

Senate Bill No. 72

(By Senator Yost)

[Introduced January 14, 2015; referred to the Committee on Energy, Industry and Mining; and

then to the Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

(A) Amphetamines;

(B) Cannabinoids/THC;

(C) Cocaine;

(D) Opiates;

(E) Phencyclidine (PCP);

(F) Benzodiazepines;

(G) Propoxyphene;

(H) Methadone;

(I) Barbiturates; and

(J) Synthetic narcotics.

Split samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation's rule, 49 C. F. R. Part 40, which may be amended from time to time by legislative rule of the Office of Miners' Health, Safety and Training. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this subdivision, the mine operator may implement a more stringent substance abuse screening policy and program;

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

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

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

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

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

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

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

(D) A certified person submitting a substituted sample or an adulterated sample;

(E) Discharge of a certified person, following completion of an arbitration conducted pursuant to a collective bargaining agreement applicable to the certified person, if any, for violation of the employer's substance abuse screening policy and program;

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

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

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

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

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

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

(D) A certified person submitting a substituted sample or an adulterated sample;

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

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

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

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

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

9 (4) Notice shall result in the immediate temporary suspension of all certificates held by the
10 certified person who failed the screening, pending a hearing before the board of appeals pursuant to
11 section two of this article: *Provided*, That notification pursuant to this subsection shall not result in
12 the immediate temporary suspension of any certificate held by a certified person who is subject to
13 a collective bargaining agreement unless and until the arbitration is concluded and the discharge is
14 upheld, and no certificate held by a certified person who is subject to a collective bargaining
15 agreement shall be suspended or revoked unless the discharge is upheld in arbitration: *Provided*,
16 *however*, That if the certified person terminates his or her employment or voluntarily removes
17 himself or herself from the grievance or arbitration procedure, the certified person may be
18 immediately, temporarily decertified pursuant to this article.

19 (d) Suspension or revocation of a certified person's certificate as a miner or other miner
20 specialty in another jurisdiction by the applicable regulatory or licensing authority for substance
21 abuse-related matters shall result in the director immediately and temporarily suspending the
22 certified person's West Virginia certificate until such time as the certified person's certification is

1 reinstated in the other jurisdiction.

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

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

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