

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Originating**

### **House Bill 4840**

BY DELEGATES STEELE, FOSTER, AND BURKHAMMER

[Originating in the Committee on Government

Organization; reported on February 24, 2022]



1 A BILL to repeal §22A-1-21 of the Code of West Virginia, 1931, as amended; to repeal §22A-5-2  
2 of said code; to repeal §22A-6-11, §22A-6-12, §22A-6-13, and §22A-6-14 of said code; to  
3 amend and reenact §22A-1-1, §22A-1-4, §22A-1-5, §22A-1-6, §22A-1-14, §22A-1-15,  
4 §22A-1-22, §22A-1-35, §22A-1-38 of said code; to amend and reenact §22A-2-12, §22A-  
5 2-55, §22A-2-63, §22A-2-66, §22A-2-73 of said code; to amend and reenact §22A-5-1 of  
6 said code; to amend and reenact §22A-6-1, §22A-6-2, §22A-6-3, §22A-6-4, §22A-6-5,  
7 §22A-6-7, §22A-6-8, §22A-6-9, §22A-6-11, §22A-6-12, §22A-6-13, and §22A-6-14 of said  
8 code; to amend and reenact §22A-7-2, §22A-7-3, §22A-7-4, and §22A-7-5 of said code;  
9 to amend and reenact §22A-8-1, §22A-8-5, and §22A-8-6 of said code; all relating to the  
10 Office of Miners Health, Safety and Training; converting the office to a compliance agency  
11 to assist mine operators; providing for alternative mechanisms of enforcement or removing  
12 certain enforcement language; requiring compliance visits to mines as often as the director  
13 determines is necessary; outlining the type of recommendations or assistance the office  
14 may offer to mines; preserving the mechanism for closing a mine when there are  
15 conditions of imminent danger present; permitting the office to serve as a backup mine  
16 rescue team when requested by the mine operator; clarifying rulemaking relating to mine  
17 safety; clarifying requirements for apprentice miners; permitting apprentice miners be  
18 supervised for 90 days; removal of fees associated with obtaining a permit to open a mine;  
19 removal of a civil penalty for failure to give notice of a mine accident; discontinuing the  
20 Board of Appeals and permitting actions be instituted in the appropriate circuit court;  
21 renaming the Board of Coal Mine Health and Safety the Mine Safety Board; providing for  
22 altered appointment requirement; requiring that nominees to fill a seat on the board are  
23 submitted with a list of the person's qualifications and experience in mine health and safety  
24 when representing the viewpoint of the operators; altering appointment requirements for  
25 persons appointed to the board representing the viewpoint of miners and requiring that  
26 each person's qualifications be provided during the nomination process; altering the

27 appointment requirements for the Health and Safety Administrator to be appointed to the  
28 Governor; amending the requirements for the Mine Safety Board to meet at least quarterly;  
29 altering the requirements to establish a quorum of the board to vote and conduct business;  
30 providing for rulemaking authority pursuant to chapter 29A for the Mine Safety Board;  
31 providing for emergency rulemaking authority; providing for rulemaking and emergency  
32 rulemaking authority relating to investigations and reports relating to mining accidents;  
33 altering membership requirements for the Coal Mine Safety Technical Review Committee;  
34 permitting the director to serve as a tie-breaking voting member; altering requirements for  
35 a quorum of the committee; permitting the Mine Safety Board to adopt, modify, or reject a  
36 proposed rule from the committee; clarifying the effect of the rules to create basic health  
37 and safety standards for mine operators; permitting electronic reports be sent when  
38 required; clarifying that the Mine Safety Board may offer assistance to any mine operator  
39 to implement any program to protect health and safety of miners; and making other  
40 technical corrections.

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

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

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

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

5 (b) The division of health, safety and training shall have as its purpose the supervision of  
6 the execution ~~and enforcement~~ of the provisions of this chapter and, in carrying out the aforesaid  
7 purposes, it shall give prime consideration to the protection of the safety and health of persons

8 employed within or at the mines of this state. In addition, the division shall, consistent with the  
9 aforesaid prime consideration, protect and preserve mining property and property used in  
10 connection therewith.

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

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

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

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

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

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

16 (4) Suspend, for good cause, any mine inspector without compensation for a period not  
17 exceeding 30 days in any calendar year.

18 (5) Prepare report forms to be used by mine inspectors in making their findings,  
19 recommendations ~~orders~~, and notices, upon ~~inspections~~ visits made in accordance with this  
20 article.

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

24 (76) Cause a properly indexed permanent and public record to be kept of all inspections  
25 visits made by himself or by mine inspectors.

26 (87) Make annually a full and complete written or electronic report of the administration of  
27 the office to the Governor and the Legislature of the state for the year ending June 30. The report  
28 shall include the number of visits ~~and inspections of~~ to mines in the state by mine inspectors, the  
29 quantity of coal, coke, and other minerals (excluding oil and gas) produced in the state, the  
30 number of individuals employed, number of mines in operation, statistics with regard to health  
31 and safety of persons working in the mines including the causes of injuries and deaths,  
32 improvements made, prosecutions, the total funds of the office from all sources identifying each  
33 source of the funds, the expenditures of the office, the surplus or deficit of the office at the  
34 beginning and end of the year, ~~the amount of fines collected, the amount of fines imposed, the~~  
35 ~~value of fines pending,~~ the number and type of ~~violations~~ concerns or safety issues found, the  
36 ~~amount of fines imposed, levied and turned over for collection, the total amount of fines levied but~~  
37 ~~not paid during the prior year,~~ the titles and salaries of all inspectors and other officials of the  
38 office, the number of ~~inspections~~ visits made by each inspector, the number and type of ~~violations~~  
39 concerns or safety issues found by each inspector. However, no inspector may be identified by  
40 name in this report. Such reports shall be filed with or electronically transmitted to the Governor  
41 and the Legislature on or before December 31 of the same year for which it was made, and ~~shall~~  
42 may upon proper authority be printed and distributed to interested persons.

43 (98) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires,  
44 mine explosions or any mine accident; to administer oaths and to require production of any books,  
45 papers, records, or other documents relevant or material to any hearing, ~~investigation~~ review or  
46 examination of any mine permitted by this chapter. Any witness so called or subpoenaed shall

47 receive \$40 per diem and shall receive mileage at the rate of \$.15 for each mile actually traveled,  
48 which shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly  
49 certified by the witness.

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

54 (4410) Beginning January 1, 2013, the director shall share information regarding  
55 suspension or revocation of a certificate of a certified person, as defined in this article for violation  
56 of the substance abuse provisions of article one-a of this chapter with other states that subject  
57 similar persons to disciplinary action for violation of a substance abuse policy.

58 (4211) The director shall may propose rules for legislative approval pursuant to §29A-3-1  
59 *et seq.* of this code, a rule establishing a program for the sharing of information between  
60 employers who employ certified persons regarding the discharge of persons in safety sensitive  
61 positions as defined in §22A-1A-1 of this ~~chapter~~ code for violation of an employer's substance  
62 abuse policy.

63 (4312) Perform all other duties which are expressly imposed upon him or her by the  
64 provisions of this chapter.

65 (4413) Impose reasonable fees upon applicants taking tests administered pursuant to the  
66 requirements of this chapter, subject to legislative approval.

67 (4514) Impose reasonable fees for the issuance of certifications required under this  
68 chapter subject to legislative approval.

69 (4615) Prepare study guides and other forms of publications relating to mine safety and  
70 charge a reasonable fee, subject to legislative approval, for the sale of the publications.

71 (4716) Make all records of the office open for inspection of interested persons and the  
72 public.

73           (17) Establish and maintain qualified, adequate mine rescue services to provide backup  
74 mine rescue and emergency preparedness coverage for all mines upon written request of a mine  
75 operator.

76           (c) The Director of the Office of Miners' Health, Safety and Training, or his or her designee,  
77 upon receipt of the list of approved innovative mine safety technologies from the Mine Safety  
78 Technology Task Force, has 30 days to approve or amend the list as provided in §11-13BB-4 of  
79 this code. At the expiration of the time period, the director shall publish the list of approved  
80 innovative mine safety technologies as provided in §11-13BB-4 of this code.

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

1           (a) There are hereby continued or established in the Office of Miners' Health, Safety and  
2 Training the following offices:

3           (1) The Mine Safety Board of Coal Mine Health and Safety established pursuant to article  
4 six of this chapter; and,

5           (2) The Coal Mine Safety and Technical Review Committee established pursuant to article  
6 six of this chapter; ~~and~~

7           ~~(3) The Board of Appeals provided for pursuant to the provisions of article five of this~~  
8 ~~chapter.~~

9           (b) Nothing in this article may authorize the director or the secretary of the Department of  
10 Commerce, Labor and Environmental resources to alter, discontinue or abolish any office, board  
11 or commission or the functions thereof, which are established by status.

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

1           The director ~~has the power and authority to~~ may propose or promulgate rules to organize  
2 the office and to carry out and implement the provisions of this chapter relating to health and  
3 safety of coal mines inspections and enforcement. All rules in effect on the effective date of this  
4 article which pertain to the provisions of this chapter as they relate to health and safety inspection  
5 ~~and enforcement~~ shall remain in effect until changed or superseded by the director, or as



6 appropriate. Except when specifically exempted by the provisions of this chapter, all rules or  
7 changes thereto shall be proposed or promulgated by the director in accordance with the  
8 provisions of chapter 29A of this code.

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

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

7 (b) If miners or one of their authorized representatives, have reason to believe, at any  
8 time, that dangerous conditions are existing or that the law is not being complied with, they may  
9 request the director to ~~have an immediate investigation made: *Provided*, That miners are always~~  
10 ~~encouraged to work with mine management with regards to safety concerns and mitigation efforts.~~  
11 If there is a concern of imminent danger, the provisions of §22A-1-15 of this code may apply.

12 (c) Mine inspectors shall devote their full-time and undivided attention to the performance  
13 of their duties, and they shall ~~examine~~ visit all of the mines in their respective districts as often as  
14 the director determines is necessary for compliance visits, safe job performance, and  
15 observations. ~~at least four times annually, and as often, in addition thereto, as the director may~~  
16 ~~direct, or the necessities of the case or the condition of the mine or mines may require, with no~~  
17 ~~advance notice of inspection provided to any person, and they shall make a personal examination~~  
18 ~~of each working face and all entrances to abandoned parts of the mine where gas is known to~~  
19 ~~liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen~~  
20 ~~of this article, exists in the mine, or whether any provision of article two of this chapter is being~~  
21 ~~violated or has been violated within the past forty-eight hours in the mine. No other person shall,~~

22 ~~with the intent of undermining the integrity of an unannounced mine inspection, provide advance~~  
23 ~~notice of any inspection or of an inspector's presence at a mine to any person at that mine. Any~~  
24 ~~person who, with the requisite intent, knowingly causes or conspires to provide advance notice of~~  
25 ~~any inspection or of an inspector's presence at a mine is guilty of a felony and, upon conviction~~  
26 ~~thereof, shall be fined not more than \$15,000 or imprisoned in a state correctional facility not less~~  
27 ~~than one year and not more than five years, or both fined and imprisoned.~~

28 (d) In addition to the other duties imposed by this article and article two of this chapter, it  
29 is the duty of each inspector to note each ~~violation~~ concern or safety issue he or she finds and  
30 ~~issue a finding, order, or notice, as appropriate for each violation so noted~~ provide technical or  
31 written recommendations to mine operators or miners to correct any such issue. During the  
32 investigation of any accident, any ~~violation~~ concerns or safety issues may be noted and the  
33 inspector or the director may provide the mine operator recommendations or other assistance to  
34 correct any noted health or safety issues. ~~whether or not the inspector actually observes the~~  
35 ~~violation and whether or not the violation exists at the time the inspector notes the violation, so~~  
36 ~~long as the inspector has clear and convincing evidence the violation has occurred or is occurring.~~

37 (e) An inspector shall require the operator or other employer to investigate all complaints  
38 received by the Office of Miners' Health, Safety and Training involving a certified person's  
39 substance abuse or alcohol related impairment at a mine. Within 30 days following notification by  
40 the Office of Miners' Health, Safety and Training to the operator or other employer of the  
41 complaint, the operator or other employer shall file with the Director a summary of its investigation  
42 into the alleged substance abuse or alcohol related impairment of a certified person.

