

---

Monday, February 29, 2016

**FORTY-EIGHTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Tim Armstead, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Saturday, February 27, 2016, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Reordering of the Calendar**

Delegate Cowles announced that the Committee on Rules had transferred Com. Sub. for H. B. 4377, on Third Reading, House Calendar, to the Special Calendar.

**Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 116** — “A Bill to amend and reenact §29-22B-1101 of the Code of West Virginia, 1931, as amended, relating to increasing number of limited video lottery terminals allowed at retail locations; requiring Lottery Commission to conduct bid only open to current permit holders prior to September 1, 2016, for permits expiring June 30, 2021; and establishing procedure for bid process”; which was referred to the Committee on the Judiciary then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 411** — “A Bill to amend and reenact §61-11-26 of the Code of West Virginia, 1931, as amended, relating to the creation of the West Virginia Second Chance for Employment Act; defining terms; expanding eligibility for criminal expungement to persons convicted of certain nonviolent felonies; defining ‘nonviolent felony’; providing exclusions to eligibility; establishing timing for filing a petition for expungement; creating petition requirements and court procedure for evaluating preliminary and final orders of expungement for nonviolent felonies; providing for preliminary orders of expungement; requiring a ten-year period under a preliminary order of expungement for a felony before one may obtain a final order of expungement; clarifying disclosure requirements with respect to the information sealed pursuant to an order of expungement, including exemptions; providing standard for inspection of sealed records; and making technical changes”; which was referred to the Committee on Industry and Labor then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 421** — “A Bill to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-9i of said code, all relating to the termination of behavioral health severance and business privilege tax; specifying effective date of the termination; establishing method of payment of outstanding refund claims; generating replacement revenue stream by changing the durable medical goods sales tax exemption to home users only; specifying effective dates of this amendment; providing method to claim this exemption; and providing definitions for clarification.”

At the respective requests of Delegate Cowles, and by unanimous consent, the bill (Com. Sub. for S. B. 421) was taken up for immediate consideration, read a first time and ordered to second reading.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 455** — “A Bill to amend and reenact §29-22B-503 and §29-22B-504 of the Code of West Virginia, 1931, as amended, all relating to allowing a person to be both a limited video lottery operator and retailer”; which was referred to the Committee on the Judiciary then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 461** — “A Bill to amend and reenact §5B-2B-1, §5B-2B-2, §5B-2B-3, §5B-2B-4, §5B-2B-4a, §5B-2B-5, §5B-2B-6 and §5B-2B-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5B-2B-4b, all relating to West Virginia Workforce Development Board; updating West Virginia Workforce Investment Act to West Virginia Innovation and Opportunity Act; defining terms; creating West Virginia Workforce Development Board; providing for composition of West Virginia Workforce Development Board; setting forth requirements for board members; setting forth duties of board; updating reporting requirements; requiring open proceedings of board; and updating language”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 468** — “A Bill to amend and reenact §46A-6K-3 of the Code of West Virginia, 1931, as amended, relating to allowing accrual of interest during rescission period on a loan where right of rescission applies, if the loan is not rescinded; and providing exclusion to the charging and payment of interest”; which was referred to the Committee on Banking and Insurance then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 542** — “A Bill to amend and reenact §17C-15-49 of the Code of West Virginia, 1931, as amended, relating generally to admissibility of certain evidence in a civil action for damages; allowing the admission of the nonuse of an adult motor vehicle occupant’s safety belt in violation of law on the issue of failure to mitigate damages; subjecting that evidentiary issue to West Virginia Rules of Evidence; prohibiting admission of evidence of failure to wear safety belt for comparative negligence purposes; providing for admission of evidence related to failure to wear safety belt for

issue of mitigation of damages under certain circumstances; requiring expert evidence showing failure to wear safety belt in violation of this section be relevant to injuries or damages of plaintiff; permitting trier of fact to reduce amount of plaintiff's recovery attributable to failure to wear safety belt after reductions for comparative negligence; limiting percentage of reduction of medical expenses for an adult vehicle occupant's failure to wear safety belt to fifty percent; and clarifying that nothing is intended to limit a manufacturer from introducing evidence of an adult vehicle occupant's failure to wear safety belt to defend the design, manufacture or crashworthiness of a product in any action claiming damages under a product liability theory"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 578** — "A Bill to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to protection of utility workers from crimes against the person; defining 'utility worker'; and establishing penalties"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 595** — "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10-15c; and to amend said code by adding thereto a new section, designated §18-7A-17b, all relating to retirement credit for members of the West Virginia National Guard; and establishing procedure for purchase of military service credit by members of certain retirement systems with current or prior service in the West Virginia National Guard"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 619** — "A Bill to amend and reenact §29A-3-5 and §29A-3-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §29A-3-19 and §29A-3-20; and to amend said code by adding thereto a new section, designated §29A-3A-20, all relating to legislative rulemaking; requiring agencies respond to public comments during the rule-making process; requiring five-year expiration provisions in all future rules promulgated by executive agencies and higher education, but with provided exceptions; requiring expiration provisions in all future modifications of rules affecting agencies and higher education, but with provided exceptions; providing that any rule containing an expiration provision shall remain in effect after the expiration date and until the rule is modified or repealed; requiring agencies to explain why or why not public comments were incorporated into the rule; providing that failure of an agency to adequately explain why or why not public comments were incorporated into the rule is grounds for rejection of the rule; requiring additional information to be included when an agency submits proposed rules to the Legislative Rule-Making Review Committee, including an economic impact statement, detailed description of the purpose or objective of the rule, explanation of the statutory authority, public comments and written responses by the agency concerning those comments; requiring the agency's response address each issue and concern expressed by the comments received and whether the rule will be overly burdensome on business and industry by setting forth specific factors that must be addressed; requiring all executive branch agencies to review and evaluate all rules, guidelines, policies and recommendations with those any federal counterparts and determine if the state's rules, guidelines, policies and recommendations are more stringent; and requiring each

agency to review each of its rules within four years to determine if its rules should be continued without change, modified or repealed, and to submit a report to the Legislative Rule-Making Review Committee”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 627** — “A Bill to amend and reenact §30-3A-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §55-7-23 of said code, all relating to permitting physicians to decline prescribing controlled substance in certain circumstances; limiting disciplinary action on medical license for not prescribing or discontinuing prescribing controlled substance in certain circumstances; precluding criminal action for not prescribing or discontinuing prescribing controlled substance in certain circumstances; and limiting liability for not prescribing or discontinuing prescribing controlled substance in certain circumstances”; which was referred to the Select Committee on Prevention and Treatment of Substance Abuse then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 634** — “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17B-7-1, §17B-7-2, §17B-7-3, §17B-7-4, §17B-7-5, §17B-7-6, §17B-7-7, §17B-7-8, §17B-7-9 and §17B-7-10, all relating to creation of the Second Chance Driver’s License Act; creating short title; setting forth legislative findings and purpose; defining terms; establishing program; directing the Director of the Division of Justice and Community Services to administer program; setting eligibility requirements to become program participant; requiring application from person wishing to participate; directing the director to coordinate with officials from courts and commissioner to verify total amount of unpaid court costs; setting deadlines for provision of information regarding unpaid court costs to director; directing how unreported court costs are to be handled; requiring notification to applicant of acceptance into program; directing the director to develop consolidated repayment schedule for participant; setting requirements for consolidated repayment schedule; permitting modification of consolidated repayment schedule; permitting hardship waiver; clarifying that participant is under no obligation to make separate or additional payments directly to court if those costs are included in consolidated repayment schedule; establishing moratorium on collection of unpaid court fees by a court or its designee while a participant is in good standing with the program; requiring monthly remittance of payments to director; directing issuance of certificate of compliance, certificate of noncompliance, program removal notice and program completion certificate under certain conditions; directing Division of Motor Vehicles to place stay or lift stay on suspension or revocation of participant’s driver’s license under certain conditions; permitting Division of Motor Vehicles to require retesting under certain circumstances; exempting participants from certain retesting fees and reinstatement fees; creating Second Chance Driver’s License Program Account; providing for administration of account; directing deposit of funds into account; authorizing expenditure of funds from account for certain purposes; requiring Division of Justice and Community Services to collect and distribute unpaid court costs on a pro rata basis; and providing legislative and emergency rule-making authority”; which was referred to the Committee on the Judiciary”; which was referred to the Committee on Roads and Transportation then the Judiciary.

### Resolutions Introduced

Delegate Moffatt offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 95** — “Requesting that bridge number 322-10-28.14, currently known as the West Hamlin Bridge, carrying West Virginia Route 10 over the Guyandotte River in Lincoln County, West Virginia, be named the ‘Army SSG Arthur N. McMellon Memorial Bridge’.”

Whereas, Staff Sergeant Arthur N. McMellon was the seventh child born to Frank and Garnett McMellon of West Hamlin, Lincoln County, and attended Guyan Valley High School; and

Whereas, SSG Arthur N. McMellon had four brothers, Frank, Jr. of West Hamlin, Forrest of Barboursville, Gerald of Alum Creek and Jimmy of Star Route 10, near Barboursville, and three of the four also served in the military; and

Whereas, SSG Arthur N. McMellon saw combat action in the United States Army in Korea at the age of seventeen, where he was missing in action, once for 18 days but returned uninjured; and

Whereas, SSG Arthur N. McMellon never intended to make a career of the Army, but later reenlisted because he was unable to find a job in West Virginia and was deployed to a combat area in Vietnam; and

Whereas, While serving as a mess sergeant, SSG Arthur N. McMellon was able to scrounge up supplies for and serve a turkey feast for 71 Vietnamese children who unexpectedly visited his First Division Company on a Thanksgiving day; and

Whereas, SSG Arthur N. McMellon’s letters home to his wife and mother described the debilitating heat and humidity endured by the troops in Vietnam, the intense fighting in the area where he was stationed near Ben Cat and his desire to be home; and

Whereas, While riding in a Jeep to secure supplies for his unit, SSG Arthur N. McMellon was killed December 1, 1965 by a Viet Cong grenade; and

Whereas, SSG Arthur N. McMellon was buried in Arlington National Cemetery on December 16, 1965; and

Whereas, Then Rep. Ken Hechler, D. W.Va., who arranged for the sergeant’s burial at Arlington, said of him, “He showed that human kindness and love can shine through and can never be obscured by the muck and grime of a brutal war”; therefore, be it

*Resolved by the Legislature of West Virginia:*

That bridge number 322-10-28.14, currently known as the West Hamlin Bridge, carrying West Virginia Route 10 over the Guyandotte River, in Lincoln County, West Virginia, be named the “Army SSG Arthur N. McMellon Memorial Bridge”; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge the “Army SSG Arthur N. McMellon Memorial Bridge”; and, be it

*Further Resolved,* That the Clerk of the House of Delegates, forward a certified copy of this resolution to the Commissioner of the Division of Highways.

Delegates Ireland, R. Smith, McCuskey, Zatezalo and D. Evans offered the following resolution, which was read by its title and referred to the Committee on Rules.

**H. C. R. 96** — “Requesting the Federal Energy Regulatory Commission (FERC) expedite the approval of six interstate natural gas pipeline projects in West Virginia.”

Whereas, The United States has benefited from the vast natural resources produced in West Virginia for more than 150 years, and

Whereas, Horizontal drilling in the Marcellus and Utica Shales has made West Virginia and the Appalachian Basin the most prolific producer of natural gas, accounting for eighty-five percent of our nation's daily production, and

Whereas, More than 30,000 direct and indirect jobs are provided or supported by the natural gas industry statewide with an average annual salary in excess of \$40,000 annually, and

Whereas, The state's Gross Domestic Product (GDP) from the production of natural gas and oil was in excess of \$3.9 billion dollars in 2014, with less than five percent of the known shale reserves permitted, West Virginia is blessed with hundreds of years of natural gas reserves, and

Whereas, The need to build natural gas pipeline infrastructure to new or underserved markets in the Northeast, Southeast and Mid-Atlantic regions of the country can now become a reality, and

Whereas, Six interstate natural gas pipeline projects are currently proposed for construction and will transport our abundant gas resources to market, and

Whereas, The following pipeline projects are critical to West Virginia: Rover Pipeline, Mountain Valley Pipeline, WB Xpress Pipeline, Leach Xpress Pipeline, Mountaineer Xpress Pipeline, Atlantic Coast Pipeline and the Supply Header Pipeline projects, and

Whereas, Building these proposed natural gas pipelines in West Virginia equates to \$5.7 billion in capital investment, more than 18,000 new construction jobs and \$61 million in property taxes during construction, and

Whereas, A recent statewide survey conducted by the West Virginia Oil and Natural Gas Association (WVONGA) found that more than seventy-five percent of West Virginia respondents support the construction of natural gas pipelines, and

Whereas, The FERC has primary jurisdiction over United States interstate natural gas pipeline projects and will make the final decision regarding project approval; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the West Virginia House of Delegates, hereby requests that the FERC, expedite the approval of these six interstate natural gas pipeline projects in West Virginia with speed so as to maximize West Virginia's natural gas resources, create thousands of good-paying jobs for West Virginia citizens, provide needed tax revenues to pay for government services and reduce America's dependence on foreign sources of energy.

