

# **WEST VIRGINIA LEGISLATURE**

**SECOND REGULAR SESSION, 2012**



# **ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**House Bill No. 4351**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)  
[By Request of the Executive]



Passed March 6, 2012

To Take Effect Ninety Days From Passage

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)  
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[Passed March 6, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §15-5B-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-5B-6; to amend and reenact §22A-1-4, §22A-1-14 and §22A-1-21 of said code; to amend said code by adding thereto two new sections, designated §22A-1-13a and 22A-1-40; to amend said code by adding thereto a new article, designated §22A-1A-1, §22A-1A-2, §22A-1A-3 and §22A-1A-4; to amend and reenact §22A-2-2, §22A-2-12, §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code; to amend said code by adding thereto a new section, designated §22A-2-43a; to amend and reenact §22A-6-4 of said code; to amend said code by adding thereto two new sections, designated §22A-6-13 and §22A-6-14; to amend and reenact §22A-7-5 of said code; to amend said code by adding thereto a new section, designated §22A-7-5a; and to amend said code by adding thereto a new article, designated §22A-12-1, all relating to mine safety generally; requiring coal mine operators to provide reports to and notify certain entities in

the event of an emergency; establishing a mine safety anonymous tip hotline; exempting information provided to the hotline from the Freedom of Information Act; permitting the Director of the Office of Miners' Health, Safety and Training to share information regarding certification suspensions or revocations with other states and to promulgate certain legislative rules; requiring a study be conducted regarding mine inspector qualifications, compensation, training and inspections; creating a criminal offense and establishing criminal penalties for providing advance notice of an inspection or an inspector's presence at a mine; increasing civil and criminal penalties; requiring operator or employer to investigate complaints involving impaired miners; creating criminal offense and penalty for willful violation of mine safety laws, rules or standards causing a fatality; providing confidentiality of certain meetings relating to violations and mining accidents; excepting certain statements from release under freedom of information act; providing conditions relating to statements to director; allowing designation of certain persons by miner family members to attend interviews and hearings in certain circumstances and providing limitations thereto; providing that Director prepare and distribute list containing certain information of persons to assist families following accidents; providing for suspension of mining certificates in certain circumstances; requiring coal mining operators and certain employers to implement substance abuse screening policy and program for certain persons; providing procedures and minimum requirements of substance abuse screening policy and program; requiring substance abuse screening upon preemployment, rehiring or transfer of miner; requiring coal mine operators to provide notification to the Director of the Office of Miners' Health, Safety and Training of certain information at specified intervals and upon certain events related to substance abuse violations; allowing operator policies to be more restrictive than minimum statutory requirements; requiring substance abuse screening of all persons in safety sensitive positions; requiring immediate suspension of miner

certificates as a result of suspensions or revocations for substance abuse in other jurisdictions and reciprocity; providing procedure for board of appeals hearings on certification suspensions and judicial review of board decisions; providing exemptions from and exceptions to the disclosure of substance abuse screening results; providing rule-making on thresholds and other protocols and requirements; providing internal effective dates; revising procedure for approval, review, comment and enforcement of mine ventilation plans; increasing the number of days an apprentice must work within sight and sound of mine foreman or experienced miner; authorizing additional training when certain conduct creating hazardous condition at mine; requiring methane detectors be maintained in accordance with manufacturer specifications; requiring periodic review copies of fire boss books by the mining superintendent or senior person at the mine, and duties thereto; requiring director to proscribe fire boss book; revising and expanding examination and reporting requirements relating to certain inspections; increasing the percentage of rock dust to be maintained in coal mines and providing certain information upon request; prescribing actions required to detect and respond to excess methane gas levels in coal mines; establishing safety levels and testing requirements relating to methane and providing for rules relating thereto and requiring certain action at certain levels; prescribing requirements for persons to operate or repair mining machinery; providing for increased training regarding the use of self-contained self-rescue devices; providing additional notification by coal mine operators in the event of an accident; allowing reduction of civil penalties when mitigating circumstances exist; authorizing board to conduct investigation in accidents resulting in a fatality; requiring study of and report on the safety of working or traveling in bleeder or gob areas of certain coal mines; requiring studies of expanding certification and mandatory substance abuse program and authorizing emergency rule-making by the Board and Director relating thereto; directing additional education for certain miners rights

and protections; requiring study of and report on education, training and examination associated with certifying miners; and requiring a study and report on enforcement procedures.