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

48 (g) At the commencement of any ~~inspection~~ visit of a coal mine by an authorized  
49 representative of the director, ~~the authorized representative of the miners at the mine,~~ as well as  
50 a salaried employee of management, at the time of the inspection shall be given an opportunity  
51 to accompany the authorized representative of the director on the inspection.

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

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

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

19 (c) ~~If upon any inspection of a coal mine an authorized representative of the director that~~  
20 While visiting a mine, if the authorized representative of the director finds that an imminent danger

21 exists in an area of the mine, in addition to issuing an order pursuant to subsection (a) of this  
22 section, the director shall review the compliance record of the mine.

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

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

26 (B) Any recommendations or assistance provided to the mine operator to mitigate  
27 concerns or safety issues; Any closure order issued pursuant to subsection (b) of this section;

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

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

32 (E) Any accident, injury, or illness record that demonstrates a serious safety or health  
33 management problem at the mine; and

34 (F) Any mitigating circumstances.

35 (2) If, after review of the mine's compliance record, the director determines that the mine  
36 has a history of repeated significant and substantial violations of a particular standard caused by  
37 unwarrantable failure to comply or a history of repeated significant and substantial violations of  
38 standards related to the same hazard caused by unwarrantable failure to comply and the history  
39 or histories demonstrate the operator's disregard for the health and safety of miners, the director  
40 shall issue a closure order for the entire mine or area throughout which the director determines  
41 the dangerous condition exists and shall immediately issue an order requiring the operator of the  
42 mine or the operator's agent to cause immediately all persons, except those referred to in  
43 subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be  
44 prohibited from entering the mine or area throughout which the director determines the dangerous  
45 condition until a thorough inspection of the mine or area has been conducted by the office and  
46 the director determines that the operator has abated all violations related to the imminent danger

47 ~~and any violations unearthed in the course of the inspection.~~ The mine inspector or director may  
48 offer recommendations or other assistance to correct any subsequent concerns or safety issues  
49 uncovered during the inspection so long as those concerns or safety issues do not present an  
50 imminent danger.

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

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

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

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

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

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

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

71 (g) Each notice or order issued under this section shall be given promptly to the operator  
72 of the coal mine or the operator's agent by an authorized representative of the director issuing

73 the notice or order and all the notices and orders shall be in writing and shall be signed by the  
74 representative and posted on the bulletin board at the mine.

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

77 (i) Each finding, order and notice made under this section shall promptly be given to the  
78 operator of the mine to which it pertains by the person making the finding, order or notice.

79 ~~(j) *Definitions.* — For the purposes of this section only, the following terms have the~~  
80 ~~following meanings:~~

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

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

**§22A-1-21. Penalties.**

1 [Repealed.]

**§22A-1-22. Discrimination.**

1 (a) No person shall discharge or in any other way discriminate against or cause to be  
2 discharged or discriminated against any miner or any authorized representative of miners by  
3 reason of the fact that the person believes or knows that such miner or representative:

4 (1) Has notified the director, his or her authorized representative, or an operator, directly  
5 or indirectly, of any alleged violation or danger;

6 (2) has filed, instituted, or caused to be filed or instituted any proceeding under this law;

7 (3) has testified or is about to testify in any proceeding resulting from the administration or  
8 enforcement of the provisions of this law. No miner or representative shall be discharged or in  
9 any other way discriminated against or caused to be discriminated against because a miner or  
10 representative has done subdivision (1), (2) or (3) above.

11 (b) Any miner or a representative of miners who believes that he or she has been  
12 discharged or otherwise discriminated against, or any miner who has not been compensated by  
13 an operator for lost time due to the posting of a withdrawal order, may, within 30 days after such  
14 violation occurs, ~~apply to the appeals board~~ file in the circuit court in the county where the  
15 petitioner resides or where mine is located for a review of such alleged discharge, discrimination,  
16 or failure to compensate. ~~A copy of the application shall be sent to such person who shall be the~~  
17 ~~respondent. Upon receipt of such application, the appeals board shall cause such investigation~~  
18 ~~to be made as it deems appropriate. Such investigation shall provide an opportunity for a public~~  
19 ~~hearing at the request of any party to enable the parties to present information relating to such~~  
20 ~~violation. The parties shall be given written notice of the time and place of the hearing at least five~~  
21 ~~days prior to the hearing. Mailing of the notice of hearing to the charged party at the party's last~~  
22 ~~address of record as reflected in the records of the office is adequate notice to the charged party.~~  
23 ~~Such notice shall be by certified mail, return receipt requested. Any such hearing shall be of~~  
24 ~~record. Upon receiving the report of such investigation, the board shall make findings of fact. If it~~  
25 ~~finds that such violation did occur, it shall issue a decision within 45 days, incorporating an order~~  
26 ~~therein, requiring the person committing such violation to take such affirmative action to abate the~~  
27 ~~violation as the board deems appropriate, including, but not limited to, the rehiring or~~  
28 ~~reinstatement of the miner or representative of miners to his or her former position with back pay,~~  
29 ~~and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there~~  
30 ~~was no such violation, it shall issue an order denying the application. Such order shall incorporate~~  
31 ~~the board's finding therein. If the proceedings under this section relative to discharge are not~~  
32 ~~completed within 45 days of the date of discharge due to delay caused by the operator, the miner~~  
33 ~~shall be automatically reinstated until the final determination. If such proceedings are not~~  
34 ~~completed within 45 days of the date of discharge due to delay caused by the board, then the~~  
35 ~~board may, at its option, reinstate the miner until the final determination. If such proceedings are~~

36 ~~not completed within 45 days of the date of discharge due to delay caused by the miner the board~~  
37 ~~shall not reinstate the miner until the final determination.~~

38 (c) Whenever ~~an order~~ a judgment or opinion is issued ~~under this section~~ by the court, at  
39 the request of the plaintiff applicant, a sum equal to the aggregate amount of all costs and  
40 expenses including the attorney's fees as determined by the ~~board~~ court to have been reasonably  
41 incurred by the applicant for, or in connection with, the institution and prosecution of such  
42 proceedings, shall be assessed against the person committing such violation.

**§22A-1-35. Mine rescue teams.**

1 (a) The operator shall provide mine rescue coverage at each active underground mine.

2 (b) Mine rescue coverage may be provided by:

3 (1) Establishing at least two mine rescue teams which are available at all times when  
4 miners are underground; or

5 (2) Entering into an arrangement for mine rescue services which assures that at least two  
6 mine rescue teams are available at all times when miners are underground.

7 (3) A West Virginia Office of Miners' Health, Safety, and Training Mine Rescue Team shall  
8 serve as a second or backup team for mines within the state if requested in writing by the mine  
9 operator ~~and qualify as one of the two teams required under subdivision (1) of this subsection~~  
10 ~~and in accordance with 30 CFR, Part 49.20(4) for all mines with no backup team available within~~  
11 ~~a one hour drive to the mine~~. The operator shall contact the office in writing and notify ~~them~~ the  
12 office of the need for mine rescue services beginning July 1, 2019. The director shall utilize surplus  
13 funds from the West Virginia Office of Miners' Health, Safety, and Training's special revenue fund  
14 to provide backup mine rescue services.

15 (c) As used in this section, mine rescue teams shall be considered available where teams  
16 are capable of presenting themselves at the mine site(s) within a reasonable time after notification  
17 of an occurrence which might require their services. Rescue team members will be considered  
18 available even though performing regular work duties or while in an off-duty capacity. The



19 requirement that mine rescue teams be available does not apply when teams are participating in  
20 mine rescue contests or providing rescue services to another mine.

21 (d) In the event of a fire, explosion, or recovery operations in or about any mine, the  
22 director is hereby authorized to assign any mine rescue team to said mine to protect and preserve  
23 life and property. The director may also assign mine rescue and recovery work to inspectors,  
24 instructors, or other qualified employees of the office as he or she deems necessary.

25 (e) The ground travel time between any mine rescue station and any mine served by that  
26 station shall not exceed two hours. To ensure adequate rescue coverage for all underground  
27 mines, no mine rescue station may provide coverage for more than 70 mines within the two-hour  
28 ground travel limit as defined in this subsection.

29 (f) Each mine rescue team shall consist of five members and one alternate, who are fully  
30 qualified, trained, and equipped for providing emergency mine rescue service. Each mine rescue  
31 team shall be trained by a state certified mine rescue instructor.

32 (g) Each member of a mine rescue team must have been employed in an underground  
33 mine for a minimum of one year. For the purpose of mine rescue work only, miners who are  
34 employed on the surface but work regularly underground meet the experience requirement. The  
35 underground experience requirement is waived for those members of a mine rescue team on the  
36 effective date of this statute.

37 (h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a  
38 physical examination by a licensed physician certifying his or her fitness to perform mine rescue  
39 work. A record that such examination was taken, together with pertinent data relating thereto,  
40 shall be kept on file by the operator and a copy shall be furnished to the director.

41 (i) Upon completion of the initial training, all mine rescue team members shall receive at  
42 least 40 hours of refresher training annually. This training shall be given at least four hours each  
43 month, or for a period of eight hours every two months, and shall include:

44 (1) Sessions underground at least once every six months;

45           (2) The wearing and use of a breathing apparatus by team members for a period of at  
46 least two hours, while under oxygen, once every two months;

47           (3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue  
48 equipment, or a different breathing apparatus; and

49           (4) Mine map training and ventilation procedures.

50           (j) When engaged in rescue work required by an explosion, fire, or other emergency at a  
51 mine, all members of mine rescue teams assigned to rescue operations shall, during the period  
52 of their rescue work, be employees of the operator of the mine where the emergency exists, and  
53 shall be compensated by the operator at the rate established in the area for such work. In no case  
54 shall this rate be less than the prevailing wage rate in the industry for the most skilled class of  
55 inside mine labor. During the period of their emergency employment, members of mine rescue  
56 teams shall be protected by the workers' compensation subscription of the mine operator.

57           (k) During the recovery work and prior to entering any mine at the start of each shift, all  
58 rescue or recovery teams shall be properly informed of existing conditions and work to be  
59 performed by the designated company official in charge.

60           (1) For every two teams performing rescue or recovery work underground, one six-  
61 member team shall be stationed at the mine portal.