### **Motions**

Delegate Kelly submitted a written motion, under the provisions of House Rule 82, to discharge **H. B. 4280**, Permitting persons who are twenty-one years of age or older to operate or be a passenger on a motorcycle without a helmet, from the Committee on Roads and Transportation.

Delegate Cowles moved that the motion be tabled.

On this motion, Delegate Kelly demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 251**), and there were—yeas 51, nays 47, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Ambler, Atkinson, Azinger, Bates, Blackwell, Boggs, Butler, Byrd, Cadle, Campbell, Caputo, Cooper, Eldridge, D. Evans, Faircloth, Ferro, Flanigan, Fluharty, Folk, Guthrie, Hartman, Hicks, Hornbuckle, Ihle, Kelly, Kessinger, Longstreth, Lynch, Marcum, McGeehan, Miley, Moffatt, Moore, Morgan, Moye, J. Nelson, Pethtel, R. Phillips, Pushkin, Reynolds, Rodighiero, Romine, Skinner, P. Smith, Sponaugle, Trecost and P. White.

Absent and Not Voting: Perdue and R. Smith.

So, a majority of the members present and voting having voted in the affirmative, the motion to table the motion to discharge prevailed.

### Special Calendar

#### Third Reading

**Com. Sub. for S. B. 10**, Creating Unborn Child Protection from Dismemberment Abortion Act; on third reading, coming up in regular order, with an amendment pending, was reported by the Clerk.

Delegates Guthrie and Pushkin moved to amend the bill on page two, section one, line thirty-two, by striking out the period and inserting a comma and “or if the woman is a victim of incest or the individual is a victim of rape when the rape is reported to a law-enforcement agency.”

On the adoption of the amendment, Delegate Fleischauer demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 252**), and there were—yeas 16, nays 82, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Caputo, Ferro, Fleischauer, Fluharty, Guthrie, Hornbuckle, Longstreth, Manchin, Miley, Moore, Morgan, Pethtel, Pushkin, Rowe, Skinner and Sponaugle.

Absent and Not Voting: Kurcaba and Perdue.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 253**), and there were—yeas 86, nays 13, absent and not voting 1, with the yeas and absent and not voting being as follows:

Nays: Caputo, Fleischauer, Fluharty, Guthrie, Hornbuckle, Longstreth, Manchin, Moore, Morgan, Pethtel, Pushkin, Rowe and Skinner.

Absent and Not Voting: Perdue.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 10) passed.

On motion of Delegate Ellington the title of the bill was amended to read as follows:

**Com. Sub. for S. B. 10** — “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2O-1, relating to prohibiting certain abortions; defining terms; prohibiting dismemberment abortions; deeming violations by physicians and other licensed medical practitioners to be a breach of the standard of care and outside the scope of practice that is

permitted by law; providing an exception; allowing for discipline from the applicable licensure board for that conduct, including, but not limited to, loss of professional license to practice for violation; constituting violations for nonphysician and nonlicensed medical practitioners as unauthorized practice of medicine and subject to criminal penalties; preserving existing legal remedies for violations; clarifying that no penalty may be assessed against a patient; and providing for certain construction of this section.”

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for H. B. 2826**, Requiring the Commissioner of the Division of Highways to approve points of access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes; “Sarah Nott’s Law”; on third reading, coming up in regular order, was read a third time.

Delegate Howell requested to be excused from voting on the passage of Com. Sub. for H. B. 2826 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegate would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Member from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 254**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Eldridge, Moffatt and Perdue.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2826) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for H. B. 4279**, Relating to disposition of seized firearms; on third reading, coming up in regular order, was read a third time.

Delegate Byrd requested to be excused from voting on the passage of Com. Sub. for H. B. 4279 under the provisions of House Rule 49.

The Speaker replied that the passage of the bill may result in a direct personal or pecuniary interest to the Delegate and excused the Gentleman from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 255**), and there were—yeas 94, nays 3, absent and not voting 2, excused 1, with the nays, excused from voting and absent and not voting being as follows:

Nays: Fluharty, McGeehan and Pushkin.

Excused from Voting: Byrd.

Absent and Not Voting: Longstreth and Perdue.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4279) passed.



*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for H. B. 4317**, Limiting factors in parenting plans; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 256**), and there were—yeas 89, nays 7, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Byrd, Flanigan, Fleischauer, Fluharty, Pushkin, Shaffer and Skinner.

Absent and Not Voting: Kelly, E. Nelson, Perdue and Romine.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4317) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**H. B. 4324**, Authorizing information sharing by Workforce West Virginia; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 257**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Kelly and Perdue.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 4324) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**H. B. 4346**, Relating to bear hunting and offenses and penalties; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 258**), and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Flanigan, Lynch and Marcum.

Absent and Not Voting: Kelly, Kurcaba and Perdue.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

**Com. Sub. for H. B. 4346** — “A Bill to amend and reenact §20-2-22a of the Code of West Virginia, 1931, as amended, relating to bear hunting; providing that training dogs on or pursuing bears with dogs is hunting bear; providing that it is unlawful to kill, attempt to kill, or wound or attempt to wound any bear using bait; providing examples of what constitutes bait; providing period of time after removal of bait an area is still considered baited; providing that it is unlawful to feed bears at any time; providing that it is unlawful to transport or possess any part of a bear not lawfully tagged; deleting certain bear hunting prohibitions; revising provisions relating to bears damaging or destroying property; permitting Division of Natural Resources officer or designated wildlife biologist to issue bear

depredation permit or authorize hunting of bears to owners or lessees suffering damage to real or personal property from bears; permitting officer or wildlife biologist to recommend other measures to end or minimize property damage by bears; providing requirements for bear damage reports by the Division of Natural Resources for bear damage claims; providing bear damage claim limit for property covered by insurance policy; providing for establishment of procedures by Division of Natural Resources to issue bear depredation permits and organizing bear hunts; and decreasing criminal penalties.”

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 259**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Kelly and Perdue.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4346) takes effect from its passage.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for H. B. 4352**, Relating to the selling of certain state owned health care facilities by the Secretary of the Department of Health and Human Resources; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 260**), and there were—yeas 53, nays 46, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Blackwell, Boggs, Butler, Byrd, Cadle, Campbell, Caputo, Cooper, Deem, Eldridge, A. Evans, Ferro, Flanigan, Fleischauer, Fluharty, Frich, Guthrie, Hamilton, Hartman, Hicks, Hornbuckle, Ihle, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, O’Neal, Perdue, Perry, Pethel, Pushkin, Reynolds, Rodighiero, Rowe, Shaffer, Skinner, P. Smith, R. Smith, Sponaugle, Trecost, Wagner and P. White.

Absent and Not Voting: McCuskey.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4352) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

At 2:29 p.m., on motion of Delegate Cowles, the House of Delegates recessed for thirty minutes.

Delegate Manchin arose to inquire about when members can obtain a copy of a bill. The Speaker replied that members are entitled to a copy of a bill any time it is available.

**Com. Sub. for H. B. 4377**, Eliminating exemption from hotel occupancy taxes on rental of hotel and motel rooms for thirty or more consecutive days; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 261**), and there were—yeas 77, nays 21, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Arvon, Azinger, Cowles, Deem, Faircloth, Folk, Hill, Howell, Ihle, Kessinger, Kurcaba, Lane, McGeehan, Miley, J. Nelson, Overington, Shaffer, Stansbury, Upson and Mr. Speaker (Mr. Armstead).

Absent and Not Voting: McCuskey and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4377) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for H. B. 4448**, Clarifying that communication by a lender or debt collector which is allowed under the West Virginia Consumer Credit and Protection Act, likewise does not violate the provisions of the West Virginia Computer Crime and Abuse Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 262**), and there were—yeas 93, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Fleischauer, Ihle, Lynch, Marcum and Pushkin.

Absent and Not Voting: McCuskey and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4448) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for H. B. 4463**, Permitting the practice of telemedicine; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 263**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: McCuskey and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4463) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for H. B. 4502**, Allowing reciprocity agreements with contiguous states to establish regulations, licensing requirements and taxes for small businesses; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 264**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Fast, Flanigan and Waxman.

Absent and Not Voting: McCuskey and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4502) passed.

On motion of Delegate Lane, the title of the bill was amended to read as follows:

**Com. Sub. for H. B. 4502** — “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-1-29, relating to reciprocity agreements with contiguous states and the District of Columbia; authorizing the governor to enter into and renew reciprocity agreements with the governors and other appropriate state governmental agencies from states that share contiguous borders with this state, and the District of Columbia, to establish regulations, licensing requirements and taxation for small businesses headquartered in this state or in contiguous states or the District of Columbia that conduct business in both this state and the contiguous state; providing the governor discretionary power to delegate such authority to the Attorney General or secretary of an executive branch department to negotiate and enter into such reciprocity agreements on behalf of the governor; requiring any reciprocity agreement that impacts or affects taxation, either the receipt or payment thereof, to be approved by Legislative act; and defining terms.”

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for H. B. 4505**, Allowing powerball winners to remain anonymous; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 265**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Fluharty, Marcum and Rowe.

Absent and Not Voting: McCuskey and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4505) passed.

On motion of Delegate Shott the title of the bill was amended to read as follows:

**Com. Sub. for H. B. 4505** — “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-15a; and to amend and reenact §29B-1-4 of said code, all relating to allowing powerball, mega millions, and hot lotto winners to remain anonymous; and providing for an exemption under the Freedom of Information Act for powerball winner information.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**H. B. 4706**, Relating to county board regional meetings; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 266**), and there were—yeas 65, nays 33, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Ambler, Boggs, Byrd, Campbell, Caputo, Cooper, Eldridge, D. Evans, Ferro, Fleischauer, Fluharty, Guthrie, Hartman, Hornbuckle, Longstreth, Lynch, Manchin, Marcum, Miley, Moore, Morgan, Moye, Perdue, Perry, Pethtel, R. Phillips, Reynolds, Rodighiero, Shaffer, Skinner, Sponaule, Trecost and P. White.

Absent and Not Voting: McCuskey and Walters.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 4706) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

### Second Reading

**S. B. 558**, Maintaining solvency of Unemployment Compensation Fund; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Delegate Manchin was recognized and moved to reconsider the action of the House whereby the motion to discharge H. B. 4280 was laid upon the table.

The Speaker ruled the motion out of order, stating House Rule 58.

Delegate Manchin then moved to take the motion to discharge H. B. 4280 from the table.

On this motion, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 267**), and there were—yeas 46, nays 52, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Azinger, Bates, Blackwell, Boggs, Byrd, Cadle, Campbell, Caputo, Eldridge, Faircloth, Ferro, Flanigan, Fleischauer, Fluharty, Folk, Guthrie, Hartman, Hicks, Hornbuckle, Ihle, Kelly, Lane, Longstreth, Lynch, Manchin, Marcum, McGeehan, Miley, Moore, Morgan, Moye, J. Nelson, Perdue, Perry, Pethtel, R. Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Shaffer, Skinner, P. Smith, Sponaule, Trecost and P. White.

Absent and Not Voting: McCuskey and Walters.

So, a majority of the members present and voting not having voted in the affirmative, the motion was rejected.

**Com. Sub. for S. B. 597**, Relating generally to Health Care Authority; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk on page one, section twenty-six, line five, by striking out "Health care providers shall be subject to the antitrust guidelines of the federal trade commission and the department of justice."

Delegate Folk asked unanimous consent to commit the bill to the Committee on the Judiciary, which consent was not given, objections being heard.

Delegate Folk then moved to commit the bill to the Committee on the Judiciary.

Delegate Miller moved to table the motion to commit Com. Sub. for S. B. 597.

Delegate Rohrbach requested to be excused from voting on Com. Sub. for S. B. 597 under the provisions of House Rule 49.

The Speaker replied that Delegate Rohrbach did exhibit direct personal or pecuniary interest therein and not as a member of a class of persons, and excused the Gentleman from voting.

On the motion to table to motion to commit, Delegate McGeehan demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 268**), and there were—yeas 56, nays 42, absent and not voting 1, excused from voting 1, with the nays, excused from voting and absent and not voting being as follows:

Nays: Azinger, Bates, Blackwell, Boggs, Byrd, Campbell, Caputo, Eldridge, Faircloth, Fast, Ferro, Fleischauer, Fluharty, Folk, Guthrie, Hartman, Ihle, Kelly, Kurcaba, Lane, Longstreth, Lynch, Manchin, Marcum, McGeehan, Miley, Moffatt, Moore, Moye, Perry, Pethtel, Pushkin, Rodighiero, Rowe, Shaffer, Shott, Skinner, P. Smith, Sponaugle, Trecost, Walters and P. White.

Excused from voting: Rohrbach.

Absent and Not Voting: McCuskey.

So, a majority of the members present and voting having voted in the affirmative, the motion to table the motion to commit prevailed.

On motion of Delegate Ellington, the amendment was amended page one, section twenty-six, line five, by striking out the following sentence, "Health care providers shall be subject to the antitrust guidelines of the federal trade commission and the department of justice."

