

H. B. 2910

(By Delegates R. Phillips, Hartman, Stansbury, Bates,
J. Nelson, R. Smith, Gearheart and Butler)

[Introduced February 24, 2015; referred to the
Committee on Energy then the Judiciary.]

A BILL to repeal §22A-6-1, §22A-6-2, §22A-6-3, §22A-6-4, §22A-6-5, §22A-6-6, §22A-6-7, §22A-6-8, §22A-6-9, §22A-6-10, §22A-6-11, §22A-6-12, §22A-6-13 and §22A-6-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §22A-1-1, §22A-1-2, §22A-1-3, §22A-1-4, §22A-1-5, §22A-1-6, §22A-1-7, §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12, §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20, §22A-1-21; to amend said code by adding thereto a new section, designated §22A-1-3a; and to amend and reenact §22A-2-3, §22A-2-4, §22A-2-8, §22A-2-12, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55 and §22A-2-77 of said code, all relating to preserving employment and promoting health and safety in the coal industry; reorganizing the Office of Miners' Health, Safety and Training; providing for appointment of deputy directors; segregating the office into districts; continuing the Board of Coal Mine Health and Safety within the office of Miners' Health; redefining qualifications for members of board; abolishing coal mine safety and technical review committee; providing for the promulgation of rules; removing the probationary period and permanent tenure for mine inspectors; providing for mine inspectors, safety instructors,

1 electrical inspectors and surface inspectors to serve at the will and discretion of director,
2 barring conflicts of interest; changing the requirements for requesting immediate inspection
3 and requires request in writing; providing for representative of operator to accompany
4 representative of director on inspections; providing for findings, orders, notices; removing
5 the requirement that entire mine be given closure order when director determines area of
6 imminent danger does not include entire mine; providing that all orders or decisions of
7 director subject to judicial review; requiring the director to file civil actions in circuit court
8 of county where mine is located; removing the requirement that civil penalties be deposited
9 in Special Health, Safety and Training Fund; requiring all working places be examined for
10 hazards once per shift; eliminating the requirement to use obsolete equipment; eliminating
11 the requirement that operator provide safety committee anonometers and smoke tubes;
12 providing that miners may return to underground working areas if ventilation restored and
13 mine determined to be safe; changing the intervals hinged man doors required; increasing the
14 numbers of apprentices under supervision of trainer; removing the authority of director to
15 propose emergency rules; changing who may receive fire boss report; providing for the
16 instruction of persons affected by revisions to roof control plans; eliminating the requirement
17 that man trip be idle one hour before transporting men; and requiring filing of mine operator
18 report with director quarterly instead of monthly.

19 Be it enacted by the Legislature of West Virginia:

20 That §22A-6-1, §22A-6-2, §22A-6-3, §22A-6-4, §22A-6-5, §22A-6-6, §22A-6-7, §22A-6-8,
21 §22A-6-9, §22A-6-10, §22A-6-11, §22A-6-12, §22A-6-13 and §22A-6-14 of the Code of West
22 Virginia, 1931, as amended, be repealed; that §22A-1-1, §22A-1-2, §22A-1-3, §22A-1-4, §22A-1-5,

1 §22A-1-6, §22A-1-7, §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12 §22A-1-13 §22A-1-14,
2 §22A-1-15, §22A-1-19, §22A-1-20, §22A-1-21 of said code be amended and reenacted; that said
3 code be amended by adding thereto a new section, designated §22A-1-3a; and that §22A-2-3,
4 §22A-2-4, §22A-2-8, §22A-2-12, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55 and
5 §22A-2-77 of said code be amended and reenacted, all to read as follows:

6 **ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;**
7 **ADMINISTRATION; ENFORCEMENT.**

8 **§22A-1-1. Continuation of the office of miners' health, safety and training; purpose.**

9 (a) The office of miners' health, safety and training is continued and is a separate office
10 within the Department of Commerce. ~~labor and environmental resources.~~ The office shall be
11 administered, in accordance with the provisions of this article, under the supervision and direction
12 of the director of the office of miners' health, safety and training.

13 (b) The ~~division of~~ office of health, safety and training shall have as its purpose the
14 supervision of the execution and enforcement of the provisions of this chapter and, in carrying out
15 the aforesaid purposes, it shall give prime consideration to the protection of the safety and health of
16 persons employed within or at the mines of this state. ~~In addition, the division shall, consistent with~~
17 ~~the aforesaid prime consideration;~~ Consistent with the primary purposes, the office shall protect and
18 preserve mining property and property used in connection therewith.

19 **§22A-1-2. Definitions.**

20 Unless the context in which used clearly requires a different meaning, the following
21 definitions apply to this chapter:

22 (a) *General.*

1 (1) Accident: The term "accident" means any mine explosion, mine ignition, mine fire, or
2 mine inundation, or injury to, or death of any person.

3 (2) Agent: The term "agent" means any person charged with responsibility for the operation
4 of all or a part of a mine or the supervision of the miners in a mine.

5 (3) Approved: The term "approved" means in strict compliance with mining law, or, in the
6 absence of law, accepted by a recognized standardizing body or organization whose approval is
7 generally recognized as authoritative on the subject.

8 (4) Face equipment: The term "face equipment" means mobile or portable mining machinery
9 having electric motors or accessory equipment normally installed or operated in by the last open
10 crosscut in an entry or room.

11 (5) Imminent danger: The term "imminent danger" means the existence of any condition or
12 practice in a coal mine which could reasonably be expected to cause death or serious physical harm
13 before such condition or practice can be abated.

14 (6) Mine: The term "mine" includes the shafts, slopes, drifts or inclines connected with, or
15 intended in the future to be connected with, excavations penetrating coal seams or strata, which
16 excavations are ventilated by one general air current or divisions thereof, and connected by one
17 general system of mine haulage over which coal may be delivered to one or more points outside the
18 mine, and the surface structures or equipment connected or associated therewith which contribute
19 directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

20 (7) Miner: The term "miner" means any individual working in a coal mine.

21 (8) Operator: The term "operator" means any firm, corporation, partnership or individual
22 operating any coal mine, or part thereof, or engaged in the construction of any facility associated with

1 a coal mine.

2 (9) Permissible: The term "permissible" means any equipment, device or explosive that has
3 been approved as permissible by the federal mine safety and health administration and/or the United
4 States bureau of mines and meets all requirements, restrictions, exceptions, limitations and
5 conditions attached to such classification by that agency or the bureau.

6 (10) Person: The term "person" means any individual, partnership, association, corporation,
7 firm, subsidiary of a corporation or other organization.

8 (11) Work of preparing the coal: The term "work of preparing the coal" means the breaking,
9 crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal or lignite
10 and such other work of preparing such coal as is usually done by the operator of the coal mine.

11 (b) *Office of miners' health, safety and training.*

12 (1) Board: The term "board" means the Board of Coal Mine Health and Safety which advises
13 the director with respect to rule making.

14 (†) (2) Board of appeals: The term "board of appeals" means as provided for in article five
15 of this chapter.

16 (‡) (3) Director: The term "director" means the director of the office of miners' health, safety
17 and training provided for in section three of this article.

18 (‡) (4) Mine inspector: The term "mine inspector" means a state mine inspector provided for
19 in section eight of this article.

20 (‡) (5) Mine inspectors' examining board: The term "mine inspectors' examining board" shall
21 mean the mine inspectors' examining board provided for in article nine of this chapter.

22 (‡) (6) Office: The term "office" means, when referring to a specific office, the office of

1 miners' health, safety and training provided for in this article. The term "office", when used
2 generically, includes any office, board, agency, unit, organizational entity or component thereof.

3 (c) *Mine areas.*

4 (1) Abandoned workings: The term "abandoned workings" means excavation, either caved
5 or sealed, that is deserted and in which further mining is not intended, or open workings which are
6 ventilated and not inspected regularly.

7 (2) Active workings: The term "active workings" means all places in a mine that are
8 ventilated and inspected regularly.

9 (3) Drift: The term "drift" means a horizontal or approximately horizontal opening through
10 the strata or in a coal seam and used for the same purposes as a shaft.

11 (4) Excavations and workings: The term "excavations and workings" means any or all parts
12 of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms and
13 working places, whether abandoned or in use.

14 (5) Inactive workings: The term "inactive workings" includes all portions of a mine in which
15 operations have been suspended for an indefinite period, but have not been abandoned.

16 (6) Mechanical working section: The term "mechanical working section" means an area of
17 a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working
18 places that are generally contiguous; and (C) which is of such size to permit necessary supervision
19 during shift operation, including preshift and on-shift examinations and tests required by law.

20 (7) Panel: The term "panel" means workings that are or have been developed off of submain
21 entries which do not exceed three thousand feet in length.

22 (8) Return air: The term "return air" means a volume of air that has passed through and

1 ventilated all the working places in a mine section.

2 (9) Shaft: The term "shaft" means a vertical opening through the strata that is or may be used
3 for the purpose of ventilation, drainage, and the hoisting and transportation of individuals and
4 material, in connection with the mining of coal.

5 (10) Slope: The term "slope" means a plane or incline roadway, usually driven to a coal seam
6 from the surface and used for the same purposes as a shaft.

7 (11) Working face: The term "working face" means any place in a coal mine in which work
8 of extracting coal from its natural deposit in the earth is performed during the mining cycle.

9 (12) Working place: The term "working place" means the area of a coal mine in by the last
10 open crosscut.

11 (13) Working section: The term "working section" means all areas of the coal mine from the
12 loading point of the section to and including the working faces.

13 (14) Working unit: The term "working unit" means an area of a mine in which coal is mined
14 with a set of production equipment; a conventional mining unit by a single loading machine; a
15 continuous mining unit by a single continuous mining machine, which is comprised of a number of
16 working places.

17 (d) *Mine personnel.*

18 (1) Assistant mine foreman: The term "assistant mine foreman" means a certified person
19 designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the
20 persons employed therein.

21 (2) Certified electrician: The term "certified electrician" means any person who is qualified
22 as a mine electrician and who has passed an examination given by the office, or has at least three

1 years of experience in performing electrical work underground in a coal mine, in the surface work
2 areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment
3 manufacturing industry or in any other industry using or manufacturing similar equipment, and has
4 satisfactorily completed a coal mine electrical training program approved by the office or any person
5 who is qualified as a mine electrician in any state that recognizes certified electricians licensed in
6 West Virginia.

7 (3) Certified person: The term "certified person", when used to designate the kind of person
8 to whom the performance of a duty in connection with the operation of a mine shall be assigned,
9 means a person who is qualified under the provisions of this law to perform such duty.

10 (4) Interested persons: The term "interested persons" includes the operator, members of any
11 mine safety committee at the mine affected and other duly authorized representatives of the mine
12 workers and the office.

13 (5) Mine foreman: The term "mine foreman" means the certified person whom the operator
14 or superintendent shall place in charge of the inside workings of the mine and of the persons
15 employed therein.

16 (6) Qualified person: The term "qualified person" means a person who has completed an
17 examination and is considered qualified on record by the office.

18 (7) Shot firer: The term "shot firer" means any person having had at least two years of
19 practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering,
20 and who has demonstrated his or her knowledge of mine gases, the use of a flame safety lamp, and
21 other approved detecting devices by examination and certification given him or her by the office.

22 (8) Superintendent: The term "superintendent" means the person who has, on behalf of the

1 operator, immediate supervision of one or more mines.

2 (9) Supervisor: The term "supervisor" means a superintendent, mine foreman, assistant mine
3 foreman or any person specifically designated by the superintendent or mine foreman to supervise
4 work or employees and who is acting pursuant to such specific designation and instructions.