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

That §15-5B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §15-5B-6; that §22A-1-4, §22A-1-14, and §22A-1-21 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §22A-1-13a and §22A-1-40; that said code be amended by adding thereto a new article, designated §22A-1A-1, §22A-1A-2, §22A-1A-3 and §22A-1A-4; that §22A-2-2, §22A-2-12, §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-43, §22A-2-55 and §22A-2-66 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-2-43a; that §22A-6-4 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §22A-6-13 and §22A-6-14; that §22A-7-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-7-5a; and that said code be amended by adding thereto a new article, designated §22A-12-1, all to read as follows:

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.**

#### **§15-5B-3. Emergency mine response.**

- 1 (a) To assist the Division of Homeland Security and
- 2 Emergency Management in implementing and operating the
- 3 Mine and Industrial Accident Rapid Response System, the
- 4 Office of Miners' Health, Safety and Training shall, on a

5 quarterly basis, provide the emergency operations center with  
6 a mine emergency contact list. In the event of any change in  
7 the information contained in the mine emergency contact list,  
8 the changes shall be provided immediately to the emergency  
9 operations center. The mine emergency contact list shall  
10 include the following information:

11 (1) The names and telephone numbers of the Director of  
12 the Office of Miners' Health, Safety and Training, or his or  
13 her designee, including at least one telephone number at  
14 which the director or designee may be reached at any time;

15 (2) The names and telephone numbers of all district mine  
16 inspectors, including at least one telephone number for each  
17 inspector at which each inspector may be reached at any time;

18 (3) A current listing of all regional offices or districts of  
19 the Office of Miners' Health, Safety and Training, including  
20 a detailed description of the geographical areas served by  
21 each regional office or district; and

22 (4) The names, locations and telephone numbers of all  
23 mine rescue stations, including at least one telephone number  
24 for each station that may be called twenty-four hours a day  
25 and a listing of all mines that each mine rescue station serves  
26 in accordance with the provisions of section thirty-five,  
27 article one, chapter twenty-two-a of this code.

28 (b) Upon the receipt of an emergency call regarding any  
29 accident, as defined in section sixty-six, article two, chapter  
30 twenty-two-a of this code, in or about any mine, the  
31 emergency operations center shall immediately notify:

32 (1) The Director of the Office of Miners' Health, Safety  
33 and Training or his or her designee;

34 (2) The district mine inspector assigned to the district or  
35 region in which the accident occurred; and

36 (3) Local emergency service personnel in the area in  
37 which the accident occurred.

38 (c) The director or his or her designee shall determine the  
39 necessity for and contact all mine rescue stations that provide  
40 rescue coverage to the mine in question.

41 (d) In the event that an emergency call regarding any  
42 accident, as defined in section sixty-six, article two, chapter  
43 twenty-two-a of this code, in or about any mine, is initially  
44 received by a county answering point, as defined in article  
45 six, chapter twenty-four of this code, the call shall be  
46 immediately forwarded to the Mine and Industrial Accident  
47 Emergency Operations Center.

48 (e) Nothing in this section shall be construed to relieve an  
49 operator, as defined in section two, article one, chapter  
50 twenty-two-a of this code, from any reporting or notification  
51 obligation under section sixty-six, article two, chapter  
52 twenty-two-a of this code and under federal law.

53 (f) The Mine and Industrial Accident Rapid Response  
54 System and the emergency operations center are designed  
55 and intended to provide communications assistance to  
56 emergency responders and other responsible persons.  
57 Nothing in this section shall be construed to conflict with  
58 the responsibility and authority of an operator to provide  
59 mine rescue coverage in accordance with the provisions of  
60 section thirty-five, article one, chapter twenty-two-a of this  
61 code or the authority of the Director of the Office of Miners'  
62 Health, Safety and Training to assign mine rescue teams  
63 under the provisions of subsection (d) of said section or to

64 exercise any other authority provided in chapter  
65 twenty-two-a of this code.

**§15-5B-6. Mine Safety Anonymous Tip Hotline.**

1 The Director of the Division of Homeland Security and  
2 Emergency Management shall maintain a toll free number  
3 that allows callers to report mine safety violations and  
4 hazardous coal mining conditions and practices. The  
5 information collected shall be provided to the Office of  
6 Miners' Health, Safety and Training. No information may  
7 be submitted to the Office of Miners' Health, Safety and  
8 Training that would allow identification of the person  
9 placing the call. The calls are confidential and any  
10 documentation thereof or related thereto is not subject to  
11 release and is exempt from the provisions of article one,  
12 chapter twenty-nine-b of this code. The director shall  
13 distribute printed information to all state mining operations  
14 alerting miners to the existence of the toll free line. Each  
15 mining operation shall post this notice at the location used  
16 to post notices pursuant to section eighteen, article one,  
17 chapter twenty-two-a of this code.