62           (2) Each rescue or recovery team performing work with a breathing apparatus shall be  
63 provided with a backup team of equal number, stationed at each fresh air base.

64           (3) The mine operator shall provide two-way communication and a lifeline or its equivalent  
65 at each fresh air base for all mine rescue or recovery teams and no mine rescue team member  
66 shall advance more than 1,000 feet in by the fresh air base: *Provided*, That if a life may possibly  
67 be saved and existing conditions do not create an unreasonable hazard to mine rescue team  
68 members, the rescue team may advance a distance agreed upon by those persons directing the  
69 mine rescue or recovery operations: *Provided, however*, That the mine operator shall provide a  
70 lifeline or its equivalent in each fresh air base for all mine rescue or recovery teams.

71 (4) A rescue or recovery team shall immediately return to the fresh air base when the  
72 atmospheric pressure of any member's breathing apparatus depletes to 60 atmospheres, or its  
73 equivalent.

74 (l) Mine rescue stations shall provide a centralized storage location for rescue equipment.  
75 This storage location may be either at the mine site, affiliated mines, or a separate mine rescue  
76 structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary  
77 equipment manual. Each mine rescue station shall be provided with at least the following  
78 equipment:

79 (1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two  
80 hours capacity, and any necessary equipment for testing such breathing apparatuses;

81 (2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating  
82 or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and  
83 sufficient to sustain each team for six hours while using the breathing apparatuses during rescue  
84 operations;

85 (3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen  
86 breathing apparatus, as required under subdivision (1) of this subsection;

87 (4) One oxygen pump or a cascading system, compatible with the supplied breathing  
88 apparatuses;

89 (5) Twelve permissible cap lamps and a charging rack;

90 (6) Two gas detectors appropriate for each type of gas which may be encountered at the  
91 mines served;

92 (7) Two oxygen indicators;

93 (8) One portable mine rescue communication system or a sound-powered communication  
94 system. The wires or cable to the communication system shall be of sufficient tensile strength to  
95 be used as a manual communication system. The communication system shall be at least 1,000  
96 feet in length; and

97           (9) Necessary spare parts and tools for repairing the breathing apparatuses and  
98 communication system, as presently prescribed by the manufacturer.

99           (m) Mine rescue apparatuses and equipment shall be maintained in a manner that will  
100 ensure readiness for immediate use. A person trained in the use and care of breathing  
101 apparatuses shall inspect and test the apparatuses at intervals not exceeding 30 days and shall  
102 certify by signature and date that the inspections and tests were done. When the inspection  
103 indicates that a corrective action is necessary, the corrective action shall be made and recorded  
104 by said person. The certification and corrective action records shall be maintained at the mine  
105 rescue station for a period of one year and made available on request to an authorized  
106 representative of the director.

107           (n) Authorized representatives of the director have the right of entry to inspect any  
108 designated mine rescue station and provide recommendations or assistance to mitigate any  
109 concerns or safety issues.

110           (o) When an authorized representative finds a violation of any of the mine rescue  
111 requirements, the representative shall take appropriate corrective action in accordance with §22A-  
112 1-15 of this code.

113           (p) Operators affiliated with a station issued an order relating to imminent danger  
114 conditions in §22A-1-15 of this code by an authorized representative will be notified of that order  
115 and that their mine rescue program is invalid. The operators shall have 24 hours to submit to the  
116 director a revised mine rescue program.

117           (q) Every operator of an underground mine shall develop and adopt a mine rescue  
118 program for submission to the director within 30 days of the effective date of this statute: *Provided,*  
119 That a new program need only be submitted when conditions exist as defined in subsection (p)  
120 of this section, or when information contained within the program has changed.

121           (r) A copy of the mine rescue program shall be posted at the mine and kept on file at the  
122 operator's mine rescue station or rescue station affiliate and the state regional office where the

123 mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a)  
124 will satisfy the requirements of subsection (q) of this section if submitted to the director.

125 (s) The operator shall immediately notify the director of any changed conditions materially  
126 affecting the information submitted in the mine rescue program.

**§22A-1-38. Applicability and enforcement of laws safeguarding life and property; rules;  
authority of director regarding enforcing safety laws.**

1 All provisions of this chapter intended to safeguard life and property shall extend to all  
2 surface-mining operations, regulated under §22-3-1 *et seq.* and §22-4-1 *et seq.* of this code,  
3 insofar as such laws are applicable thereto. The director shall may promulgate ~~reasonable~~ rules  
4 in accordance with the provisions of chapter 29A of this code to protect the safety of those  
5 employed in and around surface mines. ~~The enforcement of all laws and rules relating to the~~  
6 ~~safety of those employed in and around surface mines is hereby vested in the director and shall~~  
7 ~~be enforced according to the provisions of this chapter.~~

**ARTICLE 2. UNDERGROUND MINES.**

**§22A-2-12. Instruction of employees and supervision of apprentices; annual examination  
of persons using approved methane-detecting devices; records of examination;  
maintenance of methane detectors, etc.**

1 (a) The Office of Miners' Health, Safety, and Training shall prescribe and establish a  
2 course of instruction in mine safety and particularly in dangers incident to employment in mines  
3 and in mining laws and rules, which course of instruction shall be successfully completed within  
4 12 weeks after any person is first employed as a miner. It is further the duty and responsibility of  
5 the Office of Miners' Health, Safety, and Training to see that the course is given to all persons as  
6 above provided after their first being employed in any mine in this state. ~~In addition to other~~  
7 ~~enforcement actions available to the director, upon~~ Upon a finding series of recommendations by  
8 the director or an authorized representative of the director indicative of the existence of a pattern  
9 of conduct creating a hazardous condition at a mine, the director shall notify the Mine Safety

10 Board of ~~Coal Mine Health and Safety~~, which shall cause additional training to occur at the mine  
11 addressing such safety issue or issues identified by the director, pursuant to §22A-7-1 *et seq.* of  
12 this code. The Director of the Office of Miners' Health, Safety, and Training is authorized to  
13 promulgate emergency and legislative rules in consultation with the Mine Safety Board of ~~Coal~~  
14 ~~Mine Health and Safety~~ pursuant to §29A-3-1 *et seq.* of this code establishing a course of  
15 instruction.

16 (b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in  
17 this state to see that every person employed to work in the mine is, before beginning work ~~therein~~,  
18 instructed in the particular danger incident to his or her work in the mine, and furnished a copy of  
19 the mining laws and rules of the mine. It is the duty of every mine operator who employs  
20 apprentices, as that term is used in §22A-8-3 and §22A-8-4 of this code to ensure that the  
21 apprentices are effectively supervised with regard to safety practices and to instruct apprentices  
22 in safe mining practices. Every apprentice shall work under the direction of the mine foreman or  
23 his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman  
24 or assistant mine foreman may delegate the supervision of an apprentice to an experienced  
25 miner, but the foreman and his or her assistant mine foreman remain responsible for the  
26 apprentice. During the first ~~420~~ 90 days of employment in a mine, the apprentice shall work within  
27 sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in a  
28 location that the mine foreman, assistant mine foreman, or experienced miner can effectively  
29 respond to cries for help of the apprentice: *Provided*, That if the apprentice has completed an  
30 approved training program as approved by the Mine Safety Board of ~~Coal Mine Health and Safety~~,  
31 this period may be reduced by an amount not to exceed 30 days. ~~The location shall be on the~~  
32 ~~same side of any belt, conveyor, or mining equipment.~~

33 (c) Persons whose duties require them to use an approved methane-detecting device or  
34 other approved methane detectors shall be examined at least annually as to their competence by  
35 a qualified official from the Office of Miners' Health, Safety, and Training and a record of the

36 examination shall be kept by the operator and the office. Approved methane-detecting devices  
37 and other approved methane detectors shall be given proper maintenance and shall be tested  
38 before each working shift. Each operator shall provide for the proper maintenance and care of the  
39 permissible approved methane-detecting device or any other approved device for detecting  
40 methane and oxygen deficiency by a person trained in the maintenance, and, before each shift,  
41 care shall be taken to ensure that the approved methane-detecting device or other device is in a  
42 permissible condition and maintained according to manufacturer's specifications.

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

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

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

6 (c) Protective gloves shall be worn when material which may injure hands is handled, but  
7 gloves with gauntleted cuffs shall not be worn around moving equipment.

8 (d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a  
9 mine: *Provided*, That metatarsal guards are not required to be worn by persons when working in  
10 those areas of underground mine workings which average less than 48 inches in height as  
11 measured from the floor to the roof of the underground mine workings.

12 (e) Approved eye protection shall be worn by all persons while being transported in open-  
13 type man trips.

14 (f) (1) A self-contained self-rescue device approved by the director shall be worn by each  
15 person underground or kept within his or her immediate reach and the device shall be provided  
16 by the operator. The self-contained self-rescue device shall be adequate to protect a miner for  
17 one hour or longer. Each operator shall train each miner in the use of the device and refresher

18 training courses for all underground employees shall be held once each quarter. Quarters shall  
19 be based on a calendar year.

20 (2) In addition to the requirements of §22A-2-55(f)(1) of this code, the operator shall also  
21 provide caches of additional self-contained self-rescue devices throughout the mine in  
22 accordance with a plan approved by the director. Each additional self-contained self-rescue  
23 device shall be adequate to protect a miner for one hour or longer. The total number of additional  
24 self-contained self-rescue devices, the total number of storage caches and the placement of each  
25 cache throughout the mine shall be established by rule pursuant to §22A-2-55(i) of this code. A  
26 luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-CONTAINED  
27 SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent direction signs  
28 shall be posted leading to each cache. Lifeline cords or other similar device, with reflective  
29 material at 25-foot intervals, shall be attached to each cache from the last open crosscut to the  
30 surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or  
31 other similar device to ensure operability.

32 (3) Any person who, without the authorization of the operator or the director, knowingly  
33 removes or attempts to remove any self-contained self-rescue device or lifeline cord from the  
34 mine or mine site with the intent to permanently deprive the operator of the device or lifeline cord  
35 or knowingly tampers with or attempts to tamper with the device or lifeline cord is guilty of a felony  
36 and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than  
37 one year nor more than 10 years, or fined not less than \$10,000 nor more than \$100,000, or both  
38 imprisoned and fined.

39 (g) The MSHA-approved emergency response plan (ERP) shall serve as the state-  
40 approved plan governing the storage of self-contained self-rescuers (SCSR). At a minimum, three  
41 one-hour SCSRs shall be available for everyone reasonably likely to be on the working section at  
42 any given time. The director may issue a special assessment pursuant to §22A-1-21 of this code  
43 for failure to comply with this subsection.



44 (h)(1) A wireless emergency communication device approved by the director and provided  
45 by the operator shall be worn by each person underground: *Provided*, That if a miner's wireless  
46 emergency communications device shall malfunction or cease to operate then such miner shall  
47 be assigned to be in sight or sound of a certified miner until such time an operating device shall  
48 be delivered. The wireless emergency communication device shall, at a minimum, be capable of  
49 receiving emergency communications from the surface at any location throughout the mine. Each  
50 operator shall train each miner in the use of the device and provide refresher training courses for  
51 all underground employees during each calendar year. The operator shall install in or around the  
52 mine any and all equipment necessary to transmit emergency communications from the surface  
53 to each wireless emergency communication device at any location throughout the mine.