5 (e) *Electrical.*

6 (1) Armored cable: The term "armored cable" means a cable provided with a wrapping of
7 metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

8 (2) Borehole cable: The term "borehole cable" means a cable designed for vertical
9 suspension in a borehole or shaft and used for power circuits in the mine.

10 (3) Branch circuit: The term "branch circuit" means any circuit, alternating current or direct
11 current, connected to and leading from the main power lines.

12 (4) Cable: The term "cable" means a standard conductor (single conductor cable) or a
13 combination of conductors insulated from one another (multiple conductor cable).

14 (5) Circuit breaker: The term "circuit breaker" means a device for interrupting a circuit
15 between separable contacts under normal or abnormal conditions.

16 (6) Delta connected: The term "delta connected" means a power system in which the
17 windings or transformers or a.c. generators are connected to form a triangular phase relationship, and
18 with phase conductors connected to each point of the triangle.

19 (7) Effectively grounded: The term "effectively grounded" is an expression which means
20 grounded through a grounding connection of sufficiently low impedance (inherent or intentionally
21 added or both) so that fault grounds which may occur cannot build up voltages in excess of limits
22 established for apparatus, circuits or systems so grounded.

1 (8) Flame-resistant cable, portable: The term "flame-resistant cable, portable" means a
2 portable flame-resistant cable that has passed the flame tests of the federal mine safety and health
3 administration.

4 (9) Ground or grounding conductor (mining): The term "ground or grounding conductor
5 (mining)", also referred to as a safety ground conductor, safety ground and frame ground, means a
6 metallic conductor used to connect the metal frame or enclosure of any equipment, device or wiring
7 system with a mine track or other effective grounding medium.

8 (10) Grounded (earthed): The term "grounded (earthed)" means that the system, circuit or
9 apparatus referred to is provided with a ground.

10 (11) High voltage: The term "high voltage" means voltages of more than one thousand volts.

11 (12) Lightning arrester: The term "lightning arrester" means a protective device for limiting
12 surge voltage on equipment by discharging or by passing surge current; it prevents continued flow
13 of follow current to ground and is capable of repeating these functions as specified.

14 (13) Low voltage: The term "low voltage" means up to and including six hundred sixty volts.

15 (14) Medium voltage: The term "medium voltage" means voltages from six hundred sixty-
16 one to one thousand volts.

17 (15) Mine power center or distribution center: The term "mine power center or distribution
18 center" means a combined transformer or distribution unit, complete within a metal enclosure from
19 which one or more low-voltage power circuits are taken.

20 (16) Neutral (derived): The term "neutral (derived)" means a neutral point or connection
21 established by the addition of a "zig-zag" or grounding transformer to a normally underground power
22 system.

1 (17) Neutral point: The term "neutral point" means the connection point of transformer or
2 generator windings from which the voltage to ground is nominally zero, and is the point generally
3 used for system groundings in wye-connected a.c. power system.

4 (18) Portable (trailing) cable: The term "portable (trailing) cable" means a flexible cable or
5 cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or
6 other external source of electric energy where permanent mine wiring is prohibited or is
7 impracticable.

8 (19) Wye-connected: The term "wye-connected" means a power system connection in which
9 one end of each phase windings or transformers or a.c. generators are connected together to form a
10 neutral point, and a neutral conductor may or may not be connected to the neutral point, and the
11 neutral point may or may not be grounded.

12 (20) Zig-zag transformer (grounding transformer): The term "zig-zag transformer (grounding
13 transformer)" means a transformer intended primarily to provide a neutral point for grounding
14 purposes.

15 **§22A-1-3. Director of the Office of Miners' Health, Safety and Training.**

16 (a) The Director of the office of Miners' Health, Safety and Training is responsible for surface
17 and underground safety inspections of coal mines and the administration of the office of Miners'
18 Health, Safety and Training.

19 (b) The director is the chief executive officer of the office. Subject to provisions of law, he
20 or she shall organize the office into those offices, sections, agencies and other units of activity found
21 by the director to be desirable for the orderly, efficient and economical administration of the office.

22 The office shall have two deputy directors appointed by director who shall serve at the will and

1 pleasure of the director. The director may appoint any other employees needed for the operation of
2 the office and may prescribe their powers and duties and fix their compensation within amounts
3 appropriated.

4 (c) The director shall be appointed by the Governor, by and with the advice and consent of
5 the Senate, and shall serve at the will and pleasure of the Governor.

6 (d) The Director of the Office of Miners' Health, Safety and Training shall be a citizen of
7 West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated
8 interest and five years' education or training in underground mining safety, and three years'
9 experience in underground mining and shall have at least three years of experience in a position of
10 responsibility in at least one discipline relating to the duties and responsibilities for which the
11 director will be responsible upon assumption of the office of director. Special reference shall be
12 given to his or her administrative experience and ability. The director shall devote all of his or her
13 time to the duties of the position of director and shall not be directly interested financially in any
14 mine in this or any other state nor shall the director, either directly or indirectly, be a majority owner
15 of, or have control of or a controlling interest in, a mine in this or any other state. The director shall
16 not be a candidate for or hold any other public office, shall not be a member of any political party
17 committee and shall immediately forfeit and vacate his or her office as director in the event he or she
18 becomes a candidate for or accepts appointment to any other public office or political party
19 committee: *Provided*, That, in the event of a vacancy in the position of director, the Governor may
20 fill the director's position on an interim basis by appointing an acting director to exercise the powers
21 of the director. The acting director shall be a citizen of West Virginia, shall be a competent person
22 of good repute and temperate habits with a demonstrated interest and five years' education, training

1 or experience in underground coal mining safety and shall have at least three years of experience in
2 a position of responsibility in at least one discipline relating to the duties and responsibilities for
3 which the acting director will be responsible during his or her interim service in the office of
4 director. The interim service appointment can not last for more than one year, after which a
5 permanent director must be appointed.

6 (e) The director shall be allowed and paid necessary expenses incident to the performance
7 of his or her official duties. Prior to the assumption of his or her official duties, the director shall
8 take the oath required of public officials prescribed by section five, article IV of the Constitution of
9 West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of
10 \$10,000. The executed oath and bond shall be filed in the Office of the Secretary of State.
11 Premiums on the bond shall be paid from office funds.

12 **§22A-1-3a. Districts and deputy directors.**

13 (a) The office shall be divided into four districts.

14 (1) District 1 consists of mines in Barbour, Berkeley, Brooke, Calhoun, Doddridge, Gilmer,
15 Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Lewis, Marion, Marshall, Mineral,
16 Monongalia, Morgan, Ohio, Pendleton, Pleasants, Preston, Randolph, Richie, Taylor, Tucker, Tyler,
17 Upshur, Wetzell, Wirt and Wood counties.

18 (2) District 2 consists of mines in McDowell, Mercer, Monroe, Summers and Wyoming
19 counties.

20 (3) District 3 consists of mines in Boone, Cabell, Lincoln, Logan, Mason, Mingo, Putnam
21 and Wayne counties.

22 (4) District 4 consists of mines in Clay, Fayette, Greenbrier, Jackson, Kanawha, Nicholas,

1 Pocahontas, Raleigh, Roane and Webster counties.

2 (b) The director shall appoint two deputy directors for the office.

3 (1) The deputy directors shall be citizens of West Virginia with one deputy director having
4 maintained a residence within District 1 for five consecutive years prior to his or her appointment
5 and the other deputy director having a residence within Districts 2, 3 or 4 for five consecutive years
6 prior to his or her appointment.

7 (2) The deputy directors of the Office of Miners' Health, Safety and Training shall be
8 competent persons of good repute and temperate habits with a demonstrated interest and five years'
9 education or training in underground mining safety, and three years' experience in underground
10 mining and shall have at least three years of experience in a position of responsibility in at least one
11 discipline relating to the duties and responsibilities for which the deputy directors will be responsible
12 upon assumption of the office of deputy director. Special reference shall be given to his or her
13 administrative experience and ability. The deputy directors shall devote all of his or her time to the
14 duties of the position of deputy director and shall not be directly interested financially in any mine
15 in this or any other state nor shall the deputy director, either directly or indirectly, be a majority
16 owner of, or have control of or a controlling interest in, a mine in this or any other state. The deputy
17 directors may not hold office or be a member of the United Mine Workers Association or any other
18 miner representative. The deputy directors may not be a candidate for or hold any other public
19 office, may not be a member of any political party committee and shall immediately forfeit and
20 vacate his or her office as director in the event he or she becomes a candidate for or accepts
21 appointment to any other public office or political party committee.

22 (3) The deputy directors are allowed and paid necessary expenses incident to the performance

1 of their official duties.

2 **§22A-1-4. Powers and duties of the Director of the Office of Miners' Health, Safety and**
3 **Training.**

4 (a) The Director of the Office of Miners' Health, Safety and Training is hereby empowered
5 and it is his or her duty to administer and enforce the provisions of this chapter relating to health and
6 safety inspections and enforcement and training in coal mines, underground clay mines, open pit
7 mines, cement manufacturing plants and underground limestone and sandstone mines.

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

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

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

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

19 (4) Suspend, for good cause, any mine inspector without compensation for a period not
20 exceeding thirty days in any calendar year.

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

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

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

6 (8) Make annually a full and complete written report of the administration of the office to the
7 Governor and the Legislature of the state for the year ending June 30. The report shall include the
8 number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke
9 and other minerals (excluding oil and gas) produced in the state, the number of individuals
10 employed, number of mines in operation, statistics with regard to health and safety of persons
11 working in the mines including the causes of injuries and deaths, improvements made, prosecutions,
12 the total funds of the office from all sources identifying each source of the funds, the expenditures
13 of the office, the surplus or deficit of the office at the beginning and end of the year, the amount of
14 fines collected, the amount of fines imposed, the value of fines pending, the number and type of
15 violations found, the amount of fines imposed, levied and turned over for collection, the total amount
16 of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other
17 officials of the office, the number of inspections made by each inspector, the number and type of
18 violations found by each inspector. However, no inspector may be identified by name in this report.
19 Such reports shall be filed with the Governor and the Legislature on or before December 31 of the
20 same year for which it was made, and shall upon proper authority be printed and distributed to
21 interested persons.

22 (9) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine

1 explosions or any mine accident; to administer oaths and to require production of any books, papers,
2 records or other documents relevant or material to any hearing, investigation or examination of any
3 mine permitted by this chapter. Any witness so called or subpoenaed shall receive \$40 per diem and
4 shall receive mileage at the rate of \$.15 for each mile actually traveled, which shall be paid out of
5 the State Treasury upon a requisition upon the State Auditor, properly certified by the witness.

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

10 (11) Beginning January 1, 2013, the director shall share information regarding suspension
11 or revocation of a certificate of a certified person, as defined in this article for violation of the
12 substance abuse provisions of article one-a of this chapter with other states that subject similar
13 persons to disciplinary action for violation of a substance abuse policy.

14 (12) The director shall propose rules for legislative approval pursuant to article three, chapter
15 twenty-nine-a of this code, a rule establishing a program for the sharing of information between
16 employers who employ certified persons regarding the discharge of persons in safety sensitive
17 positions as defined in section one, article one-a of this chapter for violation of an employer's
18 substance abuse policy.

19 (13) Perform all other duties which are expressly imposed upon him or her by the provisions
20 of this chapter.

21 (14) Impose reasonable fees upon applicants taking tests administered pursuant to the
22 requirements of this chapter.

1 (15) Impose reasonable fees for the issuance of certifications required under this chapter.

2 (16) Prepare study guides and other forms of publications relating to mine safety and charge
3 a reasonable fee for the sale of the publications.

4 (17) Make all records of the office open for inspection of interested persons and the public.