**CHAPTER 22A. MINER HEALTH, SAFETY AND TRAINING.**

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

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

1 (a) The Director of the Office of Miners' Health, Safety  
2 and Training is hereby empowered and it is his or her duty to  
3 administer and enforce the provisions of this chapter relating

4 to health and safety inspections and enforcement and training  
5 in coal mines, underground clay mines, open pit mines,  
6 cement manufacturing plants and underground limestone and  
7 sandstone mines.

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

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

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

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

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

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

30 (6) Hear and determine applications made by mine  
31 operators for the annulment or revision of orders made by

32 mine inspectors, and to make inspections of mines, in  
33 accordance with the provisions of this article.

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

37 (8) Make annually a full and complete written report of the  
38 administration of the office to the Governor and the Legislature  
39 of the state for the year ending June 30. The report shall include  
40 the number of visits and inspections of mines in the state by  
41 mine inspectors, the quantity of coal, coke and other minerals  
42 (excluding oil and gas) produced in the state, the number of  
43 individuals employed, number of mines in operation, statistics  
44 with regard to health and safety of persons working in the mines  
45 including the causes of injuries and deaths, improvements made,  
46 prosecutions, the total funds of the office from all sources  
47 identifying each source of the funds, the expenditures of the  
48 office, the surplus or deficit of the office at the beginning and  
49 end of the year, the amount of fines collected, the amount of  
50 fines imposed, the value of fines pending, the number and type  
51 of violations found, the amount of fines imposed, levied and  
52 turned over for collection, the total amount of fines levied but  
53 not paid during the prior year, the titles and salaries of all  
54 inspectors and other officials of the office, the number of  
55 inspections made by each inspector, the number and type of  
56 violations found by each inspector. However, no inspector may  
57 be identified by name in this report. Such reports shall be filed  
58 with the Governor and the Legislature on or before December 31  
59 of the same year for which it was made, and shall upon proper  
60 authority be printed and distributed to interested persons.

61 (9) Call or subpoena witnesses, for the purpose of  
62 conducting hearings into mine fires, mine explosions or any  
63 mine accident; to administer oaths and to require production  
64 of any books, papers, records or other documents relevant or

65 material to any hearing, investigation or examination of any  
66 mine permitted by this chapter. Any witness so called or  
67 subpoenaed shall receive \$40 per diem and shall receive  
68 mileage at the rate of \$.15 for each mile actually traveled,  
69 which shall be paid out of the State Treasury upon a  
70 requisition upon the State Auditor, properly certified by the  
71 witness.

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

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

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

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

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

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

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

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

103 (c) The Director of the Office of Miners' Health, Safety  
104 and Training, or his or her designee, upon receipt of the list  
105 of approved innovative mine safety technologies from the  
106 Mine Safety Technology Task Force, has thirty days to  
107 approve or amend the list as provided in section four, article  
108 thirteen-bb, chapter eleven of this code. At the expiration of  
109 the time period, the director shall publish the list of approved  
110 innovative mine safety technologies as provided in section  
111 four, article thirteen-bb, chapter eleven of this code.

**§22A-1-13a. Study of mine inspector qualification,  
compensation, training and inspection  
programs.**

1 The director is directed to conduct a study of the  
2 minimum qualifications for mine inspectors, the minimum  
3 compensation paid to mine inspectors and the overall training  
4 program established for mine inspectors. The study shall  
5 identify ways to attract and retain new, qualified mine  
6 inspectors to minimize the effect of the anticipated retirement  
7 of a significant number of current inspectors. Additionally,  
8 the study shall examine ways to improve the training  
9 programs for mine inspectors by focusing on technological  
10 advances in coal mining techniques, best practices used in  
11 modern coal mines and proper mine ventilation. Further, the  
12 director shall perform an assessment of the resources and

13 qualification of inspectors necessary to approve mine  
14 ventilation plans. Finally, the study shall make  
15 recommendations on how to reassess mine inspection  
16 priorities to ensure that mines having a history of numerous  
17 safety violations are inspected more frequently than mines  
18 having a history of comparatively few safety violations while  
19 preserving the minimum number of inspections required by  
20 the code. By December 31, 2012, the Office of Miners'  
21 Health, Safety and Training shall report to the Legislature's  
22 Joint Committee on Government and Finance with  
23 recommendations regarding the implementation of its  
24 findings.