Delegate Pushkin moved to amend the amendment on page one, at the end of section twenty-six, by striking out the period, inserting a colon and the following proviso:

*"Provided, That this immunity, the exemption from the antitrust action under state and federal antitrust law set forth in this section, and all of the provisions of section twenty-eight of this article shall not apply to a hospital merger, acquisition, or combination that is the subject of a proceeding pending before the authority, the Attorney General, of the Federal Trade Commission at the time of passage of the amendments to this article during the 2016 regular legislative session."*

On the adoption of the amendment, Delegate Pushkin demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 269**), and there were—yeas 17, nays 81, absent and not voting 1, excused 1, with the yeas and absent and not voting and excused being as follows:

Yeas: Blackwell, Caputo, Ferro, Fleischauer, Fluharty, Folk, Guthrie, Lane, Miley, Moore, Pethtel, Pushkin, Shaffer, Shott, Skinner, P. Smith and Sponaugle.

Absent and Not Voting: McCuskey.

Excused: Rohrbach.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to third reading.

**Com. Sub. for H. B. 2665**, Relating to participation in Motor Vehicle Alcohol Test and Lock Program; on second reading, coming up in regular order, was read a second time.

Delegate Sponaugle moved to amend the bill on page one, section two-b, lines eight and nine, by striking out the words "and with an alcohol concentration in his or her blood of twelve hundredths of one percent or less" and the comma.

On the adoption of the amendment, Delegate Sponaugle demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 270**), and there were—yeas 29, nays 69, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Blackwell, Byrd, Cadle, Caputo, Cowles, Duke, Eldridge, Ferro, Flanigan, Fleischauer, Guthrie, Hamilton, Hicks, Hornbuckle, Ihle, Longstreth, Lynch, Manchin, McGeehan, Moffatt, Moore, Morgan, Pethtel, Pushkin, Reynolds, Rodighiero, Shaffer and Sponaugle.

Absent and Not Voting: Hartman and McCuskey.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2704**, West Virginia Consumer Sales and Service Use tax; on second reading, coming up in regular order, was read a second time.

Delegate Cowles asked unanimous consent to advance the bill the third reading with the amendments pending and the right to amend on that reading, which consent was not given, objections being heard.

Delegate Miley was recognized and moved to lay the bill upon the table.

On this motion, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 271**), and there were—yeas 46, nays 53, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Azinger, Bates, Blackwell, Boggs, Byrd, Campbell, Caputo, Eldridge, Ferro, Fluharty, Folk, Guthrie, Hartman, Hicks, Hornbuckle, Ihle, Ireland, Kelly, Kurcaba, Longstreth, Lynch, Manchin, Marcum, McGeehan, Miley, Moore, Morgan, Moye, J. Nelson, Perdue, Perry, Pethtel, Phillips, Pushkin, Reynolds, Rodighiero, Rowe, Shaffer, Skinner, P. Smith, Sponaugle, Stansbury, Trecost, Walters, B. White and P. White.

Absent and Not Voting: McCuskey.

So, a majority of the members present and voting not having voted in the affirmative, the motion did not prevail.

Delegate Cowles moved to advance the bill to third reading with the amendments pending and the right to amend on third reading.

Delegate Cowles then withdrew his motion.

Unanimous consent having been obtained, the bill was then advanced to third reading with the amendments pending and further right to amend and the rule was suspended to permit the offering and consideration of amendments on that reading.

**Com. Sub. for H. B. 2849**, Creating the West Virginia Sentencing Commission; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2963**, Expanding the definition of kidnapping; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4176**, Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4183**, Relating generally to reporting opioid overdoses; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4225**, Relating to patriotic displays at public buildings; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4240**, Relating to the Uniform Controlled Substances Act; on second reading, coming up in regular order, was read a second time.

Delegate Pushkin moved to amend the bill on page three, section four hundred-six-b, lines thirty-nine and forty, by striking out subsection (e) in its entirety.

On the adoption of the amendment, Delegate Pushkin demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 272**), and there were—yeas 20, nays 76, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Canterbury, Caputo, Flanigan, Fleischauer, Fluharty, Folk, Hill, Hornbuckle, Ihle, Longstreth, Lynch, Manchin, McGeehan, Moore, Pushkin, Shaffer, Skinner, Sponaugle, Stansbury and Upson.

Absent and Not Voting: Guthrie, McCuskey, E. Nelson and Westfall.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 4248**, Relating to methadone regulation; on second reading, coming up in regular order, was read a second time, advanced to third reading with the right to amend and the rule was suspended to permit the offering and consideration of amendments on that reading.

**Com. Sub. for H. B. 4271**, Ending discretionary transfers to the Licensed Racetrack Modernization Fund; on second reading, coming up in regular order, was read a second time, advanced to third reading with the right to amend, and the rule was suspended to permit the offering and consideration of amendments on that reading.

**Com. Sub. for H. B. 4307**, Clarifying that a firearm may be carried for self defense in state parks, state forests and state recreational areas; on second reading, coming up in regular order, was read



a second time, advanced to third reading with an amendment pending and the right to offer further amendments, and the rule was suspended to permit the offering and consideration of amendments on that reading.

**Com. Sub. for H. B. 4314**, Prohibiting the sale of powdered or crystalline alcohol; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4428**, Clarifying that optometrists may continue to exercise the same prescriptive authority which they possessed prior to hydrocodone being reclassified; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4438**, Relating to the involuntary examination of individuals experiencing a psychiatric emergency or mental illness; on second reading, coming up in regular order, was read a second time, advanced to third reading with the right to amend, and the rule was suspended to permit the offering and consideration of amendments on that reading.

**Com. Sub. for H. B. 4466**, Relating to public school support; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4480**, The Ryan Brown Addiction Treatment Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4486**, Terminating the Behavioral Health Severance and Business Privilege Tax; on second reading, coming up in regular order, was, on motion of Delegate Cowles, postponed one day.

**Com. Sub. for H. B. 4500**, Oil and Gas Royalty Payment and Transparency Act of 2016; on second reading, coming up in regular order, was read a second time, advanced to third reading with the right to amend, and the rule was suspended to permit the offering and consideration of amendments on that reading.

**Com. Sub. for H. B. 4507**, Providing an employer may grant preference in hiring to a veteran or disabled veteran; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4517**, Limiting the ability of an agent under a power of attorney to take self-benefiting actions; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4542**, Allowing persons with property within rural fire protection districts to opt out of fire protection coverage; on second reading, coming up in regular order, was read a second time, advanced to third reading with the right to amend, and the rule was suspended to permit the offering and consideration of amendments on that reading.

**Com. Sub. for H. B. 4561**, Creating a special hiring process for West Virginia Division of Highways employees; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4566**, Relating to school personnel; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4575**, Creating criminal offenses relating to money laundering; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4576**, Increasing the penalties for transporting controlled substances into the state; on second reading, coming up in regular order, was read a second time.

Delegate Pushkin moved to amend the bill on page one, line eighteen, following the period, by inserting a new subdivision (5) to read as follows:

“(5) Notwithstanding subdivision (1) of this subsection, for marihuana, or substances defined pursuant to subdivision (27) subsection (d), section 204, article two, shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than \$15,000, or both.”

On the adoption of the amendment, Delegate Marcum demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 273**), and there were—yeas 36, nays 61, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Bates, Blair, Byrd, Campbell, Canterbury, Caputo, Cowles, Eldridge, Flanigan, Fleischauer, Fluharty, Folk, Guthrie, Hartman, Hill, Hornbuckle, Ihle, Kurcaba, Lynch, Manchin, McGeehan, Moffatt, Moore, Morgan, J. Nelson, Perdue, Perry, Pushkin, Reynolds, Rowe, Skinner, Sponaugle, Stansbury, Statler, Upson and Wagner.

Absent and Not Voting: Deem, McCuskey and Westfall.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

There being no further amendments, the bill was ordered to engrossment and third reading.

**Com. Sub. for H. B. 4577**, Creating an additional penalty for use of a firearm in furtherance of a drug offense; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4578**, Creating a criminal offense of conspiracy to violate the drug laws; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4608**, Requiring the State Auditor to consider for payment a claim submitted by an electronically generated invoice; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4625**, Redirecting certain racing and gaming revenues from greyhound development funds to the State Road Fund; on second reading, coming up in regular order, was read a second time, advanced to third reading with the right to amend, and the rule was suspended to permit the offering and consideration of amendments on that reading.

**Com. Sub. for H. B. 4633**, Requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4644**, Relating to jury fees; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4654**, Relating to the Executive Secretary of the Board of Registered Professional Nurses; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4655**, Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Ellington, the bill was amended page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That §33-25E-2 the Code of West Virginia, 1931, as amended, be amended be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-25E-5, all to read as follows:

## **ARTICLE 25E. PATIENTS’ EYE CARE ACT.**

### **§33-25E-2. Definitions.**

For the purposes of this article:

(1) ‘Commissioner’ means the Insurance Commissioner of West Virginia.

(2) ‘Contractual discount’ means a percentage reduction from a provider’s usual and customary rate for covered services and materials required under a participating provider agreement.

(3) ‘Covered services’ means services for which reimbursement from the insurer or vision care plan or vision care discount plan is provided to a vision care provider by an enrollee’s plan contract, or for which a reimbursement would be available but for the application of the enrollee’s contractual plan limitations of deductibles, copayments, or coinsurance, regardless of how the benefits are listed in an enrollee’s benefit plan’s definition of benefits.

(4) ‘Covered materials’ means materials for which reimbursement from the insurer, vision care plan or vision care discount plan is provided to a vision care provider by an enrollee’s plan contract, or for which a reimbursement would be available but for the application of the enrollee’s contractual limitations of deductibles, copayments, or coinsurance.

~~(a)~~ (5) ‘Covered person’ means an individual enrolled in a health benefit plan or an eligible dependent of that person.

(6) ‘Enrollee’ means any individual enrolled in a health care plan, vision care plan or vision care discount plan provided by a group, employer or other entity that purchases or supplies coverage for a vision care plan or vision care discount plan.

~~(b) ‘Eye care provider’ means an optometrist or ophthalmologist licensed by the State of West Virginia.~~

(7) ‘Eye care provider’ means a licensed doctor of optometry practicing under the authority of article eight, chapter thirty of this code or a licensed medical physician specializing in ophthalmology licensed in West Virginia to practice medicine and surgery under the authority of article three, chapter thirty of this code or osteopathy under article fourteen, chapter thirty of this code.

~~(c)~~ (8) ‘Eye care benefits’ means coverage for the diagnosis, treatment and management of eye disease and injury.

~~(d)~~ (9) 'Health benefit policy' means any individual or group plan, policy or contract providing medical, hospital or surgical coverage issued, delivered, issued for delivery or renewed in this state by an insurer, after January 1, 2001. It does not include credit accident and sickness, long-term care, Medicare supplement, champus supplement, disability or limited benefits policies.

~~(e) 'Insurer' means any health care corporation, health maintenance organization, accident and sickness insurer, nonprofit hospital service corporation, nonprofit medical service corporation or similar entity.~~

(10) 'Insurer' has the same meaning ascribed to it in section one, article forty-five of this chapter.

(11) 'Materials' means ophthalmic devices including, but not limited to, lenses, devices containing lenses, artificial intraocular lenses, ophthalmic frames and other lens mounting apparatus, prisms, lens treatments and coatings, contact lenses, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

(12) 'Services' means the professional work performed by an eye care provider.

(13) 'Subcontractor' means any company, group or third party entity including, but not limited to, agents, servants, partially- or wholly-owned subsidiaries and controlled organization that is contracted by the insurer, vision care plan or vision care discount plan to supply services or materials for an eye care provider or enrollee to fulfill the benefit plan of an insurer, vision care plan or vision care discount plan.

~~(f)~~ (14) 'Vision care benefits' means benefits for the refraction of the eyes and other optical benefits.

(15) 'Vision care discount plan' means a business arrangement or contract governed by the provisions of this chapter in which a person, in exchange for fees, dues, charges or other consideration, offers access for its plan members to providers of eye care or ancillary services and the right to receive discounts on eye care or ancillary services provided under the discount vision care plan from those providers.

(16) 'Vision care plan' means an entity that creates, promotes, sells, provides, advertises or administers, an integrated or stand-alone vision benefit plan, or a vision care insurance policy or contract which provides vision benefits to an enrollee pertaining to the provision of covered services or covered materials.

### **§33-25E-5. Noncovered discounts.**

(a) No agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may seek to or require that an eye care provider provide services or materials at a fee limited or set by the insurer, vision care plan or vision care discount plan unless the services or materials are reimbursed as covered services or covered materials under the contract.

(1) An eye care provider may not charge more for services and materials that are noncovered services or noncovered materials to an enrollee of a vision care plan or insurer than his or her usual and customary rate for such services and materials.

(2) Reimbursements paid by an insurer, vision care plan, or vision care discount plan for covered services and covered materials, regardless of supplier or optical lab used to obtain materials, shall be reasonable, shall be clearly listed on a fee schedule that is made available to the vision care provider prior to accepting a contract from the insurer, vision care plan or vision discount plan and shall not provide nominal reimbursement or advertise services and materials to be covered with additional copay or coinsurance if the health plan, vision care plan or vision care discount plan do not

reimburse for the services or materials in order to claim that services and materials are covered services and materials.

(3) Insurers, vision care plans and vision care discount plans shall not publish, disseminate or falsely represent the benefits that are provided to groups, employers or individual enrollees as a means of selling coverage to or communicating benefit coverage to enrollees.