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

11 **§22A-1-5. Offices continued in the office of Miners' Health, Safety and Training.**

12 (a) There are hereby continued in the office of Miners' Health, Safety and Training the
13 following offices:

14 (1) The Board of Coal Mine Health and Safety established pursuant to article six of this
15 chapter;

16 ~~(2) The coal mine safety and technical review committee established pursuant to article six~~
17 ~~of this chapter;~~

18 ~~(3)~~ (2) The board of miner training, education and certification established pursuant to article
19 seven of this chapter;

20 ~~(4)~~ (3) The mine inspectors' examining board established pursuant to article nine of this
21 chapter; and

22 ~~(5)~~ (4) The board of appeals provided for pursuant to the provisions of article five of this

1 chapter.

2 (b) Nothing in this article may authorize the director or the secretary of the Department of
3 Commerce, labor and environmental resources to alter, discontinue or abolish any office, board or
4 commission or the functions thereof, which are established by statute.

5 **§22A-1-6. Director's authority to promulgate rules.**

6 ~~The director has the power and authority to propose or promulgate rules to organize the office
7 and to carry out and implement the provisions of this chapter relating to health and safety inspections
8 and enforcement. All rules in effect on the effective date of this article which pertain to the
9 provisions of this chapter as they relate to health and safety inspection and enforcement shall remain
10 in effect until changed or superseded by the director, or as appropriate. Except when specifically
11 exempted by the provisions of this chapter, all rules or changes thereto shall be proposed or
12 promulgated by the director in accordance with the provisions of chapter twenty-nine-a of this code.~~

13

14 (a) The director has the power and authority to propose or promulgate rules to carry out and
15 implement the provisions of this chapter relating to health and safety inspections and enforcement.
16 All rules in effect on the effective date of this article which pertain to the provisions of this chapter
17 as they relate to health and safety inspection and enforcement shall remain in effect until changed
18 or superseded by the director, or as appropriate. All rules or changes thereto shall be proposed or
19 promulgated by the director in accordance with the provisions of chapter twenty-nine-a of this code.
20 Except as provided in section (b) of this section, the director has the power and authority to propose
21 or promulgate rules to organize the office.

22 (b) The Board of Coal Mine Health and Safety is continued and is a board within the office.

1 The board consists of the director and six voting members who are residents of this state, and who
2 are appointed as follows:

3 (1) The Governor shall appoint, by and with the advice and consent of the Senate, three board
4 members to represent the viewpoint of those operators in this state. When those members are to be
5 appointed, the Governor shall request from the major trade association representing operators in the
6 state a list of three nominees for each such position on the board. At least one nominee shall be from
7 District 1 and at least one nominee shall be from District 2, 3, or 4. These nominees shall be persons
8 with special experience and competence in health and safety. There shall be submitted with such
9 list a summary of the qualifications of each nominee. For purposes of this subdivision, the major
10 trade association representing operators in this state is that association which represents operators
11 accounting for over one half of the coal produced in mines in this state in the year prior to the year
12 in which the appointment is to be made and "operators in this state" means any operator owning a
13 mine situated within this state.

14 (2) The Governor shall appoint, by and with the advice and consent of the Senate, three
15 members who can reasonably be expected to represent the viewpoint of the working miners of this
16 state. At least one nominee shall be from District 1 and at least one nominee shall be from District
17 2, 3, or 4. When members are to be appointed, the Governor shall request from the major employee
18 organization representing coal miners as well as the three largest operators by coal production within
19 this state a list of five nominees for each position on the board. The major trade association
20 representing operators shall advise the Governor of the three largest operators in the state. The
21 highest ranking official within the major employee organization representing coal miners and chief
22 executive officers of the three largest operators by coal production within this state shall submit a

1 list of five nominees for each such position on the board. These nominees shall have a background
2 in health and safety. The Governor shall make the appointments from the requested lists of
3 nominees;

4 (3) All appointments made by the Governor under the provisions of subdivisions (1) and (2)
5 of this subsection shall be with the advice and consent of the Senate;

6 (4) The members shall serve a four year term and are eligible for reappointment for another
7 four year term.

8 (5) Each member of the board not otherwise employed by the state shall be paid the same
9 compensation, and each member of the board shall be paid the expense reimbursement, as is paid
10 to members of the Legislature for their interim duties as recommended by the Citizens Legislative
11 Compensation Commission and authorized by law for each day or portion thereof engaged in the
12 discharge of official duties. In the event the expenses are paid by a third party, the member shall not
13 be reimbursed by the state. The reimbursement shall be paid out of the State Treasury upon a
14 requisition upon the State Auditor, properly certified by the Office of Miners' Health, Safety and
15 Training. No employer shall prohibit a member of the board from exercising leave of absence from
16 his or her place of employment in order to attend a meeting of the board or a meeting of a
17 subcommittee of the board, or to prepare for a meeting of the board, any contract of employment to
18 the contrary notwithstanding.

19 (c) The board shall adopt as standard rules the "coal mine health and safety provisions of this
20 chapter". The Board of Coal Mine Health and Safety shall devote its time toward promulgating rules
21 in those areas specifically directed by this chapter and those necessary to prevent fatal accidents and
22 injuries.

1 (d) The board shall review such standard rules and, when deemed appropriate to improve or
2 enhance coal mine health and safety, revise the same or develop and promulgate new rules dealing
3 with coal mine health and safety.

4 (e) The board shall develop, promulgate and revise, as may be appropriate, rules as are
5 necessary and proper to effectuate the purposes of article two of this chapter and to prevent the
6 circumvention and evasion thereof.

7 (f) In considering the promulgation of rules, the board shall consider and commission, with
8 the consent of the director, the latest available scientific data in the field, the technical feasibility of
9 standards, and experience gained under this and other safety statutes. The board shall also consider
10 the need to protect and preserve mining, mining property, and property used in connection therewith.

11 (g) No rules promulgated by the board shall reduce or compromise the level of safety or
12 protection afforded miners below the level of safety or protection afforded by the Federal Mine
13 Safety and Health Act of 1977, as amended, or the rules promulgated thereunder.

14 (h) Any miner or any coal operator has the power to petition the circuit court of the county
15 where they reside or where their mining operations occur for a determination as to whether any rule
16 promulgated or revised reduces the protection afforded miners below that provided by the Federal
17 Mine Safety and Health Act of 1977, as amended, or the rules promulgated thereunder, or is
18 otherwise contrary to law. However, any rule properly promulgated by the board pursuant to the
19 terms and conditions of this chapter creates a rebuttable presumption that said rule does not reduce
20 the protection afforded miners below that provided by the Federal Mine Safety and Health Act of
21 1977, as amended, or the rules promulgated thereunder.

22 **§22A-1-7. Savings provisions.**

1 All orders, determinations, rules, permits, grants, contracts, certificates, licenses and
2 privileges which have been issued, made, granted, or allowed to become effective by the Governor,
3 any state department or agency or official thereof, or by a court of competent jurisdiction, in the
4 performance of functions which were transferred from the division of energy to the secretary of the
5 Department of Commerce ~~labor and environmental resources~~, to the director, or to the office, and
6 which were in effect on the date such transfer occurred, shall continue in effect according to their
7 terms until modified, terminated, superseded, set aside or revoked in accordance with law by the
8 Governor, the secretary, the director, or other authorized official, a court of competent jurisdiction
9 or by operation of law.

10 **§22A-1-8. Mine inspectors; regions and districts; employment; tenure; oath.**

11 Notwithstanding any other provisions of this code to the contrary, mine inspectors shall be
12 selected, serve and be removed as provided in this article.

13 ~~The director shall divide the state into a sufficient number of regions, so as to equalize, as~~
14 ~~far as practical, the work of each inspector.~~ The director may assign inspectors to districts and may
15 designate and assign not more than one inspector-at-large and one assistant inspector-at-large to each
16 region. The director may designate the places of abode of inspectors at points convenient to the
17 mines of their respective districts, and, in the case of inspectors-at-large and assistant inspectors-at-
18 large, their respective regions.

19 All mine inspectors appointed after the mine inspectors' examining board has certified to the
20 director an adequate register of qualified eligible candidates, so long as the register contains the
21 names of at least three qualified eligible candidates, shall be appointed from the names on such
22 register. ~~Each original appointment shall be made by the director for a probationary period of not~~

1 ~~more than one year.~~

2 The director shall make each appointment from among the three qualified eligible candidates
3 on the register having the highest grades: *Provided*, That the director may, for good cause, at least
4 thirty days prior to making an appointment, strike any name from the register. Upon striking any
5 name from the register, the director shall immediately notify in writing each member of the mine
6 inspectors' examining board of the action, together with a detailed statement of the reasons therefor.
7 Thereafter, if the mine inspectors' examining board finds, after hearing, that the action of the director
8 was arbitrary or unreasonable, it may then order the name of any candidate so stricken from the
9 register to be reinstated thereon. The reinstatement is effective from the date of removal from the
10 register.

11 The name of any candidate passed over for appointment for three years shall be deleted from
12 the register.

13 ~~After having served for a probationary period of one year to the satisfaction of the director,~~
14 ~~a mine inspector has permanent tenure, subject to dismissal only for cause in accordance with the~~
15 ~~applicable provisions of section twelve of this article. No mine inspector, while in office, may be~~
16 ~~directly or indirectly interested as an employee, owner, lessor, operator, stockholder, superintendent~~
17 ~~or engineer of any coal mine. Before entering upon the discharge of the duties as a mine inspector,~~
18 ~~he or she shall take the oath of office prescribed by section 5, article IV of the Constitution of West~~
19 ~~Virginia, a certificate of which oath shall be filed in the office of the Secretary of State.~~

20 Mine inspectors shall serve at the will and discretion of the director. No mine inspector,
21 while in office, may be directly or indirectly interested as an employee, owner, lessor, operator,
22 stockholder, superintendent or engineer of any coal mine. No mine inspector may hold office or be

1 a member of any employee organization.

2 The inspectors, inspectors-at-large and assistant inspectors-at-large, together with the
3 director, shall make all inspections authorized by this article and article two of this chapter and shall
4 perform such other duties as are imposed upon mine inspectors by this chapter and by any applicable
5 legislative rules.

6 **§22A-1-9. Mine safety instructors; eligibility; qualifications; examinations; salary; provisions**
7 **relating to underground mine inspectors applicable to mine safety instructors.**

8 (a) The office shall employ a sufficient number of mine safety instructors as the director
9 determines to be reasonably necessary in fully and effectively carrying out the applicable provisions
10 of this chapter.

11 (b) To be eligible for employment as a mine safety instructor, the applicant shall be: (1) A
12 citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and
13 reputation, and of temperate habits; (2) a person who has had at least five years of practical
14 experience in coal mines, at least two years of which has been in mines in this state: *Provided*, That
15 graduation from any accredited college of mining engineering may be considered equivalent to two
16 years of practical experience; (3) a person who has had practical experience with dangerous gases
17 found in coal mines, and who has a good theoretical and practical knowledge of mines, mining
18 methods, mine ventilation, sound safety practices and applicable mining laws and rules; and (4) a
19 person who possesses a West Virginia foreman-fireboss certification; or a person who has had at
20 least three years of experience as an actual working team member of a mine rescue team, or at least
21 three years of experience as a member of a first aid team or emergency medical technician team; or
22 a person who has had at least three years of experience as the safety director, or the equivalent as

1 approved by the mine inspectors' examining board, of a mine; or a person who has had at least three
2 years of experience as an active member of a mine safety committee. For the purpose of this section,
3 practical experience means the performance of normal mining duties requiring a person to hold a
4 certificate of competency and qualification as an experienced miner prior to actually performing such
5 duties.

6 (c) (1) In order to qualify for appointment as a mine safety instructor, an eligible applicant
7 shall submit to written, oral and practical examinations administered by the mine inspectors'
8 examining board and furnish evidence of good health, character and other facts establishing
9 eligibility as the board may require. The examinations shall relate to the duties to be performed by
10 a mine safety instructor and, subject to the approval of the mine inspectors' examining board, may
11 be prepared by the director.