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

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

9 (b) If miners or one of their authorized representatives,  
10 have reason to believe, at any time, that dangerous conditions  
11 are existing or that the law is not being complied with, they  
12 may request the director to have an immediate investigation  
13 made.

14 (c) Mine inspectors shall devote their full-time and  
15 undivided attention to the performance of their duties, and  
16 they shall examine all of the mines in their respective districts

17 at least four times annually, and as often, in addition thereto,  
18 as the director may direct, or the necessities of the case or the  
19 condition of the mine or mines may require, with no advance  
20 notice of inspection provided to any person, and they shall  
21 make a personal examination of each working face and all  
22 entrances to abandoned parts of the mine where gas is known  
23 to liberate, for the purpose of determining whether an  
24 imminent danger, referred to in section fifteen of this article,  
25 exists in the mine, or whether any provision of article two of  
26 this chapter is being violated or has been violated within the  
27 past forty-eight hours in the mine. No other person shall,  
28 with the intent of undermining the integrity of an  
29 unannounced mine inspection, provide advance notice of any  
30 inspection or of an inspector's presence at a mine to any  
31 person at that mine. Any person who, with the requisite  
32 intent, knowingly causes or conspires to provide advance  
33 notice of any inspection or of an inspector's presence at a  
34 mine is guilty of a felony and, upon conviction thereof, shall  
35 be fined not more than \$15,000 or imprisoned in a state  
36 correctional facility not less than one year and not more than  
37 five years, or both fined and imprisoned.

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

48 (e) On or after July 1, 2012, an inspector shall require the  
49 operator or other employer to investigate all complaints

50 received by the Office of Miners' Health, Safety and Training  
51 involving a certified person's substance abuse or alcohol  
52 related impairment at a mine. Within thirty days following  
53 notification by the Office of Miners' Health, Safety and  
54 Training to the operator or other employer of the complaint,  
55 the operator or other employer shall file with the Director a  
56 summary of its investigation into the alleged substance abuse  
57 or alcohol related impairment of a certified person.

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

66 (g) At the commencement of any inspection of a coal mine  
67 by an authorized representative of the director, the authorized  
68 representative of the miners at the mine at the time of the  
69 inspection shall be given an opportunity to accompany the  
70 authorized representative of the director on the inspection.

**§22A-1-21. Penalties.**

1 (a) (1) Any operator of a coal mine in which a violation  
2 of any health or safety rule occurs or who violates any other  
3 provisions of this chapter shall be assessed a civil penalty by  
4 the director under subdivision (3) of this subsection, which  
5 shall be not more than \$5,000, for each violation, unless the  
6 director determines that it is appropriate to impose a special  
7 assessment for the violation, pursuant to the provisions of  
8 subdivision (2), subsection (b) of this section. Each violation  
9 constitutes a separate offense. In determining the amount of

10 the penalty, the director shall consider the operator's history  
11 of previous violations, whether the operator was negligent,  
12 the appropriateness of the penalty to the size of the business  
13 of the operator charged, the gravity of the violation and the  
14 demonstrated good faith of the operator charged in attempting  
15 to achieve rapid compliance after notification of a violation.

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

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

25 (4) A civil penalty under subdivision (1) or (2) of  
26 subsection (a) of this section or subdivision (1) or (2) of  
27 subsection (b) of this section shall be assessed by the director  
28 only after the person charged with a violation under this  
29 chapter or rule promulgated pursuant to this chapter has been  
30 given an opportunity for a public hearing and the director has  
31 determined, by a decision incorporating the director's  
32 findings of fact in the decision, that a violation did occur and  
33 the amount of the penalty which is warranted and  
34 incorporating, when appropriate, an order in the decision  
35 requiring that the penalty be paid. Any hearing under this  
36 section shall be of record.