(4) All provisions in this section shall apply to any successors in interest of an insurer, vision care plan, or vision care discount plan and shall apply to any subcontractors that are used by an insurer, vision care plan or vision care discount plan to supply materials or services to an eye care provider or enrollee and be subject to all applicable penalties as provided in this section.

(c) No agreement between an insurer, vision care plan or vision care discount and a vision care provider may require that an eye care provider must participate with or be credentialed by any specific vision care plan or vision care discount plan as a condition of participation in the health care network of the insurer to provide covered medical services to its enrollees.

(1) Any insurer issuing or renewing a health benefit plan, vision care plan or vision care discount plan issued or renewed which provides coverage for services rendered by an eye care provider shall provide the same reimbursement for services to optometrists as allowed for those services rendered by physicians or osteopaths.

(2) An insurer may not require an optometrist to meet terms and conditions that are not required of a physician or osteopath as a condition for participation in its provider network for the provision of services that are within the scope of practice of an optometrist.

(3) A clause requiring that if a provider enters into any subcontract agreement with another provider to provide their licensed health care services to the subscriber, dependent of the subscriber, or enrollee of a managed care plan where the subcontracted provider will bill the managed care plan or subscriber or enrollee directly for the subcontracted services, the subcontract agreement must meet all requirements of this section and that the subcontract agreements shall be filed with the commissioner.

(4) The provisions of subdivisions (1), (2) and (3) of this section also apply to any agreements an insurer enters into to provide services covered under the health benefit plan, vision care plan or vision care discount plan.

(d) It is an unfair trade practice for an insurer that offers multiple vision benefit plans or multiple vision discount plans to require an eye care provider, as a condition of participation in a vision benefit plan or vision discount plan of the insurer, to participate in any of the insurer's other vision benefit plans or vision discount plans. In addition to the proceedings and penalties provided in this chapter for violation of this provision, a contract violating this subsection is void.

(e) An insurer, vision care plan or vision care discount plan may not change or alter an agreement entered into with an eye care provider without performing the following steps:

(1) Sending a certified letter detailing proposed changes to the eye care provider;

(2) Having a face-to-face meeting to discuss proposed changes if requested by an eye care provider;

(3) An eye care provider either agrees or does not agree to the proposed changes. If the changes to the agreement are not agreed to by the eye care provider, the current agreement shall continue and the insurer, vision care plan or vision care discount plan may not remove the eye care provider from a panel or plan for not accepting the changes to the agreement; and

(4) A new agreement is required to be established and agreed upon after three or more material changes are made to an existing agreement from an insurer, vision care plan or vision care discount plan.

(f) No agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may restrict or limit, either directly or indirectly, the vision care provider's choice of sources and suppliers of services or materials or use of optical labs provided by the eye care provider to an enrollee.

(g) No insurer, vision care plan or vision care discount plan may change the terms, discounts or reimbursement rates contained in the agreement, regardless of supplier or fabricating lab used to supply materials, without a signed acknowledgement of written agreement from the vision care provider.

(h) A person adversely affected by a violation of this section may bring action in a court of competent jurisdiction for injunctive relief against the insurer, vision care plan or vision care discount plan and, upon prevailing, may recover monetary damages of no more than \$1,000 for each instance found to be in violation plus attorney's fees and costs.

(i) In a fiscal year, no insurer, vision care plan or vision care discount plan may charge back or otherwise recoup administrative fees or other amounts from an eye care provider in a total amount of more than three percent of the payments received by the eye care provider from the insurer, vision care plan or vision care discount plan for providing services to enrollees without the written agreement of the eye care provider.

(j) The Insurance Commissioner of West Virginia may seek an injunction against an insurer, vision care plan or vision care discount plan in a court of competent jurisdiction for violation of this section.

(k) The requirements of this section apply to insurer, vision care plan or vision care discount plan policies, contracts, addendums and certificates executed, delivered, issued for delivery, continued or renewed in the State of West Virginia.

(1) No insurer, vision care plan or vision care discount plan contract may be longer than two years from the date that it was first signed.

(2) No insurer, vision care plan or vision care discount plan may construe recredentialing as recontracting with a vision care provider.

(l) An insurer, vision care plan or vision care discount plan may not discriminate against any provider who is located within the geographic coverage area of the insurer, vision care plan or vision care discount plan and who is willing to meet the terms and conditions for participation established by the insurer, including West Virginia Medicaid programs and Medicaid partnerships.

(m) This section is effective upon passage and includes all vision care plans and discount card plans upon renewal of enrollee's current plan or upon issue of a new plan to any enrollee."

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 4659**, Authorizing local health departments to bill health insurance plans for services; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 4660**, Relating to the information required to be included in support of an application to the Public Service Commission for a certificate of convenience and necessity for a

water, sewer and/or stormwater service project; on second reading, coming up in regular order, was read a second time.

Delegate Skinner moved to amend the bill on page four, section eleven, lines seventy-eight through eighty-eight, by striking out subsection (j) in its entirety.

And,

Re-lettering the subsequent subsections accordingly.

Delegate Hanshaw requested to be excused from voting on H. B. 4660 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegate would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Member from voting.

On the adoption of the amendment, Delegate Skinner demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 274**), and there were—yeas 35, nays 60, absent and not voting 5, with the yeas and absent and not voting being as follows:

Yeas: Bates, Blackwell, Boggs, Byrd, Campbell, Caputo, Eldridge, Faircloth, Fast, Ferro, Fleischauer, Fluharty, Folk, Frich, Guthrie, Hartman, Hicks, Hornbuckle, Lane, Lynch, Manchin, Miley, Moye, Perdue, Perry, Phillips, Pushkin, Reynolds, Rodighiero, Skinner, P. Smith, Sponaugle, Statler, Trecost and Upson.

Absent and Not Voting: Deem, Marcum, McCuskey, Moore and Westfall.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

There being no further amendments, the bill was ordered to engrossment and third reading.

**Com. Sub. for H. B. 4662**, Permitting the Superintendent of the State Police to collect \$3 dollars from the sale of motor vehicle inspection stickers; on second reading, coming up in regular order, was read a second time, advanced to third reading with the right to amend, and the rule was suspended to permit the offering and consideration of amendments on that reading.

**Com. Sub. for H. B. 4673**, Providing for a crime for the theft, damage or release of deer from private game farms; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4685**, Relating to professional and occupational board members on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4696**, Creating the unlicensed practice review board; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4726**, Relating to coal mining generally; on second reading, coming up in regular order, was read a second time.

On motion of Delegate R. Smith, the bill was amended on page two, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9 and §22-3A-10 of the Code of West Virginia, 1931, as amended, be repealed; that §16-4C-6c of said code be amended and reenacted; that §22-1-7 of said code be amended and reenacted; that §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a, §22-3-30a of said code be amended and reenacted; that said code be amended by adding thereto six new sections, designated §22-3-34, §22-3-35, §22-3-36, §22-3-37, §22-3-38 and §22-3-39; that §22-11-6 of said code be amended and reenacted; that §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-31 and §22A-1-35 of said code be amended and reenacted; that §22A-1A-2 of said code be amended and reenacted; that §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code be amended and reenacted; and that §22A-7-7 of said code be amended and reenacted; all to read as follows:

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

#### **§16-4C-6c. Certification requirements for emergency medical technician ~~industrial~~ mining.**

(a) Commencing July 1, ~~2014~~ 2016, an applicant for certification as an emergency medical technician ~~industrial~~ mining shall:

(1) Be at least eighteen years old;

(2) Apply on a form prescribed by the ~~Commissioner~~ Director of Miners' Health, Safety and Training;

(3) Pay the application fee;

(4) Possess a valid cardiopulmonary resuscitation (CPR) certification;

(5) Successfully complete an emergency medical technician-~~industrial~~ mining education program authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; and

(6) Successfully complete emergency medical technician-~~industrial~~ mining cognitive and skills examinations authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification.

(b) The emergency medical technician ~~industrial~~ mining certification is valid for three years.

(c) A certified emergency medical technician ~~industrial~~ mining ~~is only authorized to~~ may only practice during his or her regular employment on ~~industrial~~ mining property. ~~For the purposes of this section, "industrial property" means property being used for production, extraction or manufacturing activities.~~

(d) To be recertified as an emergency medical technician ~~industrial~~ mining, a certificate holder shall:

(1) Apply on a form prescribed by the ~~Commissioner~~ Director of Miners' Health, Safety and Training.

(2) Pay the application fee;

(3) Possess a valid cardiopulmonary resuscitation (CPR) certification;



(4) Successfully complete one of the following:

(A) A one-time thirty-two hour emergency medical technician-~~industrial~~ mining recertification course authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; or

(B) Three annual eight-hour retraining and testing programs authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; and

(5) Successfully complete emergency medical technician-~~industrial~~ mining cognitive and skills recertification examinations authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification.

~~(e) Commencing July 1, 2014, the certification for emergency medical technician-miner, also known as emergency medical technician-mining, shall be known as the certification for emergency medical technician-industrial, and the certification is valid until the original expiration date, at which time the person may recertify as an emergency medical technician-industrial miner pursuant to this section.~~

~~(f)~~(e) The education program, training, courses, and cognitive and skills examinations required for certification and recertification as an emergency medical technician-miner, also known as emergency medical technician ~~industrial~~ mining, in existence on January 1, 2014, shall remain in effect for the certification and recertification of emergency medical technician-industrial until they are changed by legislative rule by the commissioner in consultation with the board of Miner Training, Education and Certification.

~~(g)~~(f) The administration of the emergency medical technician ~~industrial~~ mining certification and recertification program by the ~~Commissioner~~ Director of Miners' Health, Safety and Training shall be done in consultation with the Board of Miner Training, Education and Certification.

~~(h)~~(g) The ~~Commissioner~~ Director of Miners' Health, Safety and Training shall propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, in consultation with the Board of Miner Training, Education and Certification, and may propose emergency rules, to:

(1) Establish emergency medical technician-~~industrial~~ mining certification and recertification courses and examinations;

(2) Authorize providers to administer the certification and recertification courses and examinations, including mine training personnel, independent trainers, community and technical colleges, and Regional Educational Service Agencies (RESA): *Provided*, That the mine training personnel and independent trainers must have a valid cardiopulmonary resuscitation (CPR) certification and must be an approved MSHA or OSHA certified instructor;

(3) Establish a fee schedule: *Provided*, That the application fee may not exceed \$10 and there shall be no fee for a certificate; and

(4) Implement the provisions of this section.

## CHAPTER 22. ENVIRONMENTAL RESOURCES.

### ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

#### §22-1-7. Offices within division.

Consistent with the provisions of this article, the Secretary shall, at a minimum, maintain the following offices within the division:

(1) The Office of Abandoned Mine Lands and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of article two of this chapter;

(2) The Division of Mining and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary the provisions of articles three and four of this chapter;

(3) The Division of Air Quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of article five of this chapter;

(4) The Office of Oil and Gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of articles six, seven, eight, nine and ten of this chapter; and

(5) The Division of Water and Waste Management, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of articles eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter; and

~~(6) The Office of Explosives and Blasting, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article three-a of this chapter.~~

### **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

#### **§22-3-2. Legislative findings and purpose; jurisdiction vested in Division of Environmental Protection; authority of ~~director~~ secretary; inter-departmental cooperation.**

(a) The Legislature finds that it is essential to the economic and social well-being of the citizens of the State of West Virginia to strike a careful balance between the protection of the environment and the economical mining of coal needed to meet energy requirements.

(1) Further, the Legislature finds that there is great diversity in terrain, climate, biological, chemical and other physical conditions in parts of this nation where mining is conducted; that the State of West Virginia in particular needs an environmentally sound and economically healthy mining industry; and by reason of the above therefor it may be necessary for the ~~director~~ secretary to promulgate rules which vary from federal regulations as is provided for in sections 101 (f) and 201 (c)(9) of the federal Surface Mining Control and Reclamation Act of 1977, as amended, 'Public Law 95-87'.

(2) Further, the Legislature finds that unregulated surface coal mining operations may result in disturbances of surface and underground areas that burden and adversely affect commerce, public welfare and safety by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes; by causing erosion and landslides; by contributing to floods; by polluting the water and river and stream beds; by destroying fish, aquatic life and wildlife habitats; by impairing natural beauty; by damaging the property of citizens; by creating hazards dangerous to life and property; and by degrading the quality of life in local communities, all where proper mining and reclamation is not practiced.

(3) Further, the Legislature finds that the reasonable control of blasting associated with surface mining within the State of West Virginia is in the public interest and will promote the protection of the citizens of the State of West Virginia and their property without sacrificing economic development. It is the policy of the State of West Virginia, in cooperation with other governmental agencies, public

and private organizations, and the citizens of this state, to use reasonable means and measures to prevent harm from the effects of blasting to its property and citizens.