12 (2) If the board finds after investigation and examination that an applicant: (A) Is eligible
13 for appointment; and (B) has passed each required examination with a grade of at least seventy-five
14 percent or an overall combined average score of eighty percent, the board shall add the applicant's
15 name and grades to the register of qualified eligible candidates and promptly certify its action in
16 writing to the director. The director shall then appoint one of the candidates from the three having
17 the highest grades.

18 (d) Mine safety instructors shall be paid an annual salary of not less than \$37,400, which shall
19 be fixed by the director, who shall take into consideration ability, performance of duty and
20 experience. Mine safety instructors shall devote all of their time to the duties of the office.

21 ~~(e) Except as expressly provided in this section to the contrary, all provisions of this article~~
22 ~~relating to the eligibility, qualification, appointment, tenure and removal of underground mine~~

1 ~~inspectors, as well as those provisions relating to compensatory time and reimbursement for~~
2 ~~necessary expenses, are applicable to mine safety instructors. Mine safety instructors shall serve at~~
3 ~~the will and discretion of the director. No mine safety instructor, while in office, may be directly or~~
4 ~~indirectly interested as an employee, owner, lessor, operator, stockholder, superintendent or engineer~~
5 ~~of any coal mine. No mine safety instructor may hold office or be a member of any employee~~
6 ~~organization.~~

7 **§22A-1-11. Employment of electrical inspectors; eligibility; qualifications; examinations;**
8 **salary; provisions relating to underground mine inspectors applicable to**
9 **electrical inspectors.**

10 (a) The office shall employ a sufficient number of electrical inspectors as the director
11 determines to be reasonably necessary in fully and effectively carrying out the applicable provisions
12 of this chapter.

13 (b) To be eligible for employment as an electrical inspector, the applicant shall be: (1) A
14 citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and
15 reputation, and of temperate habits; and (2) a person who has had five years of practical electrical
16 experience in coal mines, at least two of which were in mines in this state, or a degree in electrical
17 engineering from an accredited electrical engineering school and three years of practical electrical
18 experience in underground coal mining. For the purposes of this section, practical electrical
19 experience means the performance of duties requiring a person to be a certified electrician, as that
20 term is defined in subdivision (2), subsection (d), section two of this article, prior to actually
21 performing such duties.

22 (c) (1) In order to qualify for appointment as an electrical inspector, an eligible applicant shall

1 submit to written, oral and practical examinations administered by the mine inspectors' examining
2 board and furnish evidence of good health, character and other facts establishing eligibility as the
3 board may require. The examinations shall relate to the duties to be performed by an electrical
4 inspector and, subject to approval of the mine inspectors' examining board, may be prepared by the
5 director.

6 (2) If the board finds after investigation and examination that an applicant: (A) Is eligible
7 for appointment; and (B) has passed the required examinations with an average grade of at least
8 ninety percent, the board shall add the applicant's name and grades to the register of qualified eligible
9 candidates and promptly certify its action in writing to the director. The director shall then appoint
10 one of the candidates from the three having the highest grades.

11 (d) Electrical inspectors shall be paid an annual salary of not less than \$42,828, which shall
12 be fixed by the director, who shall take into consideration ability, performance of duty and
13 experience. Electrical inspectors shall devote all of their time to the duties of the office.

14 ~~(e) Except as expressly provided in this section to the contrary, all provisions of this article~~
15 ~~relating to the eligibility, qualifications, appointment, tenure and removal of underground mine~~
16 ~~inspectors, as well as those provisions relating to compensatory time and reimbursement for~~
17 ~~necessary expenses, are applicable to mine electrical inspectors. Electrical inspectors shall serve~~
18 ~~at the will and discretion of the director. No electrical inspector, while in office, may be directly or~~
19 ~~indirectly interested as an employee, owner, lessor, operator, stockholder, superintendent or engineer~~
20 ~~of any coal mine. No electrical inspector may hold office or be a member of any employee~~
21 ~~organization.~~

22 **§22A-1-12. Employment of underground mine inspectors; eligibility; qualifications;**

1 **examinations; salary and expenses; reinstatement; removal.**

2 (a) The office shall employ as many underground mine inspectors as the director determines
3 to be reasonably necessary in fully and effectively carrying out the applicable provisions of this
4 chapter.

5 (b) To be eligible for employment as a mine inspector the applicant shall be: (1) A citizen
6 of West Virginia, in good health, not less than twenty-four years of age, of good character and
7 reputation and of temperate habits; (2) a person who has had at least five years of practical
8 experience in coal mines, at least two years of which have been in mines of this state: *Provided,*
9 That graduation from any accredited college of mining engineering may be considered the equivalent
10 of two years of practical experience; (3) a person who has had practical experience with dangerous
11 gases found in coal mines; and (4) a person who has a good theoretical and practical knowledge of
12 mines, mining methods, mine ventilation, sound safety practices and applicable mining laws and
13 rules. For the purpose of this section, practical experience means the performance of normal mining
14 duties requiring a person to hold a certificate of competency and qualification as an experienced
15 underground miner prior to actually performing such duties.

16 (c) In order to qualify for appointment as an underground mine inspector, an eligible
17 applicant shall submit to written, oral and practical examinations administered by the mine
18 inspectors' examining board and furnish evidence of good health, character and other facts
19 establishing eligibility as the board may require. The examinations shall relate to the duties to be
20 performed by an underground mine inspector and, subject to the approval of the mine inspectors'
21 examining board, may be prepared by the director. If the board finds after investigation and
22 examination that an applicant: (1) Is eligible for appointment; and (2) has passed each required

1 examination, with a grade of at least seventy-five percent or an overall combined average score of
2 eighty percent, the board shall add the applicant's name and grades to the register of qualified eligible
3 candidates and promptly certify its action in writing to the director. The director shall then appoint
4 one of the candidates from the three having the highest grades.

5 (d) Underground mine inspectors shall be paid an annual salary of not less than \$38,160;
6 assistant inspectors-at-large, not less than \$44,448; inspectors-at-large, not less than \$46,104, each
7 of which shall be fixed by the director, who shall take into consideration ability, performance of
8 duty, and experience. In accordance with established rules of the state's travel management office,
9 underground mine inspectors shall also be allowed and paid expenses necessarily incident to the
10 performance of their official duties: *Provided*, That no reimbursement for expenses may be made
11 other than upon the timely submittal of a properly itemized expense account settlement completed
12 by the underground mine inspector, approved and countersigned by the director, or his or her
13 designated representative, verifying that the expenses were actually incurred in the performance of
14 official duties. Underground mine inspectors shall devote all of their time to the duties of the office
15 and shall be afforded compensatory time or compensation of at least the regular rate for all time in
16 excess of forty hours per week.

17 ~~(c)(1) An underground mine inspector, after having received a permanent appointment, may~~
18 ~~be removed from office only for physical or mental impairment, incompetency, neglect of duty,~~
19 ~~public intoxication, malfeasance in office or other similarly good cause.~~

20 ~~(2) Proceedings for the removal of an underground mine inspector may be initiated by the~~
21 ~~director whenever there is reasonable cause to believe that adequate cause exists, warranting~~
22 ~~removal. The proceeding may be initiated by a verified petition, filed with the mine inspectors²~~

1 ~~examining board by the director, setting forth with particularity the facts alleged. Not less than~~
2 ~~twenty reputable citizens, who are operators or employees in mines in this state, may petition the~~
3 ~~director for the removal of an underground mine inspector. If the petition is verified by at least one~~
4 ~~of the petitioners, based on actual knowledge of the affiant of the alleged facts, which, if true,~~
5 ~~warrant the removal of the inspector, the director shall cause an investigation of the alleged facts to~~
6 ~~be made. If, after the investigation, the director finds that there is substantial evidence, which, if~~
7 ~~true, warrants removal of the inspector, the director shall file a petition with the board requesting~~
8 ~~removal of the inspector.~~

9 ~~(3) On receipt of a petition by the director seeking removal of an underground mine~~
10 ~~inspector, the board shall promptly notify the inspector to appear before it at a time and place~~
11 ~~designated in the notice, which time shall be not less than fifteen days thereafter. There shall be~~
12 ~~attached to the copy of the notice served upon the inspector a copy of the petition filed with the~~
13 ~~board.~~

14 ~~(4) At the time and place designated in the notice, the board shall hear all evidence offered~~
15 ~~in support of the petition and on behalf of the inspector. Each witness shall be sworn, and a~~
16 ~~transcript shall be made of all evidence taken and proceedings had at the hearing. No continuance~~
17 ~~may be granted except for good cause shown. The chair of the board and the director have power~~
18 ~~to administer oaths and subpoena witnesses.~~

19 ~~(5) If any mine inspector against whom a petition has been filed willfully refuses or fails to~~
20 ~~appear before the board, or having appeared, refuses to answer under oath any relevant question on~~
21 ~~the basis that the testimony or answer might incriminate him or her or refuses to waive immunity~~
22 ~~from prosecution because of any relevant matter about which the inspector may be asked to testify,~~

1 ~~then the inspector shall forfeit his or her position.~~

2 ~~(6) If, after hearing, the board finds that the inspector should be removed, it shall enter an~~
3 ~~order to that effect. The decision of the board is final and is not subject to judicial review.~~

4 (e) Underground mine inspectors serve at the will and discretion of the director. No
5 underground mine inspector, while in office, may be directly or indirectly interested as an employee,
6 owner, lessor, operator, stockholder, superintendent or engineer of any coal mine. No underground
7 mine inspector may hold office or be a member of any employee organization. Before discharging
8 the duties as an underground mine inspector, he or she shall take the oath of office prescribed by
9 section 5, article IV of the Constitution, a certificate of which oath shall be filed in the office of the
10 Secretary of State.

11 **§22A-1-13. Employment of surface mine inspectors; eligibility; qualifications; examinations;**
12 **salary; provisions relating to underground mine inspectors applicable to**
13 **surface mine inspectors.**

14 (a) The office shall employ as many surface mine inspectors as the director determines to be
15 reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

16 (b) To be eligible for employment as a surface mine inspector the applicant shall be: (1) A
17 citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and
18 reputation and of temperate habits; (2) a person who has had at least five years of practical
19 experience in coal mines, at least two years of which have been in surface mines in this state:
20 *Provided*, That graduation from any accredited college of mining engineering may be considered the
21 equivalent of two years of practical experience; and (3) a person who has a good theoretical and
22 practical knowledge of surface mines, surface mining methods, sound safety practices and applicable

1 mining laws and rules. For the purpose of this section, practical experience means the performance
2 of normal mining duties requiring a person to hold a certificate of competency and qualification as
3 an experienced surface miner prior to actually performing such duties.

4 (c) (1) In order to qualify for appointment as a surface mine inspector, an eligible applicant
5 shall submit to written, oral and practical examinations administered by the mine inspectors'
6 examining board and furnish evidence of good health, character and other facts establishing
7 eligibility as the board may require. The examinations shall relate to the duties to be performed by
8 a surface mine inspector and, subject to the approval of the mine inspectors' examining board, may
9 be prepared by the director.

10 (2) If the board finds after investigation and examination that an applicant is: (A) Eligible
11 for appointment; and (B) has passed each required examination with a grade of at least seventy-five
12 percent, or an overall combined average score of eighty percent, the board shall add the applicant's
13 name and grades to the register of qualified eligible candidates and promptly certify its action in
14 writing to the director. The director shall then appoint one of the candidates from the three having
15 the highest grades.

16 (d) Surface mine inspectors shall be paid an annual salary of not less than \$37,332, which
17 shall be fixed by the director, who shall take into consideration ability, performance of duty, and
18 experience. Surface mine inspectors shall devote all of their time to the duties of the office.