54 (2) Any person who, without the authorization of the operator or the director, knowingly  
55 removes or attempts to remove any wireless emergency communication device or related  
56 equipment from the mine or mine site with the intent to permanently deprive the operator of the  
57 device or equipment or knowingly tampers with or attempts to tamper with the device or equipment  
58 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility  
59 for not less than one year nor more than 10 years, or fined not less than \$10,000 nor more than  
60 \$100,000, or both imprisoned and fined.

61 (i)(1) A wireless tracking device approved by the director and provided by the operator  
62 shall be worn by each person underground. In the event of an accident or other emergency, the  
63 tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical  
64 location of each person underground: *Provided*, That no person shall discharge or discriminate  
65 against any miner based on information gathered by a wireless tracking device during  
66 nonemergency monitoring. Each operator shall train each miner in the use of the device and  
67 provide refresher training courses for all underground employees during each calendar year. The  
68 operator shall install in or around the mine all equipment necessary to provide real-time  
69 emergency monitoring of the physical location of each person underground.

70 (2) The MSHA-approved ERP shall serve as the state-approved plan: *Provided*, That the  
71 MSHA-approved plan shall comply with all other provisions of state mining law as set forth in state  
72 code or the code of state rules.

73 (3) Any person who, without the authorization of the operator or the director, knowingly  
74 removes or attempts to remove any wireless tracking device or related equipment, approved by  
75 the director, from a mine or mine site with the intent to permanently deprive the operator of the  
76 device or equipment or knowingly tampers with or attempts to tamper with the device or equipment  
77 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility  
78 for not less than one year nor more than 10 years, or fined not less than \$10,000 nor more than  
79 \$100,000, or both imprisoned and fined.

80 (j) The director ~~shall~~ may promulgate emergency and legislative rules to implement ~~and~~  
81 ~~enforce~~ this section pursuant to the provisions of §29A-3-1 *et seq.* of this code.

**§22A-2-63. No mine to be opened or reopened without prior approval of the Director of the  
Office of Miners' Health, Safety and Training; certificate of approval; ~~approval fees;~~  
extension of certificate of approval; certificates of approval not transferable;  
section to be printed on certificates of approval.**

1 (a) No mine may be opened or reopened unless prior approval has been obtained from  
2 the Director of the Office of Miners' Health, Safety and Training. The director may not  
3 unreasonably withhold approval. ~~The operator shall pay a fee of \$100 for the approval, which~~  
4 ~~shall be tendered with the application for approval: *Provided*, That mines producing coal solely~~  
5 ~~for the operator's use shall be issued a permit without charge if coal production will be less than~~  
6 ~~50 tons a year.~~

7 Within 30 days after January 1, of each year, the holder of a permit to open a mine shall  
8 apply for the extension of the permit for an additional year. The permit, evidenced by a document  
9 issued by the director, shall be granted as a matter of right ~~for a fee of \$100~~ if, at the time  
10 application is made, the permit holder is in compliance with the provisions of §22A-2-77 of this

11 ~~article code and has paid or otherwise appealed all coal mine assessments issued to the mine if~~  
12 ~~operated by the permit holder and imposed under article one of this chapter. Applications for~~  
13 ~~extension of permits not submitted within the time required shall be processed as an application~~  
14 ~~to open or reopen a mine and shall be accompanied by a fee of \$100.~~

15 (b) Permits issued pursuant to this section are not transferable.

16 (c) If the operator of a mine is not the permit holder as defined in subsection (a) of this  
17 section, then the operator shall apply for and obtain a certificate of approval to operate the mine  
18 on which the permit is held prior to commencing operations. ~~The operator shall pay a fee of \$100,~~  
19 ~~which payment shall be tendered with the application for approval.~~ The approval, evidenced by a  
20 certificate issued by the director, shall be granted if, at the time application is made, the applicant  
21 is in compliance with the provisions of §22A-2-77 of this ~~article code and has paid or otherwise~~  
22 ~~appealed all coal mine assessments imposed on the applicant for the certificate of approval under~~  
23 ~~article one of this chapter.~~

24 ~~(d) In addition to the director's authority to file a petition for enforcement under subdivision~~  
25 ~~(4), subsection (a), section twenty one, article one of this chapter, if if an operator holding a~~  
26 ~~certificate of approval issued pursuant to subsection (c) of this section, has been assessed a civil~~  
27 ~~penalty in accordance with section twenty one, article one of this chapter, and its implementing~~  
28 ~~rules, and the penalty has become final, fails to pay the penalty within the time prescribed in the~~  
29 ~~order, the director or the authorized representative of the director, by certified mail, return receipt~~  
30 ~~requested, shall send a notice to the operator advising the operator of the unpaid penalty. If the~~  
31 ~~penalty is not paid in full within sixty days from the issuance of the notice of delinquency by the~~  
32 ~~director, then the director may revoke the operator's certificate of approval: *Provided*, That the~~  
33 ~~operator to whom the delinquency notice is issued has thirty days from receipt of the delinquency~~  
34 ~~notice to request, by certified mail, return receipt requested, a public hearing held in accordance~~  
35 ~~with the procedures of section seventeen, article one of this chapter, and its implementing rules,~~  
36 ~~including application for temporary relief. Once the operator's certificate of approval is revoked~~

37 ~~pursuant to this subsection, the operator may not obtain any certificate of approval under the~~  
38 ~~provisions of this section to operate any other mine until that operator pays the delinquent~~  
39 ~~penalties that have become final.~~

40 (ed) Every firm, corporation, partnership, or individual that contracts to perform services  
41 or construction at a coal mine is considered to be an operator and shall apply for and obtain a  
42 certificate of approval prior to commencing operations: *Provided*, That these persons shall only  
43 be required to obtain one certificate annually: *Provided, however*, That persons such as, but not  
44 limited to, consultants, mine vendors, office equipment suppliers, and maintenance and delivery  
45 personnel are excluded from this requirement to obtain a certificate of approval. ~~Operators who~~  
46 ~~are required to obtain a certificate of approval pursuant to the provisions of this subsection shall~~  
47 ~~pay a fee of \$100 which shall be tendered with the application for approval. Approval evidenced~~  
48 ~~by a certificate issued by the director, shall be granted if, at the time the application is made, the~~  
49 ~~applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant~~  
50 ~~under article one of this chapter.~~

51 Within 30 days after January 1, of each year, the holder of a certificate of approval shall  
52 apply for the extension of that approval for an additional year. ~~Applications for extension shall be~~  
53 ~~accompanied by a fee of \$100. An extension shall be granted if, at the time application is made,~~  
54 ~~the applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant~~  
55 ~~under article one of this chapter. All delinquent assessments which have been imposed upon a~~  
56 ~~certificate of approval holder or applicants under this section may not be imposed upon any permit~~  
57 ~~holder or certificate of approval holder or any applicant pursuant to subsection (a) or (c) of this~~  
58 ~~section.~~

59 (f) The provisions of this section shall be printed on the reverse side of every permit issued  
60 under subsection (a) of this section and certificate of approval issued under subsection (e) of this  
61 section.

62 (g) The district mine inspector shall conduct a ~~preinspection~~ visit of the area proposed for  
63 underground mining prior to issuance of any new opening permit approval to ensure there are no  
64 concerns or other safety issues that need to be mitigated prior to opening.

65 ~~(h) All moneys collected by the office of miners' health, safety and training for the approval~~  
66 ~~fees set forth in subsections (a), (c) and (e) of this section shall be deposited with the treasurer of~~  
67 ~~the State of West Virginia to the credit of the general administration — operating permit fees fund.~~  
68 ~~The operating permit fees fund shall be used by the director who is authorized to expend the~~  
69 ~~moneys in the fund for the administration of this chapter.~~

**§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and Training.**

- 1 (a) For the purposes of this section, the term accident means:
- 2 (1) The death of an individual at a mine;
- 3 (2) An injury to an individual at a mine which has a reasonable potential to cause death;
- 4 (3) The entrapment of an individual;
- 5 (4) The unplanned inundation of a mine by a liquid or gas;
- 6 (5) The unplanned ignition or explosion of gas or dust;
- 7 (6) The unplanned ignition or explosion of a blasting agent or an explosive;
- 8 (7) An unplanned fire in or about a mine not extinguished within five minutes of ignition;
- 9 (8) An unplanned roof fall at or above the anchorage zone in active workings where roof  
10 bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or  
11 impedes passage;
- 12 (9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular  
13 mining activity for more than one hour;
- 14 (10) An unstable condition at an impoundment, refuse pile or culm bank which requires  
15 emergency action in order to prevent failure, or which causes individuals to evacuate an area, or  
16 the failure of an impoundment, refuse pile or culm bank;

17 (11) Damage to hoisting equipment in a shaft or slope which endangers an individual or  
18 which interferes with use of the equipment for more than thirty minutes; and

19 (12) An event at a mine which causes death or bodily injury to an individual not at the mine  
20 at the time the event occurs.

21 (b) Whenever any accident occurs in or about any coal mine or the machinery connected  
22 therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice,  
23 within 15 minutes of ascertaining the occurrence of an accident, to the Mine and Industrial  
24 Accident Emergency Operations Center at the statewide telephone number established by the  
25 Director of the Division of ~~Homeland Security and~~ Emergency Management pursuant to the  
26 provisions of §15-5B-1 *et seq* of this code stating the particulars of the accident: *Provided*, That  
27 the operator or the mine foreman in charge of the mine may comply with this notice requirement  
28 by immediately providing notice to the appropriate local organization for emergency services as  
29 defined in §15-5-8 of this code ~~section eight, article five of said chapter~~, or the appropriate local  
30 emergency telephone system operator as defined in §24-6-1 *et seq.* of this code: *Provided*,  
31 *however*, That if, immediately upon ascertaining the occurrence of an accident, the operator or  
32 the mine foreman in charge of the mine provides notice to the local organization for emergency  
33 services as defined in §15-5-8 of this code, or the appropriate local emergency telephone system  
34 operator as defined in §24-6-1 *et seq.* of this code, then, in order to comply with this subsection,  
35 the operator or mine foreman in charge of the mine shall also give notice to the Mine and Industrial  
36 Accident Emergency Operations Center at the statewide number identified in this subsection  
37 within 15 minutes of completing the telephone call to the local organization for emergency  
38 services or the appropriate local emergency telephone system operator, as applicable: *Provided*  
39 *further* That nothing in this subsection shall be construed to relieve the operator from any reporting  
40 or notification requirement under federal law.

41 ~~(c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant~~  
42 ~~to rules authorized in this section, a civil administrative penalty of up to \$100,000 on the operator~~

43 if it is determined that the operator or the mine foremen in charge of the mine failed to give  
44 immediate notice as required in this section. The director may later amend the assessment of a  
45 penalty under this section if so warranted: *Provided*, That the director may waive imposition of the  
46 civil administrative penalty at any time if he or she finds that the failure to give immediate notice  
47 was caused by circumstances wholly outside the control of the operator: *Provided, however*, That  
48 the assessment of the civil administrative penalty set forth in this subsection may be appealed to  
49 the Board of Appeals, and the Board of Appeals may, by a vote of two Board of Appeals Members,  
50 reduce the amount of the civil administrative penalty upon a finding of mitigating circumstances  
51 warranting the imposition of a lesser amount.

