

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 74**

BY SENATOR YOST

[Introduced January 13, 2016;

Referred to the Committee on Energy, Industry and  
Mining; and then to the Committee on the Judiciary.]

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

*Be it enacted by the Legislature of West Virginia:*

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

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

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

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

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

6 (A) Amphetamines;

7 (B) Cannabinoids/THC;

8 (C) Cocaine;

9 (D) Opiates;

10 (E) Phencyclidine (PCP);

11 (F) Benzodiazepines;

12 (G) Propoxyphene;

13 (H) Methadone;

14 (I) Barbiturates; and

15 (J) Synthetic narcotics.

16 Split samples shall be collected by providers who are certified as complying with standards  
17 and procedures set out in the United States Department of Transportation's rule, 49 C. F. R. Part  
18 40, which may be amended, from time to time, by legislative rule of the Office of Miners' Health,  
19 Safety and Training. Collected samples shall be tested by laboratories certified by the United  
20 States Department of Health and Human Services, Substance Abuse and Mental Health Services  
21 Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this  
22 subdivision, the mine operator may implement a more stringent substance abuse screening policy  
23 and program;

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

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

33 (b) For purposes of this subsection, preemployment testing shall be required upon hiring  
34 by a new employer, rehiring by a former employer following a termination of the  
35 employer/employee relationship or transferring to a West Virginia mine from an employer's out-  
36 of-state mine to the extent that any substance abuse test required by the employer in the other

37 jurisdiction does not comply with the minimum standards for substance abuse testing required by  
38 this article. Furthermore, the provisions of this section apply to all employers that employ certified  
39 persons who work in mines, regardless of whether that employer is an operator, contractor,  
40 subcontractor or otherwise.

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

43 (A) A positive drug or alcohol test of a certified person, whether it be a preemployment  
44 test, random test, reasonable suspicion test or post-accident test. However, for purposes of  
45 determining whether a drug test is positive the certified employee may not rely on a prescription  
46 dated more than one year prior to the date of the drug test result;

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

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

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

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

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

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

57 (2) With respect to any certified person subject to a collective bargaining agreement, the  
58 employer shall notify the director, on a form prescribed by the director, within seven days of any  
59 of the following:

60 (A) A positive drug or alcohol test of a certified person, whether it be a preemployment

61 test, random test, reasonable suspicion test or post-accident test. However, for purposes of  
62 determining whether a drug test is positive the certified employee may not rely on a prescription  
63 dated more than one year prior to the date of the drug test result;

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

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

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

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

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

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

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

77 (4) Notice shall result in the immediate temporary suspension of all certificates held by the  
78 certified person who failed the screening, pending a hearing before the board of appeals pursuant  
79 to section two of this article.

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

85           (e) The provisions of this article shall not be construed to preclude an employer from  
86 developing or maintaining a drug and alcohol abuse policy, testing program or substance abuse  
87 program that exceeds the minimum requirements set forth in this section. The provisions of this  
88 article shall also not be construed to require an employer to alter, amend, revise or otherwise  
89 change, in any respect, a previously established substance abuse screening policy and program  
90 that meets or exceeds the minimum requirements set forth in this section. The provisions of this  
91 article shall require an employer to subject its employees who as part of their employment are  
92 regularly present at a mine and who are employed in a safety-sensitive position to preemployment  
93 and random substance abuse tests: *Provided*, That each employer shall retain the discretion to  
94 establish the parameters of its substance abuse screening policy and program so long as it meets  
95 the minimum requirements of this article. For purposes of this section, a “safety-sensitive position”  
96 means an employment position where the employee’s job responsibilities include duties and  
97 activities that 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 a heading or the present law and underscoring indicates new language that would be added.