19 ~~(e) Except as expressly provided in this section to the contrary, all provisions of this article~~
20 ~~relating to the eligibility, qualification, appointment, tenure, and removal of underground mine~~
21 ~~inspectors, as well as those provisions relating to compensatory time and reimbursement for~~
22 ~~necessary expenses, are applicable to surface mine inspectors. Underground mine inspectors serve~~

1 at the will and discretion of the director. No underground mine inspector, while in office, may be
2 directly or indirectly interested as an employee, owner, lessor, operator, stockholder, superintendent
3 or engineer of any coal mine. No underground mine inspector may hold office or be a member of
4 any employee organization. Before discharging the duties as an underground mine inspector, he or
5 she shall take the oath of office prescribed by section 5, article IV of the Constitution of West
6 Virginia, a certificate of which oath shall be filed in the office of the Secretary of State.

7 **§22A-1-14. Director and inspectors authorized to enter mines; duties of inspectors to examine**
8 **mines; no advance notice of an inspection; reports after fatal accidents.**

9 (a) The director, or his or her authorized representative, has authority to visit, enter, and
10 examine any mine, whether underground or on the surface, and may call for the assistance of any
11 district mine inspector or inspectors whenever assistance is necessary in the examination of any
12 mine. The operator of every coal mine shall furnish the director or his or her authorized
13 representative proper facilities for entering the mine and making examination or obtaining
14 information.

15 (b) If miners or one of their authorized representatives, have reason to believe, at any time,
16 that ~~dangerous conditions are existing~~ imminent danger exists or that the law is not being complied
17 with, they may request the director to have an immediate investigation made. The request shall be
18 written and signed by the miner or authorized representative and a copy of the request shall be
19 provided to the operator no later than at the time of inspection, except that the operator or his or her
20 agent shall be immediately notified if the complaint indicates that an imminent danger exists. The
21 name of the person providing the notice and the names of individual miners referred may not appear
22 in any copy or notification.

1 (c) Mine inspectors shall devote their full-time and undivided attention to the performance
2 of their duties, and they shall examine all of the mines in their respective districts at least four times
3 annually, and as often, in addition thereto, as the director may direct, or the necessities of the case
4 or the condition of the mine or mines may require, with no advance notice of inspection provided
5 to any person, and they shall make a personal examination of each working face and all entrances
6 to abandoned parts of the mine where gas is known to liberate, for the purpose of determining
7 whether an imminent danger, referred to in section fifteen of this article, exists in the mine, or
8 whether any provision of article two of this chapter is being violated or has been violated within the
9 past forty-eight hours in the mine. No other person shall, with the intent of undermining the integrity
10 of an unannounced mine inspection, provide advance notice of any inspection or of an inspector's
11 presence at a mine to any person at that mine. Any person who, with the requisite intent, knowingly
12 causes or conspires to provide advance notice of any inspection or of an inspector's presence at a
13 mine is guilty of a felony and, upon conviction thereof, shall be fined not more than \$15,000 or
14 imprisoned in a state correctional facility not less than one year and not more than five years, or both
15 fined and imprisoned.

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

22 (e) On or after July 1, 2012, an inspector shall require the operator or other employer to

1 investigate all complaints received by the Office of Miners' Health, Safety and Training involving
2 a certified person's substance abuse or alcohol related impairment at a mine. Within thirty days
3 following notification by the Office of Miners' Health, Safety and Training to the operator or other
4 employer of the complaint, the operator or other employer shall file with the Director a summary of
5 its investigation into the alleged substance abuse or alcohol related impairment of a certified person.

6 (f) The mine inspector shall visit the scene of each fatal accident occurring in any mine
7 within his or her district and shall make an examination into the particular facts of the accident;
8 make a report to the director, setting forth the results of the examination, including the condition of
9 the mine and the cause or causes of the fatal accident, if known, and all the reports shall be made
10 available to the interested parties, upon written requests.

11 (g) At the commencement of any inspection of a coal mine by an authorized representative
12 of the director, the authorized representative of the miners at the mine, as well as a representative
13 of the operator, at the time of the inspection shall be given an opportunity to accompany the
14 authorized representative of the director on the inspection.

15 **§22A-1-15. Findings, orders and notices.**

16 (a) If upon any inspection of a coal mine an authorized representative of the director finds
17 that an imminent danger exists, the representative shall determine the area throughout which the
18 danger exists and shall immediately issue an order requiring the operator of the mine or the operator's
19 agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4),
20 subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until
21 an authorized representative of the director determines that the imminent danger no longer exists.

22 (b) If upon any inspection of a coal mine an authorized representative of the director finds

1 that there has been a violation of the law, but the violation has not created an imminent danger, he
2 or she shall issue a notice to the operator or the operator's agent fixing a reasonable time for the
3 abatement of the violation. If upon the expiration of the period of time, as originally fixed or
4 subsequently extended, an authorized representative of the director finds that the violation has not
5 been totally abated, and if the director also finds that the period of time should not be further
6 extended, the director shall find the extent of the area affected by the violation and shall promptly
7 issue an order requiring the operator of the mine or the operator's agent to cause immediately all
8 persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section,
9 to be withdrawn from and to be prohibited from entering the area until an authorized representative
10 of the director determines that the violation has been abated.

11 (c) If upon any inspection of a coal mine an authorized representative of the director finds
12 that an imminent danger exists in an area of the mine, in addition to issuing an order pursuant to
13 subsection (a) of this section, the director shall review the compliance record of the mine.

14 (1) A review of the compliance record conducted in accordance with this subsection shall,
15 at a minimum, include a review of the following:

16 (A) Any closure order issued pursuant to subsection (a) of this section;

17 (B) Any closure order issued pursuant to subsection (b) of this section;

18 (C) Any enforcement measures taken pursuant to this chapter, other than those authorized
19 under subsections (a) and (b) of this section;

20 (D) Any evidence of the operator's lack of good faith in abating significant and substantial
21 violations at the mine;

22 (E) Any accident, injury or illness record that demonstrates a serious safety or health

1 management problem at the mine; and

2 ~~(F) The number of employees at the mine, the size, layout and physical features of the mine~~
3 ~~and the length of time the mine has been in operation; and~~

4 ~~(G)~~ (F) Any mitigating circumstances.

5 (2) If, after review of the mine's compliance record, the director determines that the mine has
6 a history of repeated significant and substantial violations of a particular standard caused by
7 unwarrantable failure to comply or a history of repeated significant and substantial violations of
8 standards related to the same hazard caused by unwarrantable failure to comply and the history or
9 histories demonstrate the operator's disregard for the health and safety of miners, the director shall
10 issue a closure order for the entire mine area throughout which the director determines the imminent
11 danger exists and shall immediately issue an order requiring the operator of the mine or the operator's
12 agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4),
13 subsection (e) of this section, to be withdrawn from and to be prohibited from entering the mine area
14 throughout which the director determines the imminent danger exists until a thorough inspection of
15 the mine area has been conducted by the office and the director determines that the operator has
16 abated all violations related to the imminent danger and any violations unearthed in the course of the
17 inspection.

18 (d) All employees on the inside and outside of a mine who are idled as a result of the posting
19 of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates
20 of pay for the period they are idled, but not more than the balance of the shift. If the order is not
21 terminated prior to the next working shift, all the employees on that shift who are idled by the order
22 are entitled to full compensation by the operator at their regular rates of pay for the period they are

1 idled, but for not more than four hours of the shift.

2 (e) The following persons are not required to be withdrawn from or prohibited from entering
3 any area of the coal mine subject to an order issued under this section:

4 (1) Any person whose presence in the area is necessary, in the judgment of the operator or
5 an authorized representative of the director, to eliminate the condition described in the order;

6 (2) Any public official whose official duties require him or her to enter the area;

7 (3) Any representative of the miners in the mine who is, in the judgment of the operator or
8 an authorized representative of the director, qualified to make coal mine examinations or who is
9 accompanied by such a person and whose presence in the area is necessary for the investigation of
10 the conditions described in the order; and

11 (4) Any consultant to any of the persons set forth in this subsection.

12 (f) Notices and orders issued pursuant to this section shall contain a detailed description of
13 the conditions or practices which cause and constitute an imminent danger or a violation of any
14 mandatory health or safety standard and, where appropriate, a description of the area of the coal mine
15 from which persons must be withdrawn and prohibited from entering.

16 (g) Each notice or order issued under this section shall be given promptly to the operator of
17 the coal mine or the operator's agent by an authorized representative of the director issuing the notice
18 or order and all the notices and orders shall be in writing and shall be signed by the representative
19 and posted on the bulletin board at the mine.

20 (h) A notice or order issued pursuant to this section may be modified or terminated by an
21 authorized representative of the director.

22 (i) Each finding, order and notice made under this section shall promptly be given to the

1 operator of the mine to which it pertains by the person making the finding, order or notice.

2 (j) *Definitions.* -- For the purposes of this section only, the following terms have the
3 following meanings:

4 (1) “Unwarrantable failure” means aggravated conduct, constituting more than ordinary
5 negligence, by a mine operator in relation to a violation of this chapter of the code; and

6 (2) “Significant and substantial violation” shall have the same meaning as that established
7 in 6 FMSHRC 1 (1984).

8 **§22A-1-19. Judicial review.**

9 (a) Any order or decision issued by the director under this law ~~except an order or decision~~
10 ~~under section fifteen of this article~~ is subject to judicial review by the circuit court of the county in
11 which the mine affected is located or the circuit court of Kanawha County upon the filing in such
12 court or with the judge thereof in vacation of a petition by any person aggrieved by the order or
13 decision praying that the order or decision be modified or set aside, in whole or in part, except that
14 the court shall not consider such petition unless such person has exhausted the administrative
15 remedies available under this law and files within thirty days from date of such order or decision.

16 (b) The party making such appeal shall forthwith send a copy of such petition for appeal, by
17 registered mail, to the other party. Upon receipt of such petition for appeal, the director shall
18 promptly certify and file in such court a complete transcript of the record upon which the order or
19 decision complained of was issued. The court shall hear such petition on the record made before
20 the director. The findings of the director, if supported by substantial evidence on the record
21 considered as a whole, shall be conclusive. The court may affirm, vacate or modify any order or
22 decision or may remand the proceedings to the director for such further action as it may direct.

1 (c) In the case of a proceeding to review any order or decision issued by the director under
 2 this law, except an order or decision pertaining to an order issued under subsection (a), section
 3 fifteen of this article or an order or decision pertaining to a notice issued under subsection (b),
 4 section fifteen of this article, the court may, under such conditions as it may prescribe, grant such
 5 temporary relief as it deems appropriate pending final determination of the proceedings if:

6 (A) All parties to the proceeding have been notified and given an opportunity to be heard on
 7 a request for temporary relief;

8 (B) The person requesting such relief shows that there is a substantial likelihood that the
 9 person will prevail on the merits of the final determination of the proceeding; and

10 (C) Such relief will not adversely affect the health and safety of miners in the coal mine.

11 ~~(d) The judgment of the court is subject to review only by the Supreme Court of Appeals of~~
 12 ~~West Virginia upon a writ of certiorari filed in such court within sixty days from the entry of the~~
 13 ~~order and decision of the circuit court upon such appeal from the director.~~

14 ~~(e)~~ (d) The commencement of a proceeding under this section shall not, unless specifically
 15 ordered by the court, operate as a stay of the order or decision of the director.

16 ~~(f)~~ (e) Subject to the direction and control of the Attorney General, attorneys appointed for
 17 the director may appear for and represent the director in any proceeding instituted under this section.