52 (d) If anyone is fatally injured, the inspector shall immediately go to the scene of the  
53 accident and make recommendations and render assistance as he or she may deem necessary  
54 for the future safety of the ~~men~~ miners and investigate the cause of the explosion or accident and  
55 make a record. He or she shall preserve the record with the other records in his or her office. The  
56 cost of the investigation records shall be paid by the Office of Miners' Health, Safety and Training.  
57 A copy shall be furnished to the operator and other interested parties. To enable him or her to  
58 make an investigation, he or she has the power to compel the attendance of witnesses and to  
59 administer oaths or affirmations. The director has the right to appear and testify and to offer any  
60 testimony that may be relevant to the questions and to cross-examine witnesses.

**§22A-2-73. Construction of shafts, slopes, surface facilities and the safety hazards attendant therewith; duties of Mine Safety Board of Coal Mine Health and Safety to promulgate rules; time limits therefor.**

1 The Mine Safety Board of Coal Mine Health and Safety shall investigate or cause to be  
2 investigated the technology, procedures, and techniques used in the construction of shafts,  
3 slopes, surface facilities, and the safety hazards, attendant therewith, and ~~shall~~ may promulgate  
4 rules governing the construction of shafts and slopes; and ~~shall promulgate by January 1, 1981,~~  
5 ~~rules governing the construction of surface facilities.~~

6           The Mine Safety Board of Coal Mine Health and Safety shall may continuously update  
7 such rules governing the construction of shafts, slopes, and surface facilities, which rules shall  
8 have as their paramount concern, the health and safety of the persons involved in such  
9 operations, and such rules shall include, but not be limited to, the certification of all supervisors,  
10 the certification and training of hoist operators and shaft workers, the certification of blasters and  
11 approval of plans. The provisions of such rules may be ~~enforced against~~ examined and  
12 recommendations may be provided to the mine operator to ensure such operators and  
13 construction companies are operating safely with the safety of the miner as the top priority. ~~in~~  
14 ~~accord with the provisions of article one of this chapter.~~ For purposes of this chapter, a  
15 construction company is an operator.

**ARTICLE 5. ~~BOARD OF APPEALS~~ RIGHT TO APPEAL.**

**§22A-5-1. Board of appeals Appeals of any action of the director.**

1           The Board of Appeals is discontinued and all appeals of any order, suspension of a  
2 certification, or revocation of any certification instituted by the director of the Officer of Miners  
3 Health, Safety and Training may be appealed in the circuit court in the county where the petitioner  
4 resides or in the circuit court of the county in which the mine is located. ~~There is hereby continued~~  
5 ~~a board of appeals, consisting of three members. Two members of the board shall be appointed~~  
6 ~~by the Governor, one person who by reason of previous training and experience may reasonably~~  
7 ~~be said to represent the viewpoint of miners, and one person who by reason of previous training~~  
8 ~~and experience may reasonably be said to represent the viewpoint of the operators. The third~~  
9 ~~person, who is chair of the board and who must not have had any connection at any time with the~~  
10 ~~coal industry or an organization representing miners, is selected by the two members appointed~~  
11 ~~by the Governor. The term of office of members of the board is five years.~~

12           ~~The function and duties of the board is to hear appeals, make determinations on questions~~  
13 ~~of miners' entitlements due to withdrawal orders and appeals from discharge or discrimination,~~  
14 ~~and suspension of certification certificates.~~



15           ~~The chair of the board has the power to administer oaths and subpoena witnesses and~~  
16 ~~require production of any books, papers, records or other documents relevant or material to the~~  
17 ~~appeal inquiry.~~

18           ~~The chair shall subpoena any witness requested by a party to a hearing to testify or~~  
19 ~~produce books, records or documents. Any witness responding to a subpoena so issued shall~~  
20 ~~receive a daily witness fee to be paid out of the State Treasury upon a requisition of the State~~  
21 ~~Auditor equivalent to the rate of pay under the wage agreement currently in effect plus all~~  
22 ~~reasonable expenses for meals, lodging and travel at the rate applicable to state employees. Any~~  
23 ~~full payments as hereinbefore specified shall be in full and exclusive payment for meals, lodging,~~  
24 ~~actual travel and similar expenses and shall be made in lieu of any lost wages occasioned by~~  
25 ~~such appearance in connection with any hearing conducted by the board.~~

26           ~~Each member of the board shall be paid the same compensation and expense~~  
27 ~~reimbursement as is paid to members of the Legislature for their interim duties as recommended~~  
28 ~~by the Citizens Legislative Compensation Commission and authorized by law for each day or~~  
29 ~~portion thereof engaged in the discharge of official duties. No reimbursement for expenses shall~~  
30 ~~be made except upon an itemized account, properly certified by such members of the board. All~~  
31 ~~reimbursement for expenses shall be paid out of the State Treasury upon a requisition upon the~~  
32 ~~State Auditor.~~

33           ~~Board members, before performing any duty, shall take and subscribe to the oath required~~  
34 ~~by section 5, article IV of the Constitution of West Virginia.~~

**§22A-5-2. Powers transferred to the Board of Appeals.**

1           [Repealed.]

**ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY WEST VIRGINIA MINE**  
**SAFETY BOARD.**

**§22A-6-1. Declaration of legislative findings and purpose.**

1           (a) The Legislature hereby finds and declares that:

2 (1) The Legislature concurs with the congressional declaration made in the Federal Coal  
3 Mine Health and Safety Act of 1969 that “the first priority and concern of all in the coal mining  
4 industry must be the health and safety of its most precious resource — the miner”;

5 (2) Coal mining is highly specialized, technical, and complex and it requires frequent  
6 review, refinement, and improvement of standards to protect the health and safety of miners;

7 (3) During each session of the Legislature, coal mine health and safety standards are  
8 proposed which require knowledge and comprehension of scientific and technical data related to  
9 coal mining;

10 (4) The formulation of appropriate rules and practices to improve health and safety and  
11 provide increased protection of miners can be accomplished more effectively by persons who  
12 have experience and competence in coal mining and coal mine health and safety.

13 (b) In view of the foregoing findings, it is the purpose of this article to:

14 (1) Establish the Mine Safety Board to continue operations of ~~Continue~~ the board of coal  
15 mine health and safety;

16 (2) Require such board to continue as standard rules the coal mine health and safety  
17 provisions of this code;

18 (3) Compel the board to review such standard rules and, when deemed appropriate to  
19 improve or enhance coal mine health and safety, to revise the same or develop and promulgate  
20 new rules dealing with coal mine health and safety; and

21 (4) Authorize such board to conduct such other activities as it deems necessary to  
22 implement the provisions of this chapter.

**§22A-6-2. Definitions.**

1 Unless the context in which a word or phrase appears clearly requires a different meaning,  
2 the words and phrases defined in section two, article one of this chapter have, when used in this  
3 article, the meaning therein assigned to them. For the purpose of this article, “board” means the

4 ~~Mine Safety Board of Coal Mine Health and Safety continued by~~ as created in section three of  
5 this article.

**§22A-6-3. ~~Board continued~~ Mine Safety Board established; membership; method of  
nomination and appointment; meetings; vacancies; quorum.**

1 (a) The ~~Board of Coal Mine Health and Safety is continued~~ Mine Safety Board is hereby  
2 established, and ~~commencing July 1, 2010~~, is a separate independent board within the  
3 Department of Commerce. The board consists of six voting members and one ex officio,  
4 nonvoting member who are residents of this state, and who are appointed as follows:

5 (1) The Governor shall appoint, by and with the advice and consent of the Senate, three  
6 members to represent the viewpoint of those operators in this state. When such members are to  
7 be appointed, the Governor ~~shall~~ may request from ~~the major~~ a trade association representing  
8 operators in this state a list of three nominees for each ~~such~~ vacant position on the ~~board~~  
9 commission. ~~All such nominees shall be persons with special experience and competence in~~  
10 ~~health and safety~~. There shall be submitted with a nominee ~~such list~~ a summary of the  
11 qualifications of each nominee, including each person's experience and competence in health  
12 and safety. ~~If the full lists of nominees are submitted in accordance with the provisions of this~~  
13 ~~subdivision, the Governor shall make the appointments from the persons so nominated. For~~  
14 ~~purposes of this subdivision, the major trade association representing operators in this state is~~  
15 ~~that association which represents operators accounting for over one half of the coal produced in~~  
16 ~~mines in this state in the year prior to the year in which the appointment is to be made.~~

17 (2) The Governor shall appoint, by and with the advice and consent of the Senate, three  
18 members who can ~~reasonably be expected~~ to represent the viewpoint of the working miners of  
19 this state. When members are to be appointed, the Governor ~~shall~~ may request from the major  
20 employee organization representing coal miners within this state, a list of three nominees for each  
21 vacant position on the board. ~~The highest ranking official within the major employee organization~~  
22 ~~representing coal miners within this state shall submit a list of three nominees for each such~~

23 ~~position on the board.~~ The nominees shall have a background in health and safety and a summary  
24 of the nominee's qualifications must be provided. ~~The Governor shall make the appointments~~  
25 ~~from the requested list of nominees.~~

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

28 (4) The Director of the Office of Miners' Health, Safety and Training or his or her designee  
29 shall serve as an *ex officio*, nonvoting member.

30 (b) ~~Members serving on the board on January 1, 2017, shall continue to serve for a~~  
31 ~~minimum of three year terms years until June 30, 2020. The term is three years.~~ Members are  
32 eligible for reappointment.

33 (c) ~~Commencing on July 1, 2017, the~~ The board shall assume retains all powers and  
34 responsibilities of:

35 (1) the Board of Miners' Training, Education and Certification established pursuant to  
36 §22A-7-1 et seq. of this code; ~~article seven of this chapter,~~

37 (2) the mine inspectors' examining board established pursuant to §22A-9-1 et seq. of this  
38 code; ~~article nine of this chapter,~~ and

39 (3) the Mine Safety Technology Task Force established pursuant to §22A-11-1 et seq. of  
40 this code ~~article eleven of this chapter.~~

41 (d) The Governor shall appoint, ~~subject to the approval of a majority of the members of~~  
42 ~~the board appointed under subdivisions (1) and (2), subsection (a) of this section,~~ a Health and  
43 Safety Administrator in accordance with the provisions of §22A-6-6 of this code, who shall certify  
44 all official records of the board. The Health and Safety Administrator shall be a full-time officer of  
45 the ~~Board of Coal Mine Health and Safety~~ Mine Safety Board with the duties provided for in §22A-  
46 6-6 of this code. The Health and Safety Administrator shall have such education and experience  
47 as the Governor deems necessary to properly investigate areas of concern to the board in the  
48 development of rules governing mine health and safety. The Governor shall appoint as Health

49 and Safety Administrator a person who has an independent and impartial viewpoint on issues  
50 involving mine safety. The Health and Safety Administrator ~~shall~~ may not be a person who is an  
51 officer, trustee, director, substantial shareholder, contractor, consultant, or employee ~~has not~~  
52 ~~been during the two years immediately preceding appointment, and is not during his or her term,~~  
53 ~~an officer, trustee, director, substantial shareholder, contractor, consultant or employee~~ of any  
54 coal operator, or an employee or officer of an employee organization or a spouse of any such  
55 person during his or her term or in the two years immediately preceding his or her appointment.  
56 The Health and Safety Administrator shall have the expertise to draft proposed rules and shall  
57 prepare such rules as are required by this code and on such other areas as will improve coal mine  
58 health and safety.