37 (5) If the person against whom a civil penalty is assessed  
38 fails to pay the penalty within the time prescribed in the  
39 order, the director may file a petition for enforcement of the  
40 order in any appropriate circuit court. The petition shall  
41 designate the person against whom the order is sought to be

42 enforced as the respondent. A copy of the petition shall  
43 immediately be sent by certified mail, return receipt  
44 requested, to the respondent and to the representative of the  
45 miners at the affected mine or the operator, as the case may  
46 be. The director shall certify and file in the court the record  
47 upon which the order sought to be enforced was issued. The  
48 court has jurisdiction to enter a judgment enforcing,  
49 modifying and enforcing as modified, or setting aside, in  
50 whole or in part, the order and decision of the director or it  
51 may remand the proceedings to the director for any further  
52 action it may direct. The court shall consider and determine  
53 de novo all relevant issues, except issues of fact which were  
54 or could have been litigated in review proceedings before a  
55 circuit court under section twenty of this article and, upon the  
56 request of the respondent, those issues of fact which are in  
57 dispute shall be submitted to a jury. On the basis of the jury's  
58 findings the court shall determine the amount of the penalty  
59 to be imposed. Subject to the direction and control of the  
60 Attorney General, attorneys appointed for the director may  
61 appear for and represent the director in any action to enforce  
62 an order assessing civil penalties under this subdivision.

63 (b) (1) Any operator who knowingly violates a health or  
64 safety provision of this chapter or health or safety rule  
65 promulgated pursuant to this chapter, or knowingly violates or  
66 fails or refuses to comply with any order issued under section  
67 fifteen of this article, or any order incorporated in a final decision  
68 issued under this article, except an order incorporated in a  
69 decision under subsection (a) of this section or subsection (b),  
70 section twenty-two of this article, shall be assessed a civil  
71 penalty by the director under subdivision (5), subsection (a) of  
72 this section of not more than \$5,000 and for a second or  
73 subsequent violation assessed a civil penalty of not more than  
74 \$10,000, unless the director determines that it is appropriate to  
75 impose a special assessment for the violation, pursuant to the  
76 provisions of subdivision (2) of this subsection.

77 (2) In lieu of imposing a civil penalty pursuant to the  
78 provisions of subsection (a) of this section or subdivision (1)  
79 of this subsection, the director may impose a special  
80 assessment if an operator violates a health or safety provision  
81 of this chapter or health or safety rule promulgated pursuant  
82 to this chapter and the violation is of serious nature and  
83 involves one or more of the following by the operator:

84 (A) Violations involving fatalities and serious injuries;

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

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

88 (D) Violations involving an imminent danger;

89 (E) Violations involving an extraordinarily high degree  
90 of negligence or gravity or other unique aggravating  
91 circumstances; or

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

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

98 (c) Whenever a corporate operator knowingly violates a  
99 health or safety provision of this chapter or health or safety  
100 rules promulgated pursuant to this chapter, or knowingly  
101 violates or fails or refuses to comply with any order issued  
102 under this law or any order incorporated in a final decision  
103 issued under this law, except an order incorporated in a  
104 decision issued under subsection (a) of this section or

105 subsection (b), section twenty-two of this article, any  
106 director, officer or agent of the corporation who knowingly  
107 authorized, ordered or carried out the violation, failure or  
108 refusal is subject to the same civil penalties that may be  
109 imposed upon a person under subsections (a) and (b) of this  
110 section.

111 (d) Whoever knowingly makes any false statement,  
112 representation or certification in any application, record,  
113 report, plan or other document filed or required to be  
114 maintained pursuant to this law or any order or decision  
115 issued under this law is guilty of a misdemeanor and, upon  
116 conviction thereof, shall be fined not more than \$10,000 or  
117 confined in jail not more than one year, or both fined and  
118 confined. The conviction of any person under this subsection  
119 shall result in the revocation of any certifications held by the  
120 person under this chapter which certified or authorized the  
121 person to direct other persons in coal mining by operation of  
122 law and bars that person from being issued any license under  
123 this chapter, except a miner's certification, for a period of not  
124 less than one year or for a longer period as may be  
125 determined by the director.

126 (e) Whoever willfully distributes, sells, offers for sale,  
127 introduces or delivers in commerce any equipment for use in  
128 a coal mine, including, but not limited to, components and  
129 accessories of the equipment, who willfully misrepresents the  
130 equipment as complying with the provisions of this law, or  
131 with any specification or rule of the director applicable to the  
132 equipment, and which does not comply with the law,  
133 specification or rule, is guilty of a misdemeanor and, upon  
134 conviction thereof, is subject to the same fine and  
135 confinement that may be imposed upon a person under  
136 subsection (d) of this section.