(b) Therefore, it is the purpose of this article to:

(1) Expand the established and effective statewide program to protect the public and the environment from the adverse effects of surface-mining operations;

(2) Assure that the rights of surface and mineral owners and other persons with legal interest in the land or appurtenances to land are adequately protected from ~~such~~ the operations;

(3) Assure that surface-mining operations are not conducted where reclamation as required by this article is not feasible;

(4) Assure that surface-mining operations are conducted in a manner to adequately protect the environment;

(5) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface-mining operations;

(6) Assure that adequate procedures are provided for public participation where appropriate under this article;

(7) Assure the exercise of the full reach of state common law, statutory and Constitutional powers for the protection of the public interest through effective control of surface-mining operations; ~~and~~

(8) Assure that the coal production essential to the nation's energy requirements and to the state's economic and social well-being is provided; and

(9) Vest in the secretary the authority to enforce all of the laws, regulations and rules established to regulate blasting consistent with the authority granted in sections thirty-four through thirty-nine of this article.

(c) In recognition of these findings and purposes, the Legislature ~~hereby~~ vests authority in the ~~director~~ secretary of the Department of Environmental Protection to:

(1) Administer and enforce the provisions of this article as it relates to surface mining to accomplish the purposes of this article;

(2) Conduct hearings and conferences or appoint persons to conduct them in accordance with this article;

(3) Promulgate, administer and enforce rules pursuant to this article;

(4) Enter into a cooperative agreement with the Secretary of the United States Department of the Interior to provide for state regulation of surface-mining operations on federal lands within West Virginia consistent with section 523 of the federal Surface Mining Control and Reclamation Act of 1977, as amended; and

(5) Administer and enforce rules promulgated pursuant to this chapter to accomplish the requirements of programs under the federal Surface Mining Control and Reclamation Act of 1977, as amended.

(d) The ~~director~~ secretary of the Department of Environmental Protection and the director of the Office of Miners' Health, Safety and Training shall cooperate with respect to each agency's programs and records to effect an orderly and harmonious administration of the provisions of this article. The

~~director~~ secretary of the Department of Environmental Protection may avail himself or herself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government, and may reasonably compensate them for ~~such~~ those services. Also, he or she may receive any federal funds, state funds or any other funds, and enter into cooperative agreements, for the reclamation of land affected by surface mining.

**§22-3-4. Reclamation; duties and functions of ~~director~~ secretary.**

(a) The ~~director~~ secretary shall administer the provisions of this article relating to surface-mining operations. The ~~director~~ secretary has within his or her jurisdiction and supervision all lands and areas of the state, mined or susceptible of being mined, for the removal of coal and all other lands and areas of the state deforested, burned over, barren or otherwise denuded, unproductive and subject to soil erosion and waste. Included within ~~such~~ the lands and areas are lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the ~~director~~ secretary shall be consistent with other provisions of this chapter.

(b) The ~~director~~ has the authority to: secretary may

(1) ~~Promulgate rules~~ Propose rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article: *Provided*, That the ~~director~~ secretary shall give notice by publication of the public hearing required in article three, chapter twenty-nine-a of this code: *Provided, however*, That any forms, handbooks or similar materials having the effect of a rule as defined in article three, chapter twenty-nine-a of this code were issued, developed or distributed by the director pursuant to or as a result of a rule are subject to the provisions of article three, chapter twenty-nine-a of this code;

(2) Make investigations or inspections necessary to ensure complete compliance with the provisions of this code;

(3) Conduct hearings or appoint persons to conduct hearings under provisions of this article or rules adopted by the ~~director~~ secretary; and for the purpose of any investigation or hearing ~~hereunder~~ under this article, the ~~director~~ secretary or his or her designated representative, may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the inquiry;

(4) Enforce the provisions of this article as provided ~~herein~~ in this article; ~~and~~

(5) Appoint such advisory committees as may be of assistance to the ~~director~~ secretary in the development of programs and policies: *Provided*, That such advisory committees shall, in each instance, include members representative of the general public; and

(6) In relation to blasting on all surface-mining operations and all surface-blasting activities related to underground mining operations:

(A) Regulate blasting on all surface-mining operations;

(B) Implement and oversee the preblast survey process, as set forth in section thirteen-a, article three of this chapter;

(C) Maintain and operate a system to receive and address questions, concerns and complaints relating to mining operations;

(D) Set the qualifications for individuals and firms performing preblast surveys;

(E) Educate, train, examine and certify blasters; and

(F) Propose rules for legislative approval pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the implementation of sections thirty-four through thirty-nine of this article.

(c)(1) After the ~~director~~ secretary has adopted the rules required by this article, any person may petition the ~~director~~ secretary to initiate a proceeding for the issuance, amendment or appeal of a rule under this article.

(2) The petition shall be filed with the ~~director~~ secretary and shall set forth the facts which support the issuance, amendment or appeal of a rule under this article.

(3) The ~~director~~ Secretary may hold a public hearing or may conduct such investigation or proceeding as he or she considers appropriate in order to determine whether the petition should be granted or denied.

(4) Within ninety days after filing of a petition described in subdivision (1) of this subsection, the ~~director~~ secretary shall either grant or deny the petition. If the ~~director~~ secretary grants the petition, he or she shall promptly commence an appropriate proceeding in accordance with the provisions of chapter twenty-nine-a of this code. If the ~~director~~ secretary denies the petition, he or she shall notify the petitioner in writing setting forth the reasons for the denial.

**§22-3-13. General environmental protection performance standards for surface mining; variances.**

(a) Any permit issued by the ~~director~~ secretary pursuant to this article to conduct surface mining operations shall require that the surface mining operations meet all applicable performance standards of this article and other requirements set forth in legislative rules proposed by the ~~director~~ secretary.

(b) The following general performance standards are applicable to all surface mines and require the operation, at a minimum, to:

(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize re-affecting the land in the future through surface mining;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution and the permit applicants' declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials and grade in order to restore the approximate original contour: *Provided*, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available

overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region: *Provided, however,* That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region and the overburden or spoil shall be shaped and graded in a way as to prevent slides, erosion and water pollution and revegetated in accordance with the requirements of this article: *Provided further,* That the ~~director~~ secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code governing variances to the requirements for return to approximate original contour or highwall elimination and where adequate material is not available from surface mining operations permitted after the effective date of this article for: (A) Underground mining operations existing prior to August 3, 1977; or (B) for areas upon which surface mining prior to July 1, 1977, created highwalls;

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area or, if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: *Provided,* That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner any other strata which is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States Secretary of Agriculture and the Soil Conservation Service pertaining thereto. The operator, at a minimum, shall: (A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in paragraph (B) of this subdivision with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in paragraph (A) of this subdivision;

(8) Create, if authorized in the approved surface mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the ~~director~~ secretary.

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the ~~director~~ Secretary determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public welfare and safety: *Provided*, That the ~~director~~ Secretary may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resources or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event may contributions be in excess of requirements set by applicable state or federal law; (C) constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to commencement of surface mining operations, the system to be certified by a person approved by the ~~director~~ secretary to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the ~~director~~ secretary, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the ~~director~~ secretary; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) any other actions prescribed by the ~~director~~ secretary;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations: (A) Stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article; and (B) assure that the construction of any coal waste pile or other coal waste storage area utilizes appropriate technologies, such as capping or the use of liners, or any other demonstrated technologies or measures which are consistent with good engineering practices, to prevent an acid mine drainage discharge;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: *Provided*, That the ~~director~~ secretary shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the ~~director~~ secretary; and (B) the operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: *Provided, however*, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion: *Provided*, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the ~~director~~ secretary, which shall include provisions to:

(A) Maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; and

(B) Require that all blasting operations be conducted by persons certified by the ~~Office of Explosives and Blasting~~ Division of Mining and Reclamation.

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface mining operations. Time limits shall be established by the ~~director~~ secretary requiring backfilling, grading and planting to be kept current: *Provided*, That where surface mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the ~~director~~ secretary may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the ~~director~~ secretary finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;

(B) If the ~~director~~ Secretary has promulgated specific rules to govern the granting of the variances in accordance with the provisions of this subparagraph and has imposed any additional requirements as the ~~director~~ Secretary considers necessary;

(C) If variances granted under the provisions of this paragraph are reviewed by the ~~director~~ Secretary not more than three years from the date of issuance of the permit: *Provided*, That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subdivision (3), section eight of this article; and



(D) If liability under the bond filed by the applicant with the ~~director~~ Secretary pursuant to subsection (b), section eleven of this article is for the duration of the underground mining operations and until the requirements of subsection (g), section eleven of this article and section twenty-three of this article have been fully complied with;

(17) Ensure that the construction, maintenance and post-mining conditions of access and haul roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: *Provided*, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, are exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to the channel so as to significantly alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved post-mining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the ~~director~~ secretary, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: *Provided*, That when the ~~director~~ secretary issues a written finding approving a long-term agricultural post-mining land use as a part of the mining and reclamation plan, the director may grant exception to the provisions of subdivision (19) of this subsection: *Provided, however*, That when the director approves an agricultural post-mining land use, the applicable five growing seasons of responsibility for revegetation begins on the date of initial planting for the agricultural post-mining land use;

On lands eligible for remaining assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than two growing seasons, as defined by the director after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection;

(21) Protect off-site areas from slides or damage occurring during surface mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: *Provided*, That spoil material may be placed outside the permit area if approved by the ~~director~~ secretary after a finding that environmental benefits will result from the placing of spoil material outside the permit area;

(22) Place all excess spoil material resulting from surface mining activities in a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main under drains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the ~~director~~ secretary, the spoil could be placed in compliance with all the requirements of this article, and is placed, where possible, upon, or above, a natural terrace, bench or berm, if placement provides

additional stability and prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) the design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: *Provided*, That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil material, the director secretary may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site-specific basis: *Provided, however*, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: *Provided further*, That the approval may not be unreasonably withheld if the site is suitable;

(23) Meet any other criteria necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological and other characteristics of the site;

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable;

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: *Provided*, That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: *Provided, however*, That at a minimum, the constructed barrier shall be of sufficient width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: *Provided further*, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; and

~~(26) The director shall promulgate for review and consideration by the West Virginia Legislature legislative rules or emergency rules during the 2016 Regular Session of the West Virginia Legislature, revisions to rules for contemporaneous reclamation as required under subdivision (16), subsection (b) of this section. The secretary shall specifically consider the adoption of federal standards codified at 30 C. F. R. §816.100-116 (1983) and 30 C. F. R. §817.100-116 (1983) when proposing revisions to the state rule.~~

(c)(1) The director secretary may prescribe procedures pursuant to which he or she may permit surface mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in paragraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting post-mining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, commercial forestry, residential or public facility including recreational uses is proposed for the post-mining use of the affected land, the director Secretary may grant a permit for a surface mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed post-mining land use is determined to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed post-mining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving

the proposed use; (iii) obtainable according to data regarding expected need and market; (iv) supported by commitments from public agencies where appropriate; (v) practicable with respect to private financial capability for completion of the proposed use; (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the post-mining land use; and (vii) designed by a person approved by the ~~director~~ secretary in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the ~~director~~ secretary provides the county commission of the county in which the land is located and any state or federal agency which the ~~director~~ secretary, in his or her discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the ~~director~~ Secretary shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are required: *Provided*, That constructed barriers may be allowed where: (i) Natural barriers do not provide adequate stability; (ii) natural barriers would result in potential future water quality deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization of the mineral resource: *Provided, however*, That, at a minimum, the constructed barrier shall be sufficient in width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: *Provided further*, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the outcrops except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned post-mining land use: *And provided further*, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit; unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) In addition to those general performance standards required by this section, when surface mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be defined by rule after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: *Provided*, That soil or spoil material from the initial cut of earth in a new surface mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the ~~director~~ secretary that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The ~~director~~ secretary may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code that permit variances from the approximate original contour requirements of this section: *Provided*, That the watershed control of the area is improved: *Provided, however*, That complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following mining and reclamation.

(f) The ~~director~~ secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria

developed pursuant to this subsection shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: *Provided*, That whenever the ~~director~~ secretary finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates a pile or the landowners involved, enter upon the premises where any coal processing waste pile exists and may take or order to be taken any remedial action that may be necessary or expedient to secure the coal processing waste pile and to abate the conditions which cause the danger to human life: *Provided, however*, That the cost reasonably incurred in any remedial action taken by the ~~director~~ secretary under this subsection may be paid for initially by funds appropriated to the division for these purposes and the sums expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the Attorney General at the request of the ~~director~~ secretary. For purposes of this subsection, 'operates' or 'operated' means to enter upon a coal processing waste pile, or part of a coal processing waste pile, for the purpose of disposing, depositing, dumping coal processing wastes on the pile or removing coal processing waste from the pile, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.

(g) The Secretary shall promulgate for review and consideration by the West Virginia Legislature during the 2017 Regular Session of the West Virginia Legislature revisions to the rules for minimizing the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas both during and after surface mining operations and during reclamation as required under subdivision (10), subsection (b) of this section, including specifically the rules for stormwater runoff and control plans. The secretary shall specifically conform these rules to the federal standards codified at 30 C.F.R. §816.41 (1983) and 30 C.F.R. §816.45-47 (1983) when proposing revisions to the state rule. The secretary shall not propose rules more stringent than the federal standards codified at 30 C.F.R. §816.41 (1983) and 30 C.F.R. §816.45-47 (1983) when proposing revisions to the state rule.