59 (e) The board shall meet at least once during each ~~calendar month~~ quarter, or more often  
60 as may be necessary, and at other times upon the call of the chair, or upon the request of any  
61 three members of the board. Under the direction of the board, the Health and Safety Administrator  
62 shall prepare an agenda for each ~~board~~ meeting giving priority to the promulgation of rules as  
63 may be required from time to time by this code, and as may be required to improve coal mine  
64 health and safety. The Health and Safety Administrator shall provide each member of the board  
65 with notice of the meeting and the agenda as far in advance of the meeting as practical, but in  
66 any event, at least five days prior thereto. No meeting of the board shall be conducted unless said  
67 notice and agenda are given to the ~~board~~ members at least five days in advance, as provided  
68 herein, except in cases of emergency, as declared by the director, in which event members shall  
69 be notified of the ~~board~~ meeting and the agenda: *Provided*, That upon agreement of a majority of  
70 the quorum present, any scheduled meeting may be ordered recessed to another day certain  
71 without further notice of additional agenda.

72 When proposed rules are to be finally adopted by the board, copies of such proposed  
73 rules shall be delivered to members not less than five days before the meeting at which such  
74 action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered

75 on the second day of a meeting ~~of the board~~ held on two consecutive days, except that by the  
76 concurrence of ~~at least four~~ a majority of members present ~~of the board~~, the board may suspend  
77 this rule of procedure and proceed immediately to the consideration of final adoption or rejection  
78 of rules. When a member fails to appear at three consecutive meetings ~~of the board~~ or at one half  
79 of the meetings held during a one-year period, the Health and Safety Administrator shall notify  
80 the member and the Governor ~~of such fact. Such~~ and such member shall be removed by the  
81 Governor unless good cause for absences is shown.

82 (f) Whenever a vacancy on the board occurs, nominations and appointments shall be  
83 made in the manner prescribed in this section: ~~Provided, That in the case of an appointment to fill~~  
84 ~~a vacancy, nominations of three persons for each such vacancy shall be requested by and~~  
85 ~~submitted to the Governor within thirty days after the vacancy occurs by the major trade~~  
86 ~~association or major employee organization, if any, which nominated the person whose seat on~~  
87 ~~the board is vacant. The vacancy shall be filled by the Governor within 30 days of his or her receipt~~  
88 ~~of the list of nominations.~~

89 (g) A quorum of the board is four members which shall include at least two members  
90 representing the viewpoint of operators and at least two members representing the viewpoint of  
91 the working miners, and the board may act officially, including voting on all business matters, by  
92 a majority of those members who are present, ~~except that no vote of the board may be taken~~  
93 ~~unless all six voting members are present.~~

**§22A-6-4. Board powers and duties.**

1 (a) The board shall adopt as standard rules the “coal mine health and safety provisions of  
2 this chapter”. Such standard rules and any other rules shall be adopted by the board ~~without~~  
3 ~~regard to~~ in accordance with the provisions of chapter 29A of this code. The ~~Board of Coal Mine~~  
4 ~~Health and Safety Mine Safety Board~~ shall devote its time toward promulgating rules in those  
5 areas specifically directed by this chapter and those necessary to prevent fatal accidents and

6 injuries. The board may adopt emergency rules to help set safety standards for mine operators  
7 and to protect the health of coal miners, as necessary.

8 ~~(b) The board shall review such standard rules and, when deemed appropriate to improve~~  
9 ~~or enhance coal mine health and safety, revise the same or develop and promulgate new rules~~  
10 ~~dealing with coal mine health and safety.~~

11 ~~(e)~~ (e) The board shall develop, promulgate, and revise, as may be appropriate, rules as are  
12 necessary and proper to effectuate the purposes of article two of this chapter ~~and to prevent the~~  
13 ~~circumvention and evasion thereof, all without regard to~~ in accordance with the provisions of  
14 chapter 29A of this code:

15 ~~(1) Upon consideration of the latest available scientific data in the field, the technical~~  
16 ~~feasibility of standards, and experience gained under this and other safety statutes, such rules~~  
17 ~~may expand protections afforded by this chapter notwithstanding specific language therein, and~~  
18 ~~such rules may deal with subject areas not covered by this chapter to the end of affording the~~  
19 ~~maximum possible protection to the health and safety of miners.~~

20 ~~(2)~~ No rules promulgated by the board shall reduce or compromise the level of safety or  
21 protection afforded miners below the level of safety or protection afforded by this chapter.

22 ~~(3)~~ (3) Any miner or representative of any miner, or any coal operator has the power to  
23 petition the Circuit Court of Kanawha County for a determination as to whether any rule  
24 promulgated or revised reduces the protection afforded miners below that provided by this  
25 chapter, or is otherwise contrary to law: *Provided*, That any rule properly promulgated by the  
26 board pursuant to the terms and conditions of this chapter creates a rebuttable presumption that  
27 said rule does not reduce the protection afforded miners below that provided by this chapter.

28 ~~(4) The director shall cause proposed rules and a notice thereof to be posted as provided~~  
29 ~~in section eighteen, article one of this chapter. The director shall deliver a copy of such proposed~~  
30 ~~rules and accompanying notice to each operator affected. A copy of such proposed rules shall be~~

31 ~~provided to any individual by the director's request. The notice of proposed rules shall contain a~~  
32 ~~summary in plain language explaining the effect of the proposed rules.~~

33 ~~(5) The board shall afford interested persons a period of not less than thirty days after~~  
34 ~~releasing proposed rules to submit written data or comments. The board may, upon the expiration~~  
35 ~~of such period and after consideration of all relevant matters presented, promulgate such rules~~  
36 ~~with such modifications as it may deem appropriate.~~

37 ~~(6) On or before the last day of any period fixed for the submission of written data or~~  
38 ~~comments under subdivision (5) of this section, any interested person may file with the board~~  
39 ~~written objections to a proposed rule, stating the grounds therefor and requesting a public hearing~~  
40 ~~on such objections. As soon as practicable after the period for filing such objections has expired,~~  
41 ~~the board shall release a notice specifying the proposed rules to which objections have been filed~~  
42 ~~and a hearing requested.~~

43 ~~(7) Promptly after any such notice is released by the board under subdivision (6) of this~~  
44 ~~section, the board shall issue notice of, and hold a public hearing for the purpose of receiving~~  
45 ~~relevant evidence. Within sixty days after completion of the hearings, the board shall make~~  
46 ~~findings of fact which shall be public, and may promulgate such rules with such modifications as~~  
47 ~~it deems appropriate. In the event the board determines that a proposed rule should not be~~  
48 ~~promulgated or should be modified, it shall within a reasonable time publish the reasons for its~~  
49 ~~determination.~~

50 ~~(83)~~ All rules promulgated by the board shall be published in the State Register and  
51 continue in effect until modified or superseded in accordance with the provisions of this chapter.

52 ~~(dc)~~ To carry out its duties and responsibilities, the board is authorized to employ such  
53 personnel, including legal counsel, experts, and consultants, as it deems necessary. In addition,  
54 the board, within the appropriations provided for by the Legislature, may conduct or contract for  
55 research and studies and ~~is entitled to the~~ may use of the services, facilities, and personnel of  
56 any agency, institution, school, college or university of this state.



57           (ed) The director shall within 60 days of a coal mining fatality or fatalities provide the board  
58 with all available reports regarding such fatality or fatalities.

59           The board shall review all reports and any recommended rules submitted by the director,  
60 receive any additional information it requests, and may, on its own initiative, investigate the  
61 circumstances surrounding a coal mining fatality or fatalities and ascertain the cause or causes  
62 of such coal mining fatality or fatalities. ~~In order to investigate a coal mining fatality or fatalities, a~~  
63 ~~majority of the board must vote in favor of commencing an investigation.~~ Within 90 days of the  
64 receipt of the Federal Mine Safety and Health Administration's fatal accident report and the  
65 director's report and recommended rules, the board shall review and consider the presentation of  
66 said report and rules and the results of its own investigation, if any, and, if a majority of ~~all voting~~  
67 members present ~~board members~~ determines that additional rules can assist in the prevention of  
68 the specific type of fatality, the board shall either accept and promulgate the director's  
69 recommended rules, amend the director's recommended rules or draft new rules as are  
70 necessary to prevent the recurrence of such fatality. If the board chooses to amend the director's  
71 recommended rules or draft its own rules, a vote is required within 120 days as to whether to  
72 promulgate the amended rule or the rule drafted by the board: *Provided*, That the board may, by  
73 majority vote of members present, find that exceptional circumstances exist and the deadline  
74 cannot be met: *Provided, however*, That under no circumstances shall such deadline be extended  
75 by more than a total of 90 days. ~~A majority vote of the board is required to promulgate any such~~  
76 ~~rule.~~

77           The board shall annually, not later than July 1, review the major causes of coal mining  
78 injuries during the previous calendar year, reviewing the causes in detail, and shall promulgate  
79 such rules as may be necessary to prevent the recurrence of such injuries and may assist mine  
80 operators and miners in healthy and safety standards for better protection.

81 Further, the board shall, on or before January 10, of each year, submit a report to the  
82 Governor, President of the Senate and Speaker of the House, which report shall include, but is  
83 not limited to:

84 (1) The number of fatalities during the previous calendar year, the apparent reason for  
85 each fatality as determined by the Office of Miners' Health, Safety and Training and the action, if  
86 any, taken by the board to prevent such fatality;

87 (2) Any rules promulgated by the board during the last year;

88 (3) What rules the board intends to promulgate during the current calendar year;

89 (4) Any problem the board is having in its effort to promulgate rules to enhance health and  
90 safety in the mining industry;

91 (5) Recommendations, if any, for the enactment, repeal, or amendment of any statute  
92 which would cause the enhancement of health and safety in the mining industry;

93 (6) Any other information the board deems appropriate;

94 (7) In addition to the report by the board, as herein contained, each individual member of  
95 said board has right to submit a separate report, setting forth any views contrary to the report of  
96 the board, and the separate report, if any, shall be appended to the report of the board and be  
97 considered a part thereof.

**§22A-6-5. Preliminary procedures for promulgation of rules.**

1 Rules may be promulgated in accordance with the provisions of §29A-3-1 et seq. of this  
2 code. The board may promulgate emergency rules with the intent to protect the life and safety of  
3 all miners, especially in the aftermath of investigating an accident which resulted in death of any  
4 miner.

