sample or submitting an
75 adulterated sample. With respect to any certified person
76 subject to a collective bargaining agreement, the employer
77 shall notify the director, on a form prescribed by the director,
78 within seven (7) days following the completion of an
79 arbitration conducted pursuant to a collective bargaining
80 agreement applicable to the certified person of a positive
81 drug or alcohol test for each person failing a random test,
82 pre-employment test, reasonable suspicion test, post-accident
83 test, refusing to submit a sample, possessing a substituted
84 sample, submitting a substituted sample, possessing an
85 adulterated sample or submitting an adulterated sample.
86 When the employer submits the completed form prescribed

87 by the director, the employer shall also submit a copy of the
88 laboratory test results showing the substances tested for and
89 the results of the test. The notification shall be accompanied
90 by a record of the test showing positive results or other
91 violation. Notice shall result in the immediate temporary
92 suspension of all certificates held by the certified person who
93 failed the screening, pending a hearing before the board of
94 appeals pursuant to section two of this article.

95 (e) Suspension or revocation of a certified person's
96 certificate as a miner or other miner specialty in another
97 jurisdiction by the applicable regulatory or licensing
98 authority for substance abuse-related matters shall result in
99 the director immediately and temporarily suspending the
100 certified person's West Virginia certificate until such time as
101 the certified person's certification is reinstated in the other
102 jurisdiction.

103 (f) The provisions of this article shall not be construed to
104 preclude an employer from developing or maintaining a drug
105 and alcohol abuse policy, testing program or substance abuse

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