### **§22-3-13a. Preblast survey requirements.**

(a) At least thirty days prior to commencing blasting, as defined in section twenty-two-a of this article, an operator or an operator's designee shall make the following notifications in writing to all owners and occupants of man-made dwellings or structures that the operator or operator's designee will perform preblast surveys in accordance with subsection (f) of this section:

(1) For surface mining operations that are less than two hundred acres in a single permitted area or less than three hundred acres of contiguous or nearly contiguous area of two or more permitted areas, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas;

(2) For all other surface mining operations, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas or seven tenths of a mile of the proposed blasting site, whichever is greater; and

(3) For permitted surface disturbance of underground mines, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted surface area or areas.

~~(b) Within thirty days of the effective date of this section, any~~ Any operator identified in subdivision (2), subsection (a) of this section that has already completed preblast surveys for man-made dwellings or structures within five tenths of a mile of the permit area and has commenced operations by the effective date of this section shall notify in writing all additional owners and occupants of man-

made dwellings or structures within seven tenths of a mile of the proposed blasting site. Except for those dwellings or structures for which the operator secures a written waiver or executes an affidavit in accordance with the requirements of subsection (c) of this section, the operator or the operator's designee must perform the additional preblast surveys in accordance with subsection (f) of this section. ~~within ninety days of the effective date of this section.~~

(c) An occupant or owner of a man-made dwelling or structure within the areas described in subdivision (1) or (2), subsection (a) of this section may waive the right to a preblast survey in writing. If a dwelling is occupied by a person other than the owner, both the owner and the occupant must waive the right to a preblast survey in writing. If an occupant or owner of a man-made dwelling or structure refuses to allow the operator or the operator's designee access to the dwelling or structure and refuses to waive in writing the right to a preblast survey or to the extent that access to any portion of the structure, underground water supply or well is impossible or impractical under the circumstances, the preblast survey shall indicate that access was refused, impossible or impractical. The operator or the operator's designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding the refusals. ~~The office of explosives and blasting~~ Division of Mining and Reclamation may not determine the preblast survey to be incomplete because it indicates that access to a particular structure, underground water supply or well was refused, impossible or impractical. The operator shall send copies of all written waivers and affidavits executed pursuant to this subsection to the ~~office of explosives and blasting.~~ Division of Mining and Reclamation.

(d) If a preblast survey was waived by the owner and was within the requisite area and the property was sold, the new owner may request a preblast survey from the operator.

(e) An owner within the requisite area may request, from the operator, a preblast survey on structures constructed after the original preblast survey.

(f) The preblast survey shall include:

(1) The names, addresses or description of structure location and telephone numbers of the owner and the residents of the structure being surveyed and the structure number from the permit blasting map;

(2) The current home insurer of the owner and the residents of the structure;

(3) The names, addresses and telephone numbers of the surface mining operator and the permit number;

(4) The current general liability insurer of the surface mining operator;

(5) The name, address and telephone number of the person or firm performing the preblast survey;

(6) The current general liability insurer of the person or firm performing the preblast survey;

(7) The date of the preblast survey and the date it was mailed or delivered to the ~~office of explosives and blasting~~ Division of Mining and Reclamation.

(8) A general description of the structure and its appurtenances, including, but not limited to: (A) The number of stories; (B) the construction materials for the frame and the exterior and interior finish; (C) the type of construction including any unusual or substandard construction; and (D) the approximate age of the structure;

(9) A general description of the survey methods and the direction of progression of the survey, including a key to abbreviations used;

(10) Written documentation and drawings, videos or photographs of the preblast defects and other physical conditions of all structures, appurtenances and water sources which could be affected by blasting;

(11) Written documentation and drawings, videos or photographs of the exterior and interior of the structure to indicate preblast defects and condition;

(12) Written documentation and drawings, videos or photographs of the exterior and interior of any appurtenance of the structure to indicate preblast defects and condition;

(13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the structure and its appurtenances to indicate preblast defects and the condition of the structure and appurtenances;

(14) Written documentation and drawings, videos or photographs of any unusual or substandard construction technique and materials used on the structure or its appurtenances or both structure and appurtenances;

(15) Written documentation relating to the type of water supply, including a description of the type of system and treatment being used, an analysis of untreated water supplies, a water analysis of water supplies other than public utilities and information relating to the quantity and quality of water;

(16) When the water supply is a well, written documentation, where available, relating to the type of well; the well log; the depth, age and type of casing or lining; the static water level; flow data; the pump capacity; the drilling contractor; and the source or sources of the documentation;

(17) A description of any portion of the structure and appurtenances not documented or photographed and the reasons;

(18) The signature of the person performing the survey; and

(19) Any other information required by the chief which additional information shall be established by rule in accordance with article three, chapter twenty-nine-a of this code.

(g) Except for additional preblast surveys prepared within one hundred twenty days of the effective date of this section, pursuant to subsection (b) of this section, the preblast survey shall be submitted to the ~~office of explosives and blasting~~ Division of Mining and Reclamation at least fifteen days prior to the commencement of any production blasting. The ~~office of explosives and blasting~~ Division of Mining and Reclamation shall review each preblast survey as to form and completeness only and notify the operator of any deficiencies: *Provided*, That once all required surveys have been reviewed and accepted by the ~~office of explosives and blasting~~ Division of Mining and Reclamation, blasting may commence sooner than fifteen days after submittal. The ~~office of explosives and blasting~~ Division of Mining and Reclamation shall provide a copy of the preblast survey to the owner or occupant.

(h) The surface mining operator shall file notice of the preblast survey or the waiver in the office of the county clerk of the county commission of the county where the man-made dwelling or structure is located to notify the public that a preblast survey has been conducted or waived. The notice shall be on a form prescribed by the ~~office of explosives and blasting~~ Division of Mining and Reclamation.

(i) ~~The chief of the office of explosives shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code dealing with preblast survey requirements and setting the qualifications for individuals and firms performing preblast surveys. All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code [include language from §22-3A-4] is hereby transferred from the office of explosives and blasting to the Division of Mining~~

and Reclamation as of the effective date of enactment of this section and article during the 2016 session of the Legislature; *Provided That any rule promulgated by office of explosives and blasting shall remain in force and effect as though promulgated by the Division of Mining and Reclamation until the Secretary amends the rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.*

(j) The provisions of this section do not apply to the extraction of minerals by underground mining methods.

**§22-3-22a. Blasting restrictions; site specific blasting design requirement.**

(a) For purposes of this section, the term “production blasting” means blasting that removes the overburden to expose underlying coal seams and does not include construction blasting.

(b) For purposes of this section, the term “construction blasting” means blasting to develop haul roads, mine access roads, coal preparation plants, drainage structures or underground coal mine sites and does not include production blasting.

(c) For purposes of this section, the term “protected structure” means any of the following structures that are situated outside the permit area: An occupied dwelling; a temporarily unoccupied dwelling which has been occupied within the past ninety days; a public building; a structure for commercial purposes; a school; a church; a community or institutional building; and a public park or a water well.

(d) Production blasting is prohibited within three hundred feet of a protected structure or within one hundred feet of a cemetery.

(e) Blasting within one thousand feet of a protected structure shall have a site-specific blast design approved by the ~~office of explosives and blasting~~ Division of Mining and Reclamation. The site-specific blast design shall limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts to do the following:

(1) Prevent injury to persons; (2) prevent damage to public and private property outside the permit area; (3) prevent adverse impacts on any underground mine; (4) prevent change in the course, channel or availability of ground or surface water outside the permit area; and (5) reduce dust outside the permit area.

In the development of a site-specific blasting plan, consideration shall be given, but is not limited to, the physical condition, type and quality of construction of the protected structure, the current use of the protected structure and the concerns of the owner or occupant living in the protected structures identified in the blasting schedule notification area.

(f) An owner or occupant of a protected structure may waive the blasting prohibition within three hundred feet. If a protected structure is occupied by a person other than the owner, both the owner and the occupant of the protected structure shall waive the blasting prohibition within three hundred feet in writing. The operator shall send copies of all written waivers executed pursuant to this subsection to the ~~office of explosives and blasting~~ Division of Mining and Reclamation. Written waivers executed and filed with the ~~office of explosives and blasting~~ Division of Mining and Reclamation are valid during the life of the permit or any renewals of the permit and are enforceable against any subsequent owners or occupants of the protected structure.

(g) The provisions of this section do not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the

underground mining methods: *Provided*, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant to said section.

**§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.**

(a) Blasting shall be conducted in accordance with the rules and laws established to regulate blasting.

(b) If the Division of Environmental Protection establishes after an inspection that a blast at a surface coal mine operation as defined by the provisions of subdivision (2), subsection (a), section thirteen-a of this article was not in compliance with the regulations governing blasting parameters and resulted in property damage to a protected structure, as defined in section twenty-two-a of this article, other than water wells, the following penalties shall be imposed for each permit area or contiguous permit areas where the blasting was out of compliance:

(1) For the first offense, the operator shall be assessed a penalty of not less than \$1,000 nor more than \$5,000.

(2) For the second offense and each subsequent offense within one year of the first offense, the surface mining operator shall be assessed a penalty of not less than \$5,000 nor more than \$10,000.

(3) For the third offense and any subsequent offense within one year of the first offense, or for the failure to pay any assessment set forth within a reasonable time established by the ~~director~~ Secretary, the surface mining operator's permit is subject to an immediate issuance of a cessation order, as set out in section sixteen of this article. The cessation order shall only be released upon written order of the ~~director~~ Secretary of the Department of Environmental Protection when the following conditions have been met:

(A) A written plan has been established and filed with the ~~director~~ Secretary assuring that additional violations will not occur;

(B) The permittee has provided compensation for the property damages or the assurance of adequate compensation for the property damages that have occurred; and

(C) A permittee shall provide such monetary and other assurances as the ~~director~~ Secretary considers appropriate to compensate for future property damages. The monetary assurances required shall be in an amount at least equal to the amount of compensation required in paragraph (B), subdivision (3) of this subsection.

(4) In addition to the penalties described in subdivisions (1), (2) and (3) of this subsection for the second and subsequent offenses on any one permitted area regardless of the time period, the owner of the protected structure is entitled to a rebuttable presumption that the property damage is a result of the blast if: (A) A preblast survey was performed; and (B) the blasting site to which the second or subsequent offense relates is within seven tenths of a mile of the protected structure.

(5) No more than one offense may arise out of any one shot. For purposes of this section, "shot" means a single blasting event composed of one or multiple detonations of explosive material or the assembly of explosive materials for this purpose. One "shot" may be composed of numerous explosive charges detonated at intervals measured in milliseconds.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the Department of Environmental Protection may not impose penalties, as provided for in subsection (b) of this section, on an operator for the violation of any rule identified in subsection (b) of this section that is merely administrative in nature.



(d) The remedies provided in this section are not exclusive and may not bar an owner or occupant from any other remedy accorded by law.

(e) Where inspection by the Department of Environmental Protection establishes that production blasting, in violation of section twenty-two-a of this article, was done within three hundred feet of a protected structure, without an approved site-specific blast design or not in accordance with an approved site-specific blast design for production blasting within one thousand feet of any protected structure as defined in section twenty-two-a of this article or within one hundred feet of a cemetery, the monetary penalties and revocation, as set out in subsection (b) of this section, apply.

(f) All penalties and liabilities as set forth in subsection (b) of this section shall be assessed by the ~~director~~ Secretary, collected by the ~~director~~ Secretary and deposited with the Treasurer of the State of West Virginia in the "General School Fund".

(g) The ~~director~~ Secretary shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code for the implementation of this section.

(h) The provisions of this section do not apply to the extraction of minerals by underground mining methods: *Provided*, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant thereto.

**§22-3-34. Office of explosives and blasting terminated; transfer of functions; responsibilities.**

The office of explosives and blasting within the Department of Environmental Protection is hereby terminated.

**§22-3-35. Legislative rules on surface-mining blasting; disciplinary procedures for certified blasters.**

(a) The Division of Mining and Reclamation shall apply and enforce the previously existing rules of the former office of explosive and blasting at 199 CSR 1 until such time as it adopts rules of its own to implement this section, but shall promulgate rules for legislative approval in accordance with the provisions of section fifteen, article three, chapter twenty-nine-a of this code as necessary to reflect the repeal of section seven, article three-a, of this chapter of the Code of West Virginia, as amended. Any rules promulgated by the Division of Mining and Reclamation shall include, but not be limited to, the following:

(1) A procedure for the review, modification and approval, prior to the issuance of any permit, of any blasting plan required to be submitted with any application for a permit to be issued by the secretary pursuant to article three of this chapter, which sets forth procedures for the inspection and monitoring of blasting operations for compliance with blasting laws and rules, and for the review and modification of the blasting plan of any operator against whom an enforcement action is taken by the Division of Environmental Protection;

(2) Specific minimum requirements for preblast surveys, as set forth in section thirteen-a, article three of this chapter;

(3) A procedure for review of preblast surveys required to be submitted under section thirteen-a, article three of this chapter;

(4) A procedure for the use of seismographs for production blasting which shall be made part of the blasting log;

(5) A procedure to warn of impending blasting to the owners or occupants adjoining the blasting area;

(6) A procedure to limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to: (A) Prevent injury to persons; (B) prevent damage to public and private property outside the permit area; (C) prevent adverse impacts on any underground mine; (D) prevent change in the course, channel or availability of ground or surface water outside the permit area; and (E) reduce dust outside the permit area;

(7) Provisions for requiring mining operators to publish the planned blasting schedule in a newspaper of general circulation in the locality of the mining operation;

(8) Provisions for requiring mining operators to provide adequate advance written notice of the proposed blasting schedule to local governments, owners and occupants living within the distances prescribed in subsection (a), section thirteen-a, article three of this chapter.