5 ~~(a) Prior to the posting of proposed rules as provided for in subsection (c), section four of~~  
6 ~~this article, the board shall observe the preliminary procedure for the development of rules set~~  
7 ~~forth in this section:~~

8           ~~(1) During a board meeting or at any time when the board is not meeting, any board~~  
9           ~~member may suggest to the Health and Safety Administrator, or such administrator on his or her~~  
10           ~~own initiative may develop, subjects for investigation and possible regulation;~~

11           ~~(2) Upon receipt of a suggestion for investigation, the Health and Safety Administrator~~  
12           ~~shall prepare a report, to be given at the next scheduled board meeting, of the technical evidence~~  
13           ~~available which relates to such suggestion, the staff time required to develop the subject matter,~~  
14           ~~the legal authority of the board to act on the subject matter, including a description of findings of~~  
15           ~~fact and conclusions of law which will be necessary to support any proposed rules;~~

16           ~~(3) The board shall by majority vote of those members who are present determine whether~~  
17           ~~the Health and Safety Administrator shall prepare a draft rule concerning the suggested subject~~  
18           ~~matter;~~

19           ~~(4) After reviewing the draft rule, the board shall determine whether the proposed rules~~  
20           ~~should be posted and made available for comment as provided for in section four of this article;~~

21           ~~(5) The board shall receive and consider those comments to the proposed rules as~~  
22           ~~provided for in section four of this article;~~

23           ~~(6) The board shall direct the Health and Safety Administrator to prepare for the next~~  
24           ~~scheduled board meeting findings of fact and conclusions of law for the proposed rules, which~~  
25           ~~may incorporate comments received and technical evidence developed, and which are consistent~~  
26           ~~with section four of this article;~~

27           ~~(7) The board shall adopt or reject or modify the proposed findings of fact and conclusions~~  
28           ~~of law; and~~

29           ~~(8) The board shall make a final adoption or rejection of the rules.~~

30           ~~(b) By the concurrence of at least four members of the board, the board may dispense~~  
31           ~~with the procedure set out in subsection (a) of this section or any other procedural rule~~  
32           ~~established, except that the board shall in all instances when adopting rules prepare findings of~~  
33           ~~fact and conclusions of law consistent with this section and section four of this article.~~

34 ~~(c) Without undue delay, the board shall adopt an order of business for the conduct of~~  
35 ~~meetings which will promote the orderly and efficient consideration of proposed rules in~~  
36 ~~accordance with the provisions of this section.~~

37 ~~§22A-6-6. Health and Safety Administrator; qualifications; duties; employees;~~  
38 ~~compensation.(a) The Governor shall appoint the Health and Safety Administrator of the board~~  
39 ~~for a term of employment of one year, and the Health and Safety Administrator employed on~~  
40 ~~January 1, 2017 shall complete a three year term until June 30, 2020, unless he or she is~~  
41 ~~determined to have committed misfeasance, malfeasance or nonfeasance as referenced herein.~~  
42 ~~The Health and Safety Administrator shall be entitled to have his or her contract of employment~~  
43 ~~renewed on an annual basis except where such renewal is denied for cause: *Provided*, That the~~  
44 ~~Governor has the power at any time to remove the Health and Safety Administrator for~~  
45 ~~misfeasance, malfeasance or nonfeasance: *Provided, however*, That the board has the power to~~  
46 ~~remove the Health and Safety Administrator without cause upon the concurrence of five members~~  
47 ~~of the board.~~

48 ~~(b) The Health and Safety Administrator shall work at the direction of the board,~~  
49 ~~independently of the Director of the Office of Miners' Health, Safety and Training and has such~~  
50 ~~authority and shall perform such duties as may be required or necessary to effectuate this article.~~

51 ~~(c) In addition to the Health and Safety Administrator, there shall be such other employees~~  
52 ~~hired by the Health and Safety Administrator as the board determines to be necessary. The Health~~  
53 ~~and Safety Administrator shall provide supervision and direction to the other employees of the~~  
54 ~~board in the performance of their duties.~~

55 ~~(d) The employees of the board shall be compensated at rates determined by the board.~~  
56 ~~The salary of the Health and Safety Administrator shall be fixed by the Governor: *Provided*, That~~  
57 ~~the salary of the Health and Safety Administrator shall not be reduced during his or her annual~~  
58 ~~term of employment or upon the renewal of his or her contract for an additional term. Such salary~~  
59 ~~shall be fixed for any renewed term at least ninety days before the commencement thereof.~~

60           ~~(e) (1) Appropriations for the salaries of the Health and Safety Administrator and any other~~  
61 ~~employees of the board and for necessary office and operating expenses shall be made to a~~  
62 ~~budget account established for those purposes in the General Revenue Fund. Such account shall~~  
63 ~~be separate from any accounts or appropriations for the Office of Miners' Health, Safety and~~  
64 ~~Training.~~

65           ~~(2) Expenditures from the funds established in section three hundred ten, article two a;~~  
66 ~~section seven, article six; section four, article seven; section three, article eleven of this chapter~~  
67 ~~shall be by the Health and Safety Administrator for administrative and operating expenses, such~~  
68 ~~operating expenses include mine health and safety, research, education and training programs~~  
69 ~~as determined by the entities.~~

70           ~~(f) The Health and Safety Administrator shall review all coal mining fatalities and major~~  
71 ~~causes of injuries as mandated by section four of this article. An analysis of such fatalities and~~  
72 ~~major causes of injuries shall be prepared for consideration by the board within ninety days of the~~  
73 ~~occurrence of the accident.~~

74           ~~(g) At the direction of the board, the administrator shall also conduct an annual study of~~  
75 ~~occupational health issues relating to employment in and around coal mines of this state and~~  
76 ~~submit a report to the board with findings and proposals to address the issues raised in such~~  
77 ~~study. The administrator is responsible for preparing the annual reports required by subsection~~  
78 ~~(e), section four of this article and section nine of this article.~~

79           ~~(h) The administrator shall provide administrative assistance to the The State Coal Mine~~  
80 ~~Safety and Technical Review Committee, Board of Coal Mine Health and Safety, and serve as~~  
81 ~~the legislative liaison for budgetary issues. The Administrator shall serve as an ex officio,~~  
82 ~~nonvoting member on The State Coal Mine Safety and Technical Review Committee.~~

83           ~~(i) The administrator shall submit to each board or commission for its approval, the~~  
84 ~~proposed budget of the board or commission before submitting it to the Secretary of Revenue.~~

85           ~~(j) The administrator shall prepare and submit to the Director of the Office of Miners'~~  
86 ~~Health, Safety and Training, no less than on a quarterly basis, a report that summarizes the coal~~  
87 ~~mine health and safety standard rules under consideration by the Board of Coal Mine Health and~~  
88 ~~Safety, as well as the meetings and meeting agendas of the board.~~

**§22A-6-7. Coal Mine Safety and Technical Review Committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the committee; powers and duties of the ~~Board of Coal Mine Health and Safety~~ Mine Safety Board.**

1           (a) The State Coal Mine Safety and Technical Review Committee is continued, and  
2 commencing July 1, 2010, is a separate independent committee within the Department of  
3 Commerce. The purposes of this committee are to:

4           (1) Assist the Mine Safety Board ~~of Coal Mine Health and Safety~~ in the development of  
5 technical data relating to mine safety issues, including related mining technology;

6           (2) Provide suggestions and technical data to the board and propose rules with general  
7 mining industry application;

8           (3) Accept and consider petitions submitted by individual mine operators or miners seeking  
9 site-specific compliance visits or rulemaking pertaining to individual mines and make  
10 recommendations to the board concerning such visits or rulemaking; and

11           (4) Provide a forum for the resolution of technical issues encountered by the board, safety  
12 education, and coal advocacy programs.

13           (b) The committee shall consist of ~~two~~ three members, with the director of the Office of  
14 Miners Health, Safety and Training serving as a tie-breaking, voting member, who shall be  
15 residents of this state and who shall be appointed as follows hereinafter specified in this section:

16           (1) The Governor shall appoint one member to represent the viewpoint of the coal  
17 operators in this state ~~from a list containing one or more nominees submitted by the major trade~~

18 ~~association representing coal operators in this state within 30 days of a vacancy submission of~~  
19 ~~such nominee or nominees.~~

20 (2) The Governor shall appoint one member to represent the viewpoint of the working  
21 miners of this state ~~from a list containing one or more nominees submitted by the highest ranking~~  
22 ~~official within the major employee organization representing coal mines within this state within 30~~  
23 days of a vacancy submission of the nominee or the nominees.

24 (3) The members appointed in accordance with the provisions of subdivisions (1) and (2)  
25 of this subsection shall be initially appointed to serve a term of three years. The members serving  
26 on the effective date of this article may continue to serve until their terms expire.

27 (4) The members appointed in accordance with the provisions of subdivisions (1) and (2)  
28 of this subsection may be, but are not required to be, members of the Mine Safety Board of Coal  
29 ~~Mine Health and Safety~~, and shall be compensated on a per diem basis in the same amount as  
30 provided in §22A-6-10 of this code, plus all reasonable expenses.

31 (c) The committee shall meet at least once during each ~~calendar month~~ quarter, or more  
32 often as may be necessary.

33 (d) A quorum of the committee shall require ~~both~~ all members and the committee may only  
34 act officially by a quorum.

35 (e) The committee may review any matter relative to mine safety and mining technology  
36 and may pursue development and resolution of issues related thereto. The committee may make  
37 recommendations to the board for the promulgation of rules with general mining industry  
38 application. Upon receipt of a unanimous recommendation for rule making from the committee  
39 and only thereon, the board may adopt, modify, or reject such rule, ~~without modification except~~  
40 ~~as approved by the committee:~~ *Provided*, That any adopted rule shall not reduce or compromise  
41 the level of safety or protection below the level of safety or protection afforded by applicable  
42 statutes and rules. Any rule or emergency rule adopted must be promulgated in accordance with

43 ~~§22A-6-5 of this code. When so promulgated, such rules shall be effective, notwithstanding the~~  
44 ~~provisions of applicable statutes.~~

45 (f) (1) Upon application of a coal mine operator, or on its own motion, the committee has  
46 the authority to accept requests for site-specific rule making on a mine-by-mine basis, and make  
47 ~~unanimous~~ recommendations to the board for site-specific rules thereon. The committee has  
48 authority to approve a request if it concludes that the request does not reduce or compromise the  
49 level of safety or protection afforded miners below the level of safety or protection afforded by any  
50 applicable statutes or rules. Upon receipt of a request for site-specific rule making, the committee  
51 may conduct an investigation a visit or engage in other investigation to better understand of the  
52 conditions in the specific mine in question, which visit or investigation shall include consultation  
53 with the mine operator and authorized representatives of the miners. Such authorized  
54 representatives of the miners shall include any person designated by the employees at the mine,  
55 persons employed by an employee organization representing one or more miners at the mine, or  
56 a person designated as a representative by one or more persons at the mine.

57 (2) If the committee determines to recommend a request made pursuant to subdivision (1)  
58 of this subsection, the committee shall provide the results of its investigation to the Mine Safety  
59 ~~Board of Coal Mine Health and Safety~~ along with recommendations for the development of the  
60 site-specific rules applicable to the individual mine, which recommendations may include a written  
61 proposal containing draft rules.

62 (3) Within 30 days of receipt of the committee's recommendation, the board ~~shall~~ may  
63 adopt, modify, or reject, ~~without modification, except as approved by the committee,~~ the  
64 committee's recommendation to promulgate site-specific rules applicable to an individual mine  
65 adopting such site-specific rules only if it determines that the application of the requested rule to  
66 such mine will not reduce or compromise the level of safety or protection afforded miners below  
67 that level of safety or protection afforded by any applicable statutes. When so promulgated, such  
68 rules shall be effective notwithstanding the provisions of applicable statutes.



69 (g) The board shall consider all rules proposed by the Coal Mine Safety and Technical  
70 Review Committee and adopt, modify, or reject, ~~without modification, except as approved by the~~  
71 ~~committee~~, such rules, dispensing with the preliminary procedures set forth in subdivisions (1)  
72 through (7), subsection (a), section five; and, in addition, with respect to site-specific rules also  
73 dispensing with the procedures set forth in subdivisions (4) through (8), subsection (c), section  
74 four of this article.