18 **§22A-1-20. Injunctions.**

19 The director may institute a civil action for relief, including a permanent or temporary
 20 injunction, restraining order, or any other appropriate order in the circuit court of the county in which
 21 the mine is located ~~or the circuit court of Kanawha County~~, whenever the operator or the operator's
 22 agent: (a) Violates or fails or refuses to comply with any order or decision issued under this law; or

1 (b) interferes with, hinders or delays the director or his or her authorized representative in carrying
2 out the provisions of this law; or (c) refuses to admit such representatives to the mine; or (d) refuses
3 to permit the inspection of the mine, or the investigation of an accident or occupational disease
4 occurring in, or connected with, such mine; or (e) refuses to furnish any information or report
5 requested by the director in furtherance of the provisions of this law; or (f) refuses to permit access
6 to, and copying of, such records as the director determines necessary in carrying out the provisions
7 of this law. ~~Each~~ The court shall have jurisdiction to provide such relief as may be appropriate.
8 Except as otherwise provided herein, any relief granted by the court to enforce an order under clause
9 (a) of this section shall continue in effect until the completion or final termination of all proceedings
10 for review of such order under this law, unless, prior thereto, the circuit court granting such relief
11 sets it aside or modifies it. In any action instituted under this section to enforce an order or decision
12 issued by the director after a public hearing, the findings of the director, if supported by substantial
13 evidence on the record considered as a whole, shall be conclusive.

14 **§22A-1-21. Penalties.**

15 (a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs
16 or who violates any other provisions of this chapter shall be assessed a civil penalty by the director
17 under subdivision (3) of this subsection, which shall be not more than \$5,000, for each violation,
18 unless the director determines that it is appropriate to impose a special assessment for the violation,
19 pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation
20 constitutes a separate offense. In determining the amount of the penalty, the director shall consider
21 the operator's history of previous violations, whether the operator was negligent, the appropriateness
22 of the penalty to the size of the business of the operator charged, the gravity of the violation and the

1 demonstrated good faith of the operator charged in attempting to achieve rapid compliance after
2 notification of a violation.

3 (2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in
4 accordance with the provisions of article three, chapter twenty-nine-a of this code.

5 (3) Any miner who knowingly violates any health or safety provision of this chapter or health
6 or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the
7 director under subdivision (4) of this subsection which shall not be more than \$250 for each
8 occurrence of the violation.

9 (4) A civil penalty under subdivision (1) or (2) of subsection (a) of this section or subdivision
10 (1) or (2) of subsection (b) of this section shall be assessed by the director only after the person
11 charged with a violation under this chapter or rule promulgated pursuant to this chapter has been
12 given an opportunity for a public hearing and the director has determined, by a decision
13 incorporating the director's findings of fact in the decision, that a violation did occur and the amount
14 of the penalty which is warranted and incorporating, when appropriate, an order in the decision
15 requiring that the penalty be paid. Any hearing under this section shall be of record.

16 (5) If the person against whom a civil penalty is assessed fails to pay the penalty within the
17 time prescribed in the order, the director may file a petition for enforcement of the order in any
18 appropriate circuit court. The petition shall designate the person against whom the order is sought
19 to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail,
20 return receipt requested, to the respondent and to the representative of the miners at the affected mine
21 or the operator, as the case may be. The director shall certify and file in the court the record upon
22 which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment

1 enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order and
2 decision of the director or it may remand the proceedings to the director for any further action it may
3 direct. The court shall consider and determine de novo all relevant issues, except issues of fact which
4 were or could have been litigated in review proceedings before a circuit court under section twenty
5 of this article and, upon the request of the respondent, those issues of fact which are in dispute shall
6 be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the
7 penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys
8 appointed for the director may appear for and represent the director in any action to enforce an order
9 assessing civil penalties under this subdivision.

10 (b) (1) Any operator who knowingly violates a health or safety provision of this chapter or
11 health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses
12 to comply with any order issued under section fifteen of this article, or any order incorporated in a
13 final decision issued under this article, except an order incorporated in a decision under subsection
14 (a) of this section or subsection (b), section twenty-two of this article, shall be assessed a civil
15 penalty by the director under subdivision (5), subsection (a) of this section of not more than \$5,000
16 and for a second or subsequent violation assessed a civil penalty of not more than \$10,000, unless
17 the director determines that it is appropriate to impose a special assessment for the violation,
18 pursuant to the provisions of subdivision (2) of this subsection.

19 (2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this
20 section or subdivision (1) of this subsection, the director may impose a special assessment if an
21 operator violates a health or safety provision of this chapter or health or safety rule promulgated
22 pursuant to this chapter and the violation is of serious nature and involves one or more of the

1 following by the operator:

2 (A) Violations involving fatalities and serious injuries;

3 (B) Failure or refusal to comply with any order issued under section fifteen of this article;

4 (C) Operation of a mine in the face of a closure order;

5 (D) Violations involving an imminent danger;

6 (E) Violations involving an extraordinarily high degree of negligence or gravity or other
7 unique aggravating circumstances; or

8 (F) A discrimination violation under section twenty-two of this article.

9 In situations in which the director determines that there are factors present which would make
10 it appropriate to impose a special assessment, the director shall assess a civil penalty of at least
11 \$5,000 and not more than \$10,000.

12 (c) Whenever a corporate operator knowingly violates a health or safety provision of this
13 chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails
14 or refuses to comply with any order issued under this law or any order incorporated in a final
15 decision issued under this law, except an order incorporated in a decision issued under subsection
16 (a) of this section or subsection (b), section twenty-two of this article, any director, officer or agent
17 of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal
18 is subject to the same civil penalties that may be imposed upon a person under subsections (a) and
19 (b) of this section.

20 (d) Whoever knowingly makes any false statement, representation or certification in any
21 application, record, report, plan or other document filed or required to be maintained pursuant to this
22 law or any order or decision issued under this law is guilty of a misdemeanor and, upon conviction

1 thereof, shall be fined not more than \$10,000 or confined in jail not more than one year, or both fined
2 and confined. The conviction of any person under this subsection shall result in the revocation of any
3 certifications held by the person under this chapter which certified or authorized the person to direct
4 other persons in coal mining by operation of law and bars that person from being issued any license
5 under this chapter, except a miner's certification, for a period of not less than one year or for a longer
6 period as may be determined by the director.

7 (e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce
8 any equipment for use in a coal mine, including, but not limited to, components and accessories of
9 the equipment, who willfully misrepresents the equipment as complying with the provisions of this
10 law, or with any specification or rule of the director applicable to the equipment, and which does not
11 comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction thereof,
12 is subject to the same fine and confinement that may be imposed upon a person under subsection (d)
13 of this section.

14 (f) Any person who willfully violates any safety standard pursuant to this chapter or a rule
15 promulgated thereunder that causes a fatality or who willfully orders or carries out such violation that
16 causes a fatality is guilty of a felony and, upon conviction thereof, shall be fined not more than
17 \$10,000 or confined in a state correctional facility not less than one year and not more than five
18 years, or both fined and imprisoned.

19 ~~(g) There is continued in the Treasury of the State of West Virginia a Special Health, Safety~~
20 ~~and Training Fund. All civil penalty assessments collected under this section shall be collected by~~
21 ~~the director and deposited with the Treasurer of the State of West Virginia to the credit of the Special~~
22 ~~Health, Safety and Training Fund. The fund shall be used by the director who is authorized to expend~~

1 ~~the moneys in the fund for the administration of this chapter.~~

2 **ARTICLE 2. UNDERGROUND MINES.**

3 **§22A-2-3. Fans.**

4 (a) The ventilation of mines, the systems for which extend for more than two hundred feet
5 underground and which are opened after the effective date of this article, shall be produced by a
6 mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is
7 prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written
8 permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or
9 its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken
10 by the mine operator or the operator's management personnel, in all mines, to cut off the power and
11 withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored
12 in fifteen minutes, the face regions and other places in the affected areas where gas (methane) is
13 likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas,
14 power may be restored and work resumed. If ventilation is not restored in fifteen minutes, all
15 underground employees shall be removed from the mine, all power shall be cut off in a timely
16 manner, and the underground employees shall not return until ventilation is restored and the mine
17 examined by certified persons, mine examiners or other persons holding a certificate to make preshift
18 examination. If ventilation is restored to the mine before miners reach the surface, the miners may
19 return to underground working areas only after an examination of the areas is made by a certified
20 person and the areas are determined to be safe.

21 (b) All main fans installed after the effective date of this article shall be located on the surface
22 in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening,

1 equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from
2 an independent power circuit. In lieu of the requirements for the location of fans and pressurere relief
3 facilities, a fan may be directly in front of, or over a mine opening: *Provided*, That such opening is
4 not in direct line with possible forces coming out of the mine if an explosion occurs: *Provided*,
5 *however*, That there is another opening having a weak-wall stopping or explosion doors that would
6 be in direct line with forces coming out of the mine. All main fans shall be provided with
7 pressurerecording gauges or water gauges. A daily inspection shall be made of all main fans and
8 machinery connected therewith by a certified electrician and a record kept of the same in a book
9 prescribed for this purpose or by adequate facilities provided to permanently record the performance
10 of the main fans and to give warning of an interruption to a fan.

11 (c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with
12 line brattice to provide adequate ventilation to the working faces: *Provided*, That auxiliary fans be
13 so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved
14 and maintained as permissible.

15 (d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be
16 stopped and the power disconnected at the power source until ventilation in the working place is
17 restored. During such stoppage, the ventilation shall be by means of the primary air current
18 conducted into the place in a manner to prevent accumulation of methane.

19 (e) In places where auxiliary fans and tubing are used, the ventilation between shifts,
20 weekends and idle shifts shall be provided to face areas with line brattice or the equivalent to prevent
21 accumulation of methane.

22 (f) The director may require that when continuous mine equipment is being used, all face

1 ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser
2 fans, and such fans shall be continuously operated during mining operations.

3 (g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not
4 intentionally be started, stopped, speed increased or decreased or the direction of the air current
5 changed without the approval of the general mine foreman, and, if he or she is not immediately
6 available, a representative of the office of miners' health, safety and training. A duly authorized
7 representative of the employees should be consulted if practical under the circumstances.

8 **§22A-2-4. Ventilation of mines in general.**

9 (a) The operator or mine foreman of every coal mine, whether worked by shaft, slope, or
10 drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines the
11 quantity of air passing through the last open crosscut between the intake and return in any pair or set
12 of entries shall be not less than nine thousand cubic feet of air per minute and as much more as is
13 necessary to dilute and render harmless and carry away flammable and harmful gases. All working
14 faces in a working section between the intake and return airway entries shall be ventilated with a
15 minimum quantity of three thousand cubic feet of air per minute and as much more as is necessary
16 to dilute and render harmless and carry away flammable and harmful gases. The quantity of air
17 reaching the last crosscut in pillar sections may be less than nine thousand cubic feet of air per
18 minute if at least nine thousand cubic feet of air per minute is being delivered to the intake of the
19 pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce
20 and carry away smoke from blasting and any flammable or harmful gases. ~~The operator shall provide~~
21 ~~to the safety committee access to anonometers and smoke tubes while performing their duties.~~ All
22 active underground working places in a mine shall be ventilated by a current of air containing not

1 less than nineteen and five-tenths percent of oxygen, not more than five-tenths percent of carbon
2 dioxide, and no harmful quantities of other noxious or poisonous gases.

3 (b) Airflow shall be maintained in all intake and return air courses of a mine, and where
4 multiple fans are used, neutral areas created by pressure equalization between main fans shall not
5 be permitted. Production activities in working faces shall cease while tubing, line brattice, or other
6 ventilation devices are being installed in by the machine operator.