(9) Provisions for establishing a process for the education, training, examination and certification of blasters working on surface-mining operations; and

(10) Provisions for establishing disciplinary procedures for all certified blasters responsible for blasting on surface-mining operations conducted within this state in violation of any law or rule promulgated by the Department of Environmental Protection to regulate blasting.

#### **§22-3-36. Claims process for blasting.**

(a) The Division of Mining and Reclamation shall establish and manage a process for the filing, administration and resolution of claims related to blasting.

(b) Claims which may be filed and determined under the provisions of this section shall be those arising from both of the following:

(1) Damage to property arising from blasting activities conducted pursuant to a permit granted under article three of this chapter; and

(2) The damage is incurred by a claimant who is the owner or occupant of the property.

(c) The claims process established by the Division of Mining and Reclamation shall include the following:

(1) An initial determination by the Division of Mining and Reclamation of the merit of the claim; and

(2) An arbitration process whereby the claim can be determined and resolved by an arbitrator in a manner which is inexpensive, prompt and fair to all parties.

(d) If the operator disagrees with the initial determination made by the Division of Mining and Reclamation and requests arbitration, then the following shall apply:

(1) Any party may be represented by a representative of their choice;

(2) At the request of the claimant, the Division of Mining and Reclamation shall provide the claimant with representation in the arbitration process, which representation shall not necessarily be an attorney-at-law; and

(3) If the claim is upheld, in whole or in part, then the operator shall pay the costs of the proceeding, as well as reasonable representation fees and costs of the claimant, in an amount not to exceed \$1,000.

(e) Participation in the claims process created by this section shall be voluntary for the claimant. However, once the claimant has submitted a claim for determination under the provisions of this section, it is intended that the finding of the Division of Mining and Reclamation, if not taken to arbitration, shall be final. If arbitration is requested, it is intended that the results of such arbitration shall be final. The Division of Mining and Reclamation shall provide written notification to the claimant of the provisions of this subsection and shall secure a written acknowledgment from the claimant prior to processing a claim pursuant to the provisions of this section.

(f) The operator shall pay any claim for which the operator is adjudged liable within thirty days of a final determination. If the claim is not paid within thirty days, the secretary shall issue a cessation order pursuant to section sixteen, article three of this chapter for all sites operated by the operator.

(g) No permit to mine coal shall be granted unless the permit applicant agrees to be subject to the terms of this section.

(h) To fulfill its responsibilities pursuant to this section, the Division of Mining and Reclamation may retain the services of inspectors, experts and other persons or firms as may be necessary.

**§22-3-37. Rules, orders and permits to remain in effect regarding blasting; proceedings not affected.**

(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective prior to the enactment of this article shall remain in effect according to their terms until modified, terminated, superseded, set aside or revoked pursuant to this article, by a court of competent jurisdiction, or by operation of law.

(b) Any proceedings, including notices of proposed rule-making, or any application for any license, permit or certificate pending before the division are not affected by this enactment.

**§22-3-38. Transfer of personnel and assets.**

The secretary shall transfer to the Division of Mining and Reclamation any personnel and assets presently used to perform or used in the performance of the duties and functions required by sections thirty-four through thirty-nine of this article.

**ARTICLE 11. WATER POLLUTION CONTROL ACT.**

**§22-11-6. Requirement to comply with standards of water quality and effluent limitations.**

All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply ~~therewith~~ with the rules: *Provided*, That:

(1) Where necessary and proper, the secretary may specify a reasonable time for persons not complying with ~~such the~~ standards and limitations to comply ~~therewith~~ with the rules and upon the expiration of any ~~such that~~ period of time, the secretary shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this state which result in reduction of the quality of ~~such the~~ waters below the standards and limitations established therefor by rules of the board or secretary;

(2) For purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act, compliance with a permit issued pursuant to this article shall be ~~deemed~~ considered compliance for purposes of both this article and sections 301, 302, 303, 306, 307 and 403 of the federal Water Pollution Control Act and with all applicable state and federal water quality standards, except for any ~~such~~ standard imposed under section 307 of the federal Water Pollution Control Act

for a toxic pollutant injurious to human health. Notwithstanding any provision of this code or rule or permit condition to the contrary, water quality standards themselves shall not be considered "effluent standards or limitations" for the purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act and shall not be independently or directly enforced or implemented except through the development of terms and conditions of a permit issued pursuant to this article. Nothing in this section, however, prevents the secretary from modifying, reissuing or revoking a permit during its term. The provisions of this section addressing compliance with a permit are intended to apply to all existing and future discharges and permits without the need for permit modifications; and

(3) The Legislature finds that there are concerns within West Virginia regarding the applicability of the research underlying the federal selenium criteria to a state such as West Virginia which has high precipitation rates and free-flowing streams and that the alleged environmental impacts that were documented in applicable federal research have not been observed in West Virginia and, further, that considerable research is required to determine if selenium is having an impact on West Virginia streams, to validate or determine the proper testing methods for selenium and to better understand the chemical reactions related to selenium mobilization in water.

(4) The Legislature finds that EPA has been contemplating a revision to the federally recommended criteria for several years, but has yet to issue a revised standard.

(5) Because of the uncertainty regarding the applicability of the current selenium standard, the secretary is hereby directed to develop within six months of the effective date of this subdivision an implementation plan for the current selenium standard that will include, at minimum, the following:

(A) Implementing the criteria as a threshold standard;

(B) A monitoring plan that will include chemical speciation of any selenium discharge;

(C) A fish population survey and monitoring plan that will be implemented at a representative location to assess any possible impacts from selenium discharges if the threshold criteria are exceeded; and

(D) The results of the monitoring will be reported to the department for use in the development of state-specific selenium criteria.

(6) Within twenty-four months of the effective date of this subdivision, the secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine of this code which establish a state-specific selenium standard that protects aquatic life. Concurrent with proposing a legislative rule, the secretary shall also submit the proposed standard and supporting documentation to the administrator of the Environmental Protection Agency. The secretary shall also consult with and consider research and data from the West Virginia Water Research Institute at West Virginia University, the regulated community and other appropriate groups in developing the state-specific selenium standard.

(7) Within thirty days of the effective date of this section, the secretary shall promulgate an emergency rule revising the statewide aluminum water quality criteria for the protection of aquatic life to incorporate aluminum criteria values using a hardness-based equation. Concurrent with issuing an emergency rule, the secretary shall also submit the proposed revisions and supporting documentation to the administrator of the Environmental Protection Agency.

(8) The secretary shall, within ninety days of receipt of any completed request for a site specific water quality criterion, approve or deny the request. Any denial of an application shall detail the specific basis for the denial and any revisions needed to the application. Any denial of a request may be appealed to the environmental quality board pursuant to section twenty-one of this article.

## CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

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

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

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

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

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

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

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

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

#### **§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.**

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

(b) If miners or one of their authorized representatives, have reason to believe, at any time, that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made-: Provided, That miners are always encouraged to work with mine management with regards to safety concerns.

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

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

(e) ~~On or after July 1, 2012, an~~ An inspector shall require the operator or other employer to investigate all complaints received by the Office of Miners' Health, Safety and Training involving a certified person's substance abuse or alcohol related impairment at a mine. Within thirty days following notification by the Office of Miners' Health, Safety and Training to the operator or other employer of the complaint, the operator or other employer shall file with the Director a summary of its investigation into the alleged substance abuse or alcohol related impairment of a certified person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of

pay for the period they are idled, but not for more than the balance of the shift. If the order is not terminated prior to the next working shift, all the employees on that shift who are idled by the order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of the shift.

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

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

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

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

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

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

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

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

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

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

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

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

#### **§22A-1-19. Judicial review.**

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



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

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

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

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

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

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

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

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

#### **§22A-1-20. Injunctions.**

The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located ~~or the circuit court of Kanawha County~~, whenever the operator or the operator's agent: (a) Violates or fails or refuses to comply with any order or decision issued under this law; or (b) interferes with, hinders or delays the director or his or her authorized representative in carrying out the provisions of this law; or (c) refuses to admit such representatives to the mine; or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine; or (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of this law; or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this law. ~~Each~~ The court shall have jurisdiction to provide such relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this law, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the director after a public hearing, the findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

#### **§22A-1-31. Withdrawal of certification.**

(a) *Charge of breach of duty.* — A mine inspector or the director may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any

duty mandated pursuant to this article or article two of this chapter. The charge shall state the name of the person charged, the duty or duties he or she is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file of each charge and of all related documents which shall be open to the public.

(b) *Evaluation of charge by board of appeals.* — Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of the director's receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his or her duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the director, the representative of the miner or miners affected and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) *Hearing.* — The Board of Appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the Board of Appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

The Board of Appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet based program in lieu of physically attending the hearing.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings of fact and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) *Failure to cooperate.* — Any person charged who without just cause refuses or fails to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his or her certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire bosses or other certified persons.

(e) *Penalties.* — The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.

(f) *Integrity of penalties imposed.* — No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under this chapter, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

### **§22A-1-35. Mine rescue teams.**

(a) ~~It is the responsibility of the~~ The operator ~~to~~ shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

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

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

(3) A West Virginia Office of Miners' Health, Safety and Training Mine Rescue Team may serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4). The operator shall contact the office and obtain the state's agreement to serve as a backup team in the form of a written notification signed by the director and this notification shall be kept posted at the mine.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

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

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

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

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the

surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

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

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

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

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

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

(4) Mine map training and ventilation procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Two oxygen indicators ~~or two flame safety lamps~~;

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

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

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

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with section fifteen of this article.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have twenty-four hours to submit to the director a revised mine rescue program.

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

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

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

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

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

### **§22A-1A-2. Board of Appeals hearing procedures.**

(a) Any hearing conducted after the temporary suspension of a certified person's certificate pursuant to this article, shall be conducted within sixty days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within forty days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of subsection (c), section thirty-one, article one of this chapter.

In addition to the rules and procedures in section thirty-one, article one of this chapter in hearings under this section, the Board of Appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet based program in lieu of physically attending the hearing.

The Board of Appeals may suspend the certificate or certificates of a certified person for violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to establish the disciplinary actions referenced in this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to section fourteen, article six of this chapter. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from taking any specific personnel action or mandating any employer to establish or maintain an employer-funded substance abuse rehabilitation program.

(c) No person whose certification is suspended or revoked under this section may perform any duties under any other certification issued under this chapter, during the period of the suspension imposed by the board of Appeals.

(d) Any party adversely affected by a final order or decision issued by the board of Appeals hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

## **ARTICLE 2. UNDERGROUND MINES.**

### **§22A-2-3. Fans.**

(a) The ventilation of mines, the systems for which extend for more than two hundred feet underground and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or the operator's management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored

in fifteen minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in fifteen minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners or other persons holding a certificate to make preshift examination. If ventilation is restored to the mine before miners reach the surface, the miners may return to underground working areas only after an examination of the areas is made by a certified person and the areas are determined to be safe.

(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: *Provided*, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: *Provided, however*, That there is another opening having a weak-wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fans and to give warning of an interruption to a fan.

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

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

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

(f) The director may require that when continuous mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he or she is not immediately available, a representative of the Office of Miners' Health, Safety and Training. A duly authorized representative of the employees should be consulted if practical under the circumstances.

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

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

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

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

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

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

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

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

(a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his or her shift or prior to his or her entering the mine to make his or her examination and, except for those persons already on assigned duty, no person except the mine owner, operator or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him or her to be safe. When reported by him or her to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make the fire boss examinations shall be assigned a definite underground area of the mine, and, in making his or her examination shall examine all active working places in the assigned area and make tests with an approved device for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test the roof, face and ribs in the working places and on active



roadways and travelways, approaches to abandoned workings, accessible falls in active sections and areas where any person is scheduled to work or travel underground. He or she shall place his or her initials and the date at or near the face of each place he or she examines. Should he or she find a condition which he or she considers dangerous to persons entering the areas, he or she shall place a conspicuous danger sign at all entrances to the place or places. Only persons authorized by the mine management may enter the places while the sign is posted and only for the purpose of eliminating the dangerous condition. Upon completing his or her examination he or she shall report by suitable communication system or in person the results of this examination to a certified person trained as a certified miner with at least two years mining experience designated by mine management to receive and record the report, at a designated station on the surface of the premises of the mine or underground, before other persons enter the mine to work in coal-producing shifts. He or she shall also record the results of his or her examination with ink or indelible pencil in a book prescribed by the director, kept for the purpose at a place on the surface of the mine designated by mine management. All records of daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.