75 (h) In performing its functions, the committee has access to the services of the coal mine  
76 Health and Safety Administrator appointed under §22A-6-3 of this code. The director shall make  
77 clerical support and assistance available in order that the committee can carry out its duties. Upon  
78 the request of ~~both~~ the members of the committee, the Health and Safety Administrator shall draft  
79 proposed rules and reports or make investigations.

80 (i) The powers and duties provided for in this section for the committee are not intended  
81 to replace or precondition the authority of the Mine Safety Board of ~~Coal Mine Health and Safety~~  
82 to act in accordance with sections one through six and eight through ten of this article.

83 (j) Appropriations for the funding of the committee and to effectuate this section shall be  
84 made to a budget account hereby established for that purpose in the General Revenue Fund.  
85 Such account shall be separate from any accounts or appropriations for the office of miners'  
86 health, safety and training.

**§22A-6-8. Effect of rules.**

1 The standard rules and any rules promulgated by the board are intended to serve as a  
2 guideline for basic health and safety standards for mine operations. The board or the director  
3 may, upon any compliance visit to any mine, noted where a mine operator or miner have  
4 circumvented the rules and may assist in creating a remedial plan or offer other training to ensure  
5 safety is the primary focus. ~~have the same force and effect of law as if enacted by the Legislature~~  
6 ~~as a part of article two of this chapter and any violation of any such rule is a violation of law or of~~  
7 ~~a health or safety standard within the meaning of this chapter.~~

**§22A-6-9. Reports.**

1 Prior to each regular session of the Legislature, the board ~~shall~~ may submit to the  
2 Legislature an annual report upon the subject matter of this article, the progress concerning the  
3 achievement of its purpose and any other relevant information, including any recommendations it  
4 deems appropriate. The report may be sent electronically to any member and paper copies may  
5 be provided upon request.

**§22A-6-11. Study of methane detecting shut off devices.**

1 [Repealed.]

**§22A-6-12. Study of whistleblower protections.**

1 [Repealed.]

**§22A-6-13. Study of ingress and egress to bleeder and gob areas of longwall panels and  
pillar sections.**

1 [Repealed.]

**§22A-6-14. Study of mandatory substance abuse program.**

1 [Repealed.]

**ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.**

**§22A-7-2. Board of Miner Training, Education and Certification abolished and duties  
imposed upon the Mine Safety Board ~~Board of Coal Mine Health and Safety.~~**

1 The Legislature hereby finds and declares that:

2 (a) The continued prosperity of the coal industry is of primary importance to the State of  
3 West Virginia;

4 (b) The highest priority and concern of this Legislature and all in the coal mining industry  
5 must be the health and safety of the industry's most valuable resource - the miner;

6 (c) A high priority must also be given to increasing the productivity and competitiveness of  
7 the mines in this State;

8 (d) An inordinate number of miners, working on both the surface in surface mining and in  
9 and at underground mines, are injured during the first few months of their experience in a mine;

10 (e) These injuries result in the loss of life and serious injury to miners and are an  
11 impediment to the future growth of West Virginia's coal industry;

12 (f) Injuries can be avoided through proper miner training, education, and certification;

13 (g) Mining is a technical occupation with various specialties requiring individualized  
14 training and education; and

15 (h) It is the general purpose of this article to:

16 (1) Require adequate training, education, and meaningful certification of all persons  
17 employed in coal mines;

18 (2) Require certain training and education of all prospective miners and miners certified  
19 by the state;

20 (3) Authorize a stipend for prospective miners enrolled in this State's miner training,  
21 education, and certification program;

22 (4) Direct the Director of the Office of Miners' Health, Safety and Training to apply and  
23 implement the standards set by the Mine Safety Board of Coal Mine Health and Safety by  
24 establishing programs for miner and prospective miner education and training; and

25 (5) Provide for a program of continuing miner education for all categories of certified  
26 miners.

**§22A-7-3. Definitions.**

1 Unless the context in which a word or phrase appears clearly requires a different meaning,  
2 the words defined in section two, article one of this chapter have when used in this article the  
3 meaning therein assigned to them. These words include, but are not limited to, the following:  
4 Office, director, mine inspector, operator, miner, shotfirer and certified electrician.

5 "Board" means the Mine Safety Board of Coal Mine Health and Safety established by  
6 §22A-6-3 of this code. ~~section four of this article.~~

7           “Mine” means any mine, including a “surface mine,” as that term is defined in §22-3-3 of  
8 this code, and in §22-4-2 of this code; and a “mine” as that term is defined in section two, article  
9 one of this chapter.

**§22A-7-4. Board of Miner Training, Education and Certification continued; membership;  
method of appointment; terms.**

1           [Repealed.]

**§22A-7-5. Additional powers and duties of the Mine Safety Board of ~~Coal Mine Health and  
Safety.~~**

1           (a) The board shall establish criteria and standards for a program of education, training,  
2 and examination to be required of all prospective miners and miners prior to their certification in  
3 any of the various miner specialties requiring certification under this article or any other provision  
4 of this code. The specialties include, but are not limited to, underground miner, surface miner,  
5 apprentice, underground mine foreman-fire boss, assistant underground mine foreman-fire boss,  
6 shotfirer, mine electrician and belt examiner. Notwithstanding the provisions of this section, the  
7 director may by rule further subdivide the classifications for certification.

8           (b) The board may require certification in other miner occupational specialties: *Provided*,  
9 That no new specialty may be created by the board unless certification in a new specialty is made  
10 desirable by action of the federal government requiring certification in a specialty not enumerated  
11 in this code.

12           (c) The board may establish criteria and standards for a program of preemployment  
13 education and training to be required of miners working on the surface at underground mines who  
14 are not certified under the provisions of this article or any other provision of this code.

15           (d) The board shall set minimum standards for a program of continuing education and  
16 training of certified persons and other miners on an annual basis: *Provided*, That the standards  
17 shall be consistent with the provisions of section seven of this article. Prior to issuing the  
18 standards, the board shall conduct public hearings at which the parties who may be affected by

19 its actions may be heard. The education and training shall be provided in a manner determined  
20 by the director to be sufficient to meet the standards established by the board.

21 (e) The board may, in conjunction with any state, local or federal agency or any other  
22 person or institution, provide for the payment of a stipend to prospective miners enrolled in one  
23 or more of the programs of miner education, training and certification provided in this article or  
24 any other provision of this code.

25 (f) The board may also, from time to time, conduct any compliance hearings and other  
26 oversight activities required to ensure full implementation of programs established by it. The board  
27 may assist any mine operator in implementing any program necessary to protect health and safety  
28 of miners.

29 (g) Nothing in this article empowers the board to revoke or suspend any certificate issued  
30 by the Director of the Office of Miners' Health, Safety and Training.

31 (h) The board may, upon its own motion or whenever requested to do so by the director,  
32 consider two certificates issued by this State to be of equal value or consider training provided or  
33 required by federal agencies to be sufficient to meet training and education requirements set by  
34 it, the director, or by the provisions of this code.

35 (i) As part of the annual training required by this section, the board shall include training  
36 of certified persons and other miners, instruction on miners' rights as they relate to the operation  
37 of unsafe equipment as provided in §22A-2-71 of this code, his or her right to withdrawal from  
38 unsafe conditions as provided in §22A-2-71 of this code, and his or her rights under §22A-1-22 of  
39 this code.

## **ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.**

### **§22A-8-1. Certificate of competency and qualification or permit of apprenticeship required of all surface and underground miners.**

1 Except as hereinafter provided, no person shall work or be employed for the purpose of  
2 performing normal duties as a surface or underground miner in any mine in this state unless the  
3 person holds at the time, he or she performs such duties a certificate of competency and

4 qualification or a permit of apprenticeship issued under the provisions of this article. This provision  
5 does not apply to properly trained mine communications persons under §22A-2-42 of this code.

**§22A-8-5. Supervision of apprentices.**

1 Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner  
2 holding a certificate of competency and qualification may have ~~one person~~ two persons working  
3 with him or her, and under his or her supervision and direction, as an apprentice, for the purpose  
4 of learning and being instructed in the duties and calling of mining. Any mine foreman or fire boss,  
5 or assistant mine foreman or fire boss, may have three persons working with him or her under his  
6 or her supervision and direction, as apprentices, for the purpose of learning and being instructed  
7 in the duties and calling of mining: *Provided*, That a mine foreman, assistant mine foreman, or fire  
8 boss supervising apprentices in an area where no coal is being produced or which is outby the  
9 working section may have as many as five apprentices under his or her supervision and direction,  
10 as apprentices, for the purpose of learning and being instructed in the duties and calling of mining  
11 or where the operator is using a production section under program for training of apprentice  
12 miners, approved by the ~~Board of Coal Mine Health and Safety~~ Mine Safety Board.

13 Every apprentice working at a surface mine shall be, at all times, under the supervision  
14 and control of at least one person who holds a certificate of competency and qualification.

15 In all cases, it is the duty of every mine operator who employs apprentices to ensure that  
16 such persons are effectively supervised and to instruct such persons in safe mining practices.  
17 Each apprentice shall wear a red hat which identifies the apprentice as such while employed at  
18 or near a mine. No person shall be employed as an apprentice for a period in excess of eight  
19 months, except that in the event of illness or injury, time extensions shall be permitted as  
20 established by the Director of the Office of Miners' Health, Safety, and Training.

**§22A-8-6. Certificate of competency and qualification — Underground or surface miner.**

1 (a) Underground miner. — A certificate of competency and qualification as an  
2 underground miner ~~or as surface miner~~ shall be issued by the director to any person who has at  
3 least ~~six~~ three months' total experience as an apprentice and demonstrated his or her competence

4 as a miner by successful completion of an examination given by the director or his or her  
5 representative in a manner and place to be determined by the Mine Safety Board of Miner  
6 ~~Training, Education and Certification: *Provided*, That all examinations shall be conducted in the~~  
7 English language and shall be of a practical nature, so as to determine the competency and  
8 qualifications of the applicant to engage in the mining of coal with reasonable safety to the  
9 applicant and fellow employees: ~~*Provided, however*, That notice of the time and place of such~~  
10 ~~examination shall be given to management at the mine, to the local union thereat if there is a local~~  
11 ~~union, and notice shall also be posted at the place or places in the vicinity of the mine where~~  
12 ~~notices to employees are ordinarily posted. Examinations shall also be held at such times and~~  
13 ~~places, and after such notice, as the board finds necessary to enable all applicants for certificates~~  
14 ~~to have an opportunity to qualify for certification.~~

15 (2) *Surface Miner.* — A certificate of competency and qualification as a surface miner  
16 shall be issued by the director to any person who has at least 90 days total experience as an  
17 apprentice and demonstrated his or her competence as a miner by successful completion of an  
18 examination given by the director or his or her representative in a manner and place to be  
19 determined by the Mine Safety Board: *Provided*, That all examinations shall be conducted in the  
20 English language and shall be of a practical nature, so as to determine the competency and  
21 qualifications of the applicant to engage in the mining of coal with reasonable safety to the  
22 applicant and fellow employees.

NOTE: The purpose of this bill is to create a support office for miners and mine operators within the Office of Miners Health, Safety, and Training.

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