7 (c) Properly installed and adequately maintained line brattice or other approved devices shall
8 be continuously used from the last open crosscut of an entry or room of each working section to
9 provide adequate ventilation to the working faces for the miners and to remove flammable,
10 explosive, and noxious gases, dust, and explosive fumes. When damaged by falls or otherwise, such
11 line brattice or other devices shall be repaired immediately.

12 (d) Brattice cloth used underground shall be of flame-resistant material. The space between
13 the line brattice or other approved device and the rib shall be large enough to permit the flow of a
14 sufficient volume and velocity of air to keep the working face clear of flammable, explosive, and
15 noxious gases, dust and explosive fumes.

16 (e) Each working unit newly developed in virgin coal hereafter, shall be ventilated by a
17 separate split of air: *Provided*, That in areas already under development and in areas where physical
18 conditions prevent compliance with this provision, the director may grant temporary relief from
19 compliance until such time as physical conditions make compliance possible. The quantity of air
20 reaching the last crosscut shall not be less than nine thousand cubic feet of air per minute and shall
21 under any condition have sufficient volume and velocity to reduce and carry away smoke and
22 flammable or harmful gases from each working face in the section.

1 (f) As working places advance, crosscuts for air shall be made not more than one-hundred-
2 five feet apart. Where necessary to render harmless and carry away noxious or flammable gases, line
3 brattice or other approved methods of ventilation shall be used so as to properly ventilate the face.
4 All crosscuts between the main intake and return airways not required for passage of air and
5 equipment shall be closed with stoppings substantially built with incombustible or fireresistant
6 material so as to keep working places well ventilated. In mines where it becomes necessary to
7 provide larger pillars for adequate roof support, working places shall not be driven more than two
8 hundred feet without providing a connection that will allow the free flow of air currents. In such
9 cases, a minimum of twelve thousand cubic feet of air a minute shall be delivered to the last open
10 crosscut and as much more as is necessary to dilute and render harmless and carry away flammable
11 and noxious gases.

12 (g) In special instances for the construction of sidetracks, haulageways, airways, or openings
13 in shaft bottom or slope bottom layouts where the size and strength of pillars is important, the
14 director may issue a permit approving greater distances. The permit shall specify the conditions
15 under which such places may be driven.

16 (h) In all mines a system of bleeder openings on air courses designed to provide positive
17 movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous
18 accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure
19 shall be made a part of pillar recovery plans projected after July 1, 1971.

20 (i) If a bleeder return is closed as a result of roof falls or water during pillar recovery
21 operations, pillar operations may continue without reopening the bleeder return if at least twenty
22 thousand cubic feet of air per minute is delivered to the intake of the pillar line.

1 (j) No operator or mine foreman shall permit any person to work where he or she is unable
2 to maintain the quantity and quality of the air current as heretofore required: *Provided*, That such
3 provisions shall not prohibit the employment of men to make place of employment safe.

4 (k) The ventilation of any mine shall be so arranged by means of air locks, overcasts, or
5 undercasts, that the use of doors on passageways where men or equipment travel may be kept to a
6 minimum. Where doors are used in a mine they shall be erected in pairs so as to provide a ventilated
7 air lock unless the doors are operated mechanically.

8 (l) A crosscut shall be provided at or near the face of each entry or room before such places
9 are abandoned.

10 (m) Overcasts or undercasts shall be constructed of incombustible material and maintained
11 in good condition.

12 (n) After January 1, 1987, all run through check curtains shall be substantially constructed
13 of translucent material, except that where belting material has to be used because of high velocity,
14 there shall be a window of translucent material at least thirty inches square or one half the height of
15 the coal seam, whichever is less.

16 **§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors;**
17 **instruction of apprentice miners.**

18 (a) The duties of the mine foreman shall be to keep a careful watch over the ventilating
19 apparatus, the airways, traveling ways, pumps and drainage. He or she shall see that, as the miners
20 advance their excavations, proper breakthroughs are made so as to ventilate properly the mine; that
21 all loose coal, slate and rock overhead in the working places and along the haulways are removed
22 or carefully secured so as to prevent danger to persons employed in such mines, and that sufficient

1 suitable props, caps, timbers, roof bolts, or other approved methods of roof supports are furnished
2 for the places where they are to be used and delivered at suitable points. The mine foreman shall
3 have all water drained or hauled out of the working places where practicable, before the miners enter,
4 and such working places shall be kept dry as far as practicable while the miners are at work. It shall
5 be the duty of the mine foreman to see that proper crosscuts are made, and that the ventilation is
6 conducted by means of such crosscuts through the rooms by means of checks or doors placed on the
7 entries or other suitable places, and he or she shall not permit any room to be opened in advance of
8 the ventilation current. The mine foreman or other certified persons designated by him or her, shall
9 measure the air current with an anemometer or other approved device at least weekly at the inlet and
10 outlet at or near the faces of the advanced headings, and shall keep a record of such measurements
11 in a book or upon a form prescribed by the director. Signs directing the way to outlets or escapeways
12 shall be conspicuously placed throughout the mine.

13 (b) After July 1, 1971, hinged man doors, at least thirty inches square or the height of the coal
14 seam, shall be installed between the intake and return at intervals of three hundred feet when the
15 height of the coal is below forty-eight inches and at intervals of ~~five~~ six hundred feet when the height
16 of the coal is above forty-eight inches.

17 (c) The duties of the mine foreman and assistant mine foreman shall include the instruction
18 of apprentice miners in the hazards incident to any new work assignments; to assure that any
19 individual given a work assignment in the working face without prior experience on the face is
20 instructed in the hazards incident thereto and supervised by a miner with experience in the tasks to
21 be performed.

22 **§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of**

1 **persons using approved methane detecting devices; records of examination;**
2 **maintenance of methane detectors, etc.**

3 (a) The Office of Miners' Health, Safety and Training shall prescribe and establish a course
4 of instruction in mine safety and particularly in dangers incident to employment in mines and in
5 mining laws and rules, which course of instruction shall be successfully completed within twelve
6 weeks after any person is first employed as a miner. It is further the duty and responsibility of the
7 Office of Miners' Health, Safety and Training to see that the course is given to all persons as above
8 provided after their first being employed in any mine in this state. In addition to other enforcement
9 actions available to the director, upon a finding by the director of the existence of a pattern of
10 conduct creating a hazardous condition at a mine, the director shall notify the board of Miners'
11 Training, Education and Certification, which shall cause additional training to occur at the mine
12 addressing such safety issue or issues identified by the director, pursuant to article seven of this
13 chapter.

14 (b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in this
15 state to see that every person employed to work in the mine is, before beginning work therein,
16 instructed in the particular danger incident to his or her work in the mine, and furnished a copy of
17 the mining laws and rules of the mine. It is the duty of every mine operator who employs
18 apprentices, as that term is used in sections three and four, article eight of this chapter to ensure that
19 the apprentices are effectively supervised with regard to safety practices and to instruct apprentices
20 in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his
21 or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or
22 assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but

1 the foreman and his or her assistant mine foreman remain responsible for the apprentice. During the
2 first one hundred twenty days of employment in a mine, the apprentice shall work within sight and
3 sound of the mine foreman, assistant mine foreman, or an experienced miner, and in a location that
4 the mine foreman, assistant mine foreman or experienced miner can effectively respond to cries for
5 help of the apprentice. The location shall be on the same side of any belt, conveyor or mining
6 equipment. Any miner holding a certificate of competency and qualification, assistant mine
7 foreman, or mine foreman may have three persons working with him or her under his or her
8 supervision and direction, as apprentices, for the purpose of learning and being instructed in the
9 duties and calling of mining. However, a miner who holds a certificate of competency and
10 qualification, assistant mine foreman, or mine foreman supervising apprentices in an area where no
11 coal is being produced or which is outby the working section may have as many as five apprentices
12 under his or her supervision and direction, as apprentices for the purpose of learning and being
13 instructed in the duties and calling of mining or where the operator is using a production section
14 under program for training of apprentice miners, approved by the board of miner training, education
15 and certification.

16 (c) Persons whose duties require them to use a approved methane detecting device or other
17 approved methane detectors shall be examined at least annually as to their competence by a qualified
18 official from the Office of Miners' Health, Safety and Training and a record of the examination shall
19 be kept by the operator and the office. Approved methane detecting devices and other approved
20 methane detectors shall be given proper maintenance and shall be tested before each working shift.
21 Each operator shall provide for the proper maintenance and care of the permissible approved
22 methane detecting device or any other approved device for detecting methane and oxygen deficiency

1 by a person trained in the maintenance, and, before each shift, care shall be taken to ensure that the
2 approved methane detecting device or other device is in a permissible condition and maintained
3 according to manufacturer's specifications.

4 **§22A-2-14. Safety inspections; removal of gases.**

5 It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine all
6 working places under his or her supervision for hazards ~~at least once every two hours~~ during each
7 coal-producing shift, or more often if necessary for safety. In all mines such examinations shall
8 include tests with an approved detector for methane and oxygen deficiency. ~~which tests for oxygen~~
9 ~~deficiency may be with a permissible flame safety lamp: *Provided, That a flame safety lamp may*~~
10 ~~be used for methane testing when a malfunction occurs with a methane detector.~~ It shall also be his
11 or her duty to remove as soon as possible after its discovery any accumulations of explosive or
12 noxious gases in active workings, and where practicable, any accumulations of explosive or noxious
13 gases in the worked out and abandoned portions of the mine. It shall be the duty of the mine
14 foreman, assistant mine foreman or fire boss to examine each mine within three hours prior to the
15 beginning of a shift and before any miner in such shift enters the active workings of the mine.

16 **§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior**
17 **to examination; report; records open for inspection.**

18 (a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger
19 signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his or
20 her shift or prior to his or her entering the mine to make his or her examination and, except for those
21 persons already on assigned duty, no person except the mine owner, operator or agent, and only then
22 in the case of necessity, shall pass beyond this danger signal until the mine has been examined by

1 the fire boss or other certified person and the mine or certain parts thereof reported by him or her to
2 be safe. When reported by him or her to be safe, the danger sign or color thereof shall be changed
3 to indicate that the mine is safe in order that employees going on shift may begin work. Each person
4 designated to make the fire boss examinations shall be assigned a definite underground area of the
5 mine, and, in making his or her examination shall examine all active working places in the assigned
6 area and make tests with an approved device for accumulations of methane and oxygen deficiency;
7 examine seals and doors; examine and test the roof, face and ribs in the working places and on active
8 roadways and travelways, approaches to abandoned workings, accessible falls in active sections and
9 areas where any person is scheduled to work or travel underground. He or she shall place his or her
10 initials and the date at or near the face of each place he or she examines. Should he or she find a
11 condition which he or she considers dangerous to persons entering the areas, he or she shall place
12 a conspicuous danger sign at all entrances to the place or places. Only persons authorized by the
13 mine management may enter the places while the sign is posted and only for the purpose of
14 eliminating the dangerous condition. Upon completing his or her examination he or she shall report
15 by suitable communication system or in person the results of this examination to a ~~certified~~
16 competent person designated by mine management to receive and record the report, at a designated
17 station on the surface of the premises of the mine or underground, before other persons enter the
18 mine to work in coal-producing shifts. He or she shall also record the results of his or her
19 examination with ink or indelible pencil in a book prescribed by the director, kept for the purpose
20 at a place on the surface of the mine designated by mine management. All records of daily and
21 weekly reports, as prescribed herein, shall be open for inspection by interested persons.

22 (b) *Supplemental examination.* -- When it becomes necessary to have workers enter areas of

1 the mine not covered during the preshift examination, a supplemental examination shall be
2 performed by a fire boss or certified person acting as such within three hours before any person
3 enters the area. The fire boss or certified person acting as such shall examine the area for hazardous
4 conditions, determine if air is traveling in its proper direction and test for oxygen deficiency and
5 methane.