(b) *Supplemental examination.* — When it becomes necessary to have workers enter areas of the mine not covered during the preshift examination, a supplemental examination shall be performed by a fire boss or certified person acting as such within three hours before any person enters the area. The fire boss or certified person acting as such shall examine the area for hazardous conditions, determine if air is traveling in its proper direction and test for oxygen deficiency and methane.

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

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

### **ROOF—FACE—RIBS**

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

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

(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine, as the director may prescribe, an ample supply of suitable materials of proper size with which to secure the roof thereof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. When overhangs or brows occur along rib lines they shall be promptly removed. All sections shall be maintained as near as possible on center. Except in the case of recovery work, supports knocked out shall be replaced

promptly. Apprentice miners shall not be permitted to set temporary supports on a working section without the direct immediate supervision of a certified miner.

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

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

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

(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner. ~~The time and parts of the plan reviewed shall be recorded in a log book kept for such purpose. Each log book entry so recorded shall be signed by such immediate supervisor making such entry.~~

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

## HOISTING

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

(a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he or she shall be readily available at all times when men are in the mine. He or she shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift, ~~and after the hoist has been idle for one hour or more before hoisting or lowering men;~~ there shall be cut out around the side of the hoisting shaft or driven through the solid strata at the bottom thereof, a traveling way, not less than five feet high and three feet wide to enable a person to pass the shaft in going from one side of it to the other without passing over or under the cage or other hoisting apparatus. Positive

stop blocks or derails shall be placed near the top and at all intermediate landings of slopes and surface inclines and at approaches to all shaft landings. A waiting station with sufficient room, ample clearance from moving equipment, and adequate seating facilities shall be provided where men are required to wait for man trips or man cages, and the miners shall remain in such station until the man trip or man cage is available.

(b) No operator of any coal mine worked by shaft, slope or incline shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine any but competent and sober engineers or drum runners; and no engineer or drum runner in charge of such machinery shall allow any person, except such as may be designated for this purpose by the operator, to interfere with any part of the machinery; and no person shall interfere with any part of the machinery; and no person shall interfere with or intimidate the engineer or drum runner in the discharge of his or her duties. Where the mine is operated or worked by shaft or slope, a minimum space of two and one-half square feet per person shall be available for each person on any cage or car where men are transported. In no instance shall more than twenty miners be transported on a cage or car without the approval of the director. No person shall ride on a loaded cage or car in any shaft, slope, or incline: *Provided*, That this does not prevent any trip rider from riding in the performance of his or her authorized duties. No engineer is required for automatically operated cages, elevators, or platforms. Cages and elevators shall have an emergency power source unless provided with other escapeway facilities.

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

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

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

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

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

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

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

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

(f) (1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his or her immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of the device and refresher training courses for all underground employees shall be held once each quarter. Quarters shall be based on a calendar year.

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

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

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

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

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

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less

than one year nor more than ten years or fined not less than \$10,000 nor more than \$100,000, or both fined and confined.

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

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

(a) For the purposes of this section, the term 'accident' means:

- (1) The death of an individual at a mine;
- (2) An injury to an individual at a mine which has a reasonable potential to cause death;
- (3) The entrapment of an individual;
- (4) The unplanned inundation of a mine by a liquid or gas;
- (5) The unplanned ignition or explosion of gas or dust;
- (6) The unplanned ignition or explosion of a blasting agent or an explosive;
- (7) An unplanned fire in or about a mine not extinguished within five minutes of ignition;
- (8) An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;
- (9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;
- (10) An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the failure of an impoundment, refuse pile or culm bank;
- (11) Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes; and
- (12) An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.

(b) Whenever any accident occurs in or about any coal mine or the machinery connected therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice, within fifteen minutes of ascertaining the occurrence of an accident, to the Mine and Industrial Accident Emergency Operations Center at the statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management pursuant to the provisions of article five-b, chapter fifteen of this code stating the particulars of the accident: *Provided*, That the operator or the mine foreman in charge of the mine may comply with this notice requirement by immediately providing notice to the appropriate local organization for emergency services as defined in section eight, article five of said chapter, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code: *Provided, however*, That if, immediately upon ascertaining the occurrence of an accident, the operator or the mine foreman in charge of the mine provides notice to the local organization for emergency services as defined in section eight, article five, chapter fifteen of this code, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code, then, in order to comply with this subsection, the operator or mine foreman in charge of the mine shall also give notice to the Mine and Industrial

Accident Emergency Operations Center at the statewide number identified in this subsection within fifteen minutes of completing the telephone call to the local organization for emergency services or the appropriate local emergency telephone system operator, as applicable: *Provided further*, That nothing in this subsection shall be construed to relieve the operator from any reporting or notification requirement under federal law.

(c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant to rules authorized in this section, a civil administrative penalty of up to \$100,000 on the operator if it is determined that the operator or the mine foremen in charge of the mine failed to give immediate notice as required in this section. The director may later amend the assessment of a penalty under this section if so warranted: *Provided*, That the director may waive imposition of the civil administrative penalty at any time if he or she finds that the failure to give immediate notice was caused by circumstances wholly outside the control of the operator: *Provided, however*, That the assessment of the civil administrative penalty set forth in this subsection may be appealed to the Board of Appeals, and the Board of Appeals may, by ~~unanimous vote~~ a vote of two Board of Appeals Members, reduce the amount of the civil administrative penalty upon a finding of mitigating circumstances warranting the imposition of a lesser amount.

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

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

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

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

**§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.**

~~(a) An existing underground mine foreman-fire boss certified pursuant to this article shall complete the continuing education requirements in this section within two years from the effective date of this section and every two years thereafter. An underground mine foreman-fire boss certified pursuant to this article on or after the effective date of this section shall complete the continuing education requirements in this section within two years of their certification and every two years thereafter. The continuing education requirements of this section may not be satisfied by the completion of other training requirements mandated by the provisions of this chapter.~~

(b) In order to receive continuing education credit pursuant to this section, a mine foreman-fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course approved by the board and taught by a qualified instructor approved by the director. The mine foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The mine foreman-fire boss shall submit documentation to the office certified by the instructor that indicates the required continuing education has been completed prior to the deadlines set forth in this subsection: *Provided*, That a mine foreman-fire boss may submit documentation of continuing education completed in another state for approval and acceptance by the board.

(c) The mine foreman-fire boss shall complete at least eight hours of continuing education every two years.

(d) The content of the continuing education course shall include, but not be limited to:

(1) Selected provisions of this chapter and 30 U. S. C. §801, *et seq.*;

(2) Selected provisions of the West Virginia and federal underground coal mine health and safety rules and regulations;

(3) The responsibilities of a mine foreman-fire boss;

(4) Selected policies and memoranda of the Office of Miners' Health, Safety and Training, the ~~board~~ Board of Coal Mine Health and Safety, and the ~~board~~ Board of Miner Training, Education and Certification, and from any safety analysis performed by the company.

(5) A review of fatality and accident trends in underground coal mines; and

(6) Other subjects as determined by the Board of Miner Training, Education and Certification. The Board shall solicit input from mining companies on the substance of the training and discuss how the training shall be scheduled during the year.

(e) The board may approve alternative training programs tailored to specific mines.

(f) ~~Failure A mine foreman-fire boss who fails to complete the requirements of this section shall result in suspension of a mine foreman-fire boss certification~~ have his or her certification suspended pending completion of the continuing education requirements. During the pendency of the suspension, the individual may not perform statutory duties assigned to a mine foreman-fire boss under West Virginia law. The office shall send notice of any suspension to the last address the certified mine foreman-fire boss reported to the director. If the requirements are not met within two years of the suspension date, the director may file a petition with the board of appeals pursuant to the procedures set forth in section thirty-one, article one of this chapter and, upon determining that the requirements have not been met, the Board of Appeals may revoke the mine foreman-fire boss' certification, which shall not be renewed except upon successful completion of the examination prescribed by law for mine foremen-fire bosses or upon completion of other training requirements established by the board: *Provided*, That an individual having his or her mine foreman-fire boss certification suspended pursuant to this section who also holds a valid mine foreman-fire boss certification from another state may have the suspension lifted by completing training requirements established by the board.

(g) The office shall make a program of instruction that meets the requirements for continuing education set forth in this section regularly available in regions of the state, based on demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a mine foreman-fire boss capacity: *Provided*, That the office may collect a fee from program participants to offset the cost of the program.

(h) The office shall make available to operators and other interested parties a list of individuals whose mine foreman-fire boss certification is in suspension or has been revoked pursuant to this section.”

The bill was then ordered to engrossment and third reading.

**H. B. 4734**, Relating to mine subsidence insurance; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4735**, Relating to the definition of health care provider, and clarifying that speech-language pathologists and audiologists are two separate providers; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 4739**, Unclaimed Life Insurance Benefits Act; on second reading, coming up in regular order, was read a second time, advanced to third reading with the right to amendment, and the rule was suspended to permit the offering and consideration of amendments on that reading.

Delegate E. Nelson asked and obtained unanimous consent to return to further consideration of **Com. Sub. for H. B. 2704**, West Virginia Consumer Sales and Service Use tax.

Delegate E. Nelson then moved that the bill be tabled.

On this motion, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 275**), and there were—yeas 92, nays 2, absent and not voting 6, with the yeas and absent and not voting being as follows:

Nays: Blair and Moffatt.

Absent and Not Voting: Deem, Hornbuckle, Marcum, McCuskey, Moore and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the motion to table the bill prevailed.

### First Reading

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for H. B. 4035**, Permitting pharmacists to furnish naloxone hydrochloride,

**Com. Sub. for H. B. 4046**, Relating to the promulgation of rules by the Department of Administration,

**Com. Sub. for H. B. 4168**, Creating a special motor vehicle collector license plate,

**Com. Sub. for H. B. 4196**, Relating to abandoned antique vehicles,

**Com. Sub. for H. B. 4239**, Relating to construction of a modern highway from Pikeville, Kentucky to Beckley, West Virginia,

**H. B. 4246**, Changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library,

**Com. Sub. for H. B. 4301**, Relating to a framework for initiating comprehensive transformation of school leadership,



**Com. Sub. for H. B. 4308**, Barring persons who are convicted of certain criminal offenses from acquiring property from their victims,

**H. B. 4345**, Repealing the West Virginia Permitting and Licensing Information Act,

**H. B. 4364**, Internet Privacy Protection Act,

**Com. Sub. for H. B. 4435**, Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects,

**Com. Sub. for H. B. 4537**, Relating to the regulation of chronic pain clinics,

**Com. Sub. for H. B. 4586**, Ensuring that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways,

**H. B. 4616**, Permitting county commissions the option of paying the salaries of county officials and their employees on a bi-weekly basis,

**Com. Sub. for H. B. 4668**, Raising the allowable threshold of the coal severance tax revenue fund budgeted for personal services,

**H. B. 4724**, Relating to adding a requirement for the likelihood of imminent lawless action to the prerequisites for the crime of intimidation and retaliation,

**H. B. 4736**, Relating to the pawn of gift cards,

**H. B. 4737**, Relating to increased penalties for manufacturing or transportation of a controlled substance in the presence of a minor,

**H. B. 4738**, Relating to the offense of driving in an impaired state,

And,

**H. B. 4740**, Permitting that current members of the National Guard or Reserves may be excused from jury duty.

Delegate Morgan asked and obtained unanimous consent that he be removed as a sponsor of Com. Sub. for H. B. 2704.

### **Miscellaneous Business**

Delegate Longstreth noted to the Clerk that she was absent when the vote was taken on Roll No. 255, and that had she been present, she would have voted "Yea" thereon.

Delegates Eldridge and Moffatt announced that they were absent when the vote was taken on Roll No. 254, and that had they been present, they would have voted "Yea" thereon.

Delegate E. Nelson noted to the Clerk that he was absent when the vote was taken on Roll No. 256, and that had he been present, he would have voted "Yea" thereon.

Delegate Kurcaba announced that he was absent when the vote was taken on Roll No. 252, and that had he been present, he would have voted "Nay" thereon; and on Roll No. 258, he would have voted "Yea" thereon.

Delegate Perdue announced that he was absent on the following Roll Nos., and had been present he would have voted as follows: Roll No. 251 - "Nay", Roll No. 252 - "Yea", Roll No. 253 - "Nay", Roll No. 254 - "Yea", Roll No. 255 - "Yea", Roll No. 256 - "Nay", Roll No. 257 - "Yea",

Roll No. 258 - "Yea" and Roll No. 259 - "Yea".

#### **Remarks of Members**

Delegate Blair asked and obtained unanimous consent that the remarks of Delegate Kessinger regarding Com. Sub. for S. B. 10, Creating Unborn Child Protection from Dismemberment Abortion Act, be printed in the Appendix to the Journal.

Delegate Pushkin asked and obtained unanimous consent that the remarks of Delegates Caputo and Manchin regarding Com. Sub. for H. B. 4352, Relating to the selling of certain state owned health care facilities by the Secretary of the Department of Health and Human Resources be printed in the Appendix to the Journal.

At 5:53 p.m, the House of Delegates adjourned until 9:00 a.m., Tuesday, March 1, 2016.

---

**HOUSE OF DELEGATES**  
**STEPHEN J. HARRISON, Clerk**  
**Building 1, Room M-212**  
**1900 Kanawha Blvd., East**  
**Charleston, WV 25305-0470**