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

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

10 ROOF--FACE--RIBS

11 **§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.**

12 (a) Each operator shall undertake to carry out on a continuing basis a program to improve the
13 roof control system of each coal mine and the means and measures to accomplish such system. The
14 roof and ribs of all active underground roadways, travelways and working places shall be supported
15 or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control
16 plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and
17 approved by the director shall be adopted and set out in printed form before new operations. The
18 safety committee of the miners of each mine where such committee exists shall be afforded the
19 opportunity to review and submit comments and recommendations to the director and operator
20 concerning the development, modification or revision of such roof control plans. The plan shall
21 show the type of support and spacing approved by the director. Such plan shall be reviewed
22 periodically, at least every six months by the director, taking into consideration any falls of roof or

1 rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished to the director or
2 his or her authorized representative and shall be available to the miners and their representatives.

3 (b) The operator, in accordance with the approved plan, shall provide at or near each working
4 face and at such other locations in the coal mine, as the director may prescribe, an ample supply of
5 suitable materials of proper size with which to secure the roof thereof of all working places in a safe
6 manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when
7 roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof
8 bolts are being installed and in such other circumstances as may be appropriate. Loose roof and
9 overhanging or loose faces and ribs shall be taken down or supported. When overhangs or brows
10 occur along rib lines they shall be promptly removed. All sections shall be maintained as near as
11 possible on center. Except in the case of recovery work, supports knocked out shall be replaced
12 promptly. Apprentice miners shall not be permitted to set temporary supports on a working section
13 without the direct immediate supervision of a certified miner.

14 (c) The operator of a mine has primary responsibility to prevent injuries and deaths resulting
15 from working under unsupported roof. Every operator shall require that no person may proceed
16 beyond the last permanent support unless adequate temporary support is provided or temporary
17 support is not required under an approved roof control plan and absence of such support will not
18 pose a hazard to the miners.

19 (d) The immediate supervisor of any area in which unsupported roof is located shall not
20 direct or knowingly permit any person to proceed beyond the last permanent support unless adequate
21 temporary support is provided or temporary support is not required under an approved roof control
22 plan and absence of such support will not pose a hazard to the miners.

1 (e) No miner shall proceed beyond the last permanent support in violation of a direct or
 2 standing order of an operator, a foreman or an assistant foreman, unless adequate temporary support
 3 is provided or temporary support is not required under an approved roof control plan and absence
 4 of such support will not pose a hazard to the miner.

5 (f) ~~The immediate supervisor of each miner who will be engaged in any activity involving~~
 6 ~~the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts~~
 7 ~~of the roof control plan relevant to the type of mining and roof control to be pursued by such miner.~~
 8 ~~The time and parts of the plan reviewed shall be recorded in a log book kept for such purpose. Each~~
 9 ~~log book entry so recorded shall be signed by such immediate supervisor making such entry. Before~~
 10 implementing an approved revision to a roof control plan, all persons who are affected by the
 11 revision shall be instructed in its provisions.

12 (g) Any action taken against a miner due, in whole or in part, to his or her refusal to work
 13 under unsupported roof, where such work would constitute a violation of this section, is prohibited
 14 as an act of discrimination pursuant to section twenty-two, article one of this chapter. Upon a
 15 finding of discrimination by the appeals board pursuant to subsection (b), section twenty-two, article
 16 one of this chapter, the miner shall be awarded by the appeals board all reliefs available pursuant to
 17 subsections (b) and (c), section twenty-two, article one of this chapter.

18 HOISTING

19 **§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum**
 20 **runners.**

21 (a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube,
 22 telephone or other approved means of communication from the top to the bottom and intermediate

1 landings of such shafts, suitably adapted to the free passage of sound, through which conversation
2 may be held between persons at the top and at the bottom of the shaft; a standard means of signaling;
3 an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a
4 sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety
5 gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or
6 hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting
7 persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and
8 inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is
9 required, he or she shall be readily available at all times when men are in the mine. He or she or she
10 shall operate the empty cage up and down the shaft at least one round trip at the beginning of each
11 shift; ~~and after the hoist has been idle for one hour or more before hoisting or lowering men;~~ there
12 shall be cut out around the side of the hoisting shaft or driven through the solid strata at the bottom
13 thereof, a traveling way, not less than five feet high and three feet wide to enable a person to pass
14 the shaft in going from one side of it to the other without passing over or under the cage or other
15 hoisting apparatus. Positive stop blocks or derails shall be placed near the top and at all intermediate
16 landings of slopes and surface inclines and at approaches to all shaft landings. A waiting station
17 with sufficient room, ample clearance from moving equipment, and adequate seating facilities shall
18 be provided where men are required to wait for man trips or man cages, and the miners shall remain
19 in such station until the man trip or man cage is available.

20 (b) No operator of any coal mine worked by shaft, slope or incline, shall place in charge of
21 any engine or drum used for lowering or hoisting persons employed in such mine any but competent
22 and sober engineers or drum runners; and no engineer or drum runner in charge of such machinery

1 shall allow any person, except such as may be designated for this purpose by the operator, to interfere
2 with any part of the machinery; and no person shall interfere with any part of the machinery; and no
3 person shall interfere with or intimidate the engineer or drum runner in the discharge of his or her
4 duties. Where the mine is operated or worked by shaft or slope, a minimum space of two and one-
5 half square feet per person shall be available for each person on any cage or car where men are
6 transported. In no instance shall more than twenty miners be transported on a cage or car without
7 the approval of the director. No person shall ride on a loaded cage or car in any shaft, slope, or
8 incline: *Provided*, That this does not prevent any trip rider from riding in the performance of his or
9 her authorized duties. No engineer is required for automatically operated cages, elevators, or
10 platforms. Cages and elevators shall have an emergency power source unless provided with other
11 escapeway facilities.

12 (c) Each automatic elevator shall be provided with a telephone or other effective
13 communication system by which aid or assistance can be obtained promptly.

14 (d) A "stop" switch shall be provided in the automatic elevator compartment that will permit
15 the elevator to be stopped at any location in the shaft.

16 **§22A-2-55. Protective equipment and clothing.**

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

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

22 (c) Protective gloves shall be worn when material which may injure hands is handled, but

1 gloves with gauntleted cuffs shall not be worn around moving equipment.

2 (d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine:

3 *Provided*, That metatarsal guards are not required to be worn by persons when working in those areas

4 of underground mine workings which average less than forty-eight inches in height as measured from

5 the floor to the roof of the underground mine workings.

6 (e) Approved eye protection shall be worn by all persons while being transported in open-

7 type man trips.

8 (f)(1) A self-contained self-rescue device approved by the director shall be worn by each

9 person underground or kept within his or her immediate reach and the device shall be provided by

10 the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour

11 or longer. Each operator shall train each miner in the use of the device and refresher training courses

12 for all underground employees shall be held once each quarter. Quarters shall be based on a calendar

13 year.

14 (2) In addition to the requirements of subdivision (1) of this subsection, the operator shall

15 also provide caches of additional self-contained self-rescue devices throughout the mine in

16 accordance with a plan approved by the director. Each additional self-contained self-rescue device

17 shall be adequate to protect a miner for one hour or longer. The total number of additional self-

18 contained self-rescue devices, the total number of storage caches and the placement of each cache

19 throughout the mine shall be established by rule pursuant to subsection (i) of this section. A

20 luminescent sign with the words "**SELF-CONTAINED SELF-RESCUER**" or "**SELF-**

21 **CONTAINED SELF-RESCUERS**" shall be conspicuously posted at each cache and luminescent

22 direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with

1 reflective material at twenty-five foot intervals, shall be attached to each cache from the last open
2 crosscut to the surface. The operator shall conduct weekly inspections of each cache and each lifeline
3 cord or other similar device to ensure operability.

4 (3) Any person that, without the authorization of the operator or the director, knowingly
5 removes or attempts to remove any self-contained self-rescue device or lifeline cord from the mine
6 or mine site with the intent to permanently deprive the operator of the device or lifeline cord or
7 knowingly tampers with or attempts to tamper with the device or lifeline cord shall be guilty of a
8 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less
9 than one year nor more than ten years or fined not less than \$10,000 nor more than \$100,000, or
10 both.

11 (g) (1) A wireless emergency communication device approved by the director and provided
12 by the operator shall be worn by each person underground. The wireless emergency communication
13 device shall, at a minimum, be capable of receiving emergency communications from the surface
14 at any location throughout the mine. Each operator shall train each miner in the use of the device and
15 provide refresher training courses for all underground employees during each calendar year. The
16 operator shall install in or around the mine any and all equipment necessary to transmit emergency
17 communications from the surface to each wireless emergency communication device at any location
18 throughout the mine.

19 (2) Any person that, without the authorization of the operator or the director, knowingly
20 removes or attempts to remove any wireless emergency communication device or related equipment,
21 from the mine or mine site with the intent to permanently deprive the operator of the device or
22 equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be

1 guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility
2 for not less than one year nor more than ten years or fined not less than \$10,000 nor more than
3 \$100,000, or both fined and confined.

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

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

20 (i) The director may promulgate ~~emergency~~ and legislative rules to implement and enforce
21 this section pursuant to the provisions of article three, chapter twenty-nine-a of this code.

22 **§22A-2-77. Monthly Quarterly report by operator of mine; exception as to certain inactive**

1 **mines.**

2 On or before the end of each ~~calendar month~~ quarter, the operator of each mine, regulated
3 under the provisions of this chapter or article three or four, chapter twenty-two of this code, shall file
4 with the director a report with respect thereto covering the next preceding ~~calendar month~~ quarter
5 which shall reflect the number of accidents which have occurred at each such mine, the number of
6 persons employed, the days worked and the actual raw tonnage mined. Quarters shall be based on
7 a calendar year. Such report shall be made upon forms furnished by the director. Other provisions
8 of this section to the contrary notwithstanding, no such report shall be required with respect to any
9 mine on approved inactive status if no employees were present at such mine at any time during the
10 next preceding calendar month.

NOTE: The purpose of this bill is to preserve employment and promote health and safety in the coal industry; reorganize the Office of Miners' Health, Safety and Training. The bill provides for appointment of deputy directors. The bill divide said Office into districts. The bill continues Board of Coal Mine Health and Safety within the Office of Miners' Health. The bill redefines qualifications for members of board. The bill abolishes coal mine safety and technical review committee. The bill provides for the promulgation of rules. The bill removes probationary period and permanent tenure for mine inspectors. The bill provides for mine inspectors, safety instructors, electrical inspectors and surface inspectors to serve at will and discretion of director, bar conflicts of interest. The bill changes requirements for requesting immediate inspection and require request in writing. The bill provides for representative of operator to accompany representative of director on inspections. The bill provide for findings, orders, notices. The bill removes requirement that entire mine be given closure order when director determines area of imminent danger does not include entire mine. The bill provides all orders or decisions of director are subject to judicial review. The bill provides director must file civil actions in circuit court of county where mine

located. The bill removes requirement that civil penalties be deposited in Special Health, Safety and Training Fund. The bill requires all working places be examined for hazards once per shift. The bill eliminates requirement that operator provide safety committee anonometers and smoke tubes. The bill provides for miners return to underground working areas if ventilation restored and mine determined to be safe. The bill changes spacing interval for hinged man doors. The bill increases maximum number of apprentices under supervision of trainer. The bill restricts authority of director to propose emergency rules. The bill eliminates requirement to use obsolete equipment. The bill changes who may receive fire boss report. The bill provides for instruction of persons affected by revisions to roof control plans. The bill eliminates requirement that man trip be idle one hour before transporting men. The bill requires filing of mine operator report with director quarterly.

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

§22A-1-3a is new; therefore, it has been completely underscored.