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

144 (g) There is continued in the Treasury of the State of  
145 West Virginia a Special Health, Safety and Training Fund.  
146 All civil penalty assessments collected under this section  
147 shall be collected by the director and deposited with the  
148 Treasurer of the State of West Virginia to the credit of the  
149 Special Health, Safety and Training Fund. The fund shall be  
150 used by the director who is authorized to expend the moneys  
151 in the fund for the administration of this chapter.

**§22A-1-40. Reporting violations, accident investigations;  
witness interviews.**

1 (a) To the extent permitted by law, any person meeting  
2 with, or providing a statement to, the director may request to  
3 do so on a confidential basis without the consent, presence,  
4 involvement or knowledge of any third party. Upon such a  
5 request, the director shall keep the identity of any individual  
6 providing such a statement and the statement itself  
7 confidential, to the extent permitted by law, and the statement  
8 shall be exempt from disclosure under article one, chapter  
9 twenty-nine-b of this code. Nothing in this section precludes  
10 a person from being represented when speaking with the  
11 director. Further, nothing in this section precludes a person  
12 under subpoena or who is voluntarily speaking with the  
13 director from authorizing any other person from participation  
14 in such meeting or statement.

15 (b) If any miner is entrapped, fatally injured or otherwise  
16 unable, as the result of an accident, to designate a  
17 representative to observe witness interviews and  
18 investigatory hearings conducted in an accident investigation,  
19 the miner's closest relative may designate one representative  
20 who may, subject to subsection (a) of this section, attend  
21 witness interviews and investigatory hearings regarding the  
22 accident for the sole purpose of observing such interviews  
23 and hearings and conveying information to the accident  
24 victim's family: *Provided*, That the right of a designated  
25 representative to observe witness interviews and  
26 investigatory hearings pursuant to this subsection shall be  
27 subject to subsection (a) of this section and shall not extend  
28 to interviews or investigatory hearings of a criminal nature  
29 conducted by state or federal inspectors or other state or  
30 federal law enforcement officers. No more than five  
31 representatives designated pursuant to this section may attend  
32 witness interviews and investigatory hearings for the purpose  
33 of observing such interviews and hearings and conveying  
34 information to accident victims' families.

35 (c) The director shall, in consultation with the Board of  
36 Coal Mine Health and Safety, develop a list of persons skilled  
37 in the fields of grief and crisis management, communications  
38 and family support. Following any mining accident  
39 involving entrapped miners or fatal injuries, the director shall  
40 promptly provide the list of such individuals to the families  
41 of the accident victim or victims. The individuals contained  
42 on the list developed by the Director shall be available as a  
43 resource to families of accident victims who seek their  
44 assistance. The list shall also contain a reference to this code  
45 section and a statement that the family has the right to  
46 designate a representative of their choosing regardless of  
47 whether that person is named on the list.

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

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

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

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

8 (A) Amphetamines,

9 (B) Cannabinoids/THC,

10 (C) Cocaine,

11 (D) Opiates,

12 (E) Phencyclidine (PCP),

13 (F) Benzodiazepines,

14 (G) Propoxyphene,

15 (H) Methadone,

16 (I) Barbiturates, and

17 (J) Synthetic narcotics.

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

30 (2) A random substance abuse testing program covering  
31 the substances referenced in subdivision (1) of this  
32 subsection. "Random testing" means that each person subject  
33 to testing has a statistically equal chance of being selected for  
34 testing at random and at unscheduled times. The selection of  
35 persons for random testing shall be made by a scientifically  
36 valid method, such as a random number table or a  
37 computer-based random number generator that is matched  
38 with the persons' social security numbers, payroll  
39 identification numbers, or other comparable identifying  
40 numbers; and

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

45 (b) For purposes of this subsection, preemployment  
46 testing shall be required upon hiring by a new employer,  
47 rehiring by a former employer following a termination of the  
48 employer/employee relationship, or transferring to a West  
49 Virginia mine from an employer's out-of-state mine to the  
50 extent that any substance abuse test required by the employer

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

57 (c) The employer or his or her agent shall notify the  
58 director at least quarterly, on a form prescribed by the  
59 director, of the number of pre-employment substance abuse  
60 screening tests administered during the prior calendar quarter  
61 and the number of positive test results associated with the  
62 substance abuse screening tests administered.

63 (d) The employer or his or her agent shall notify the  
64 director, on a form prescribed by the director, within seven  
65 days following completion of an arbitration conducted  
66 pursuant to a collective bargaining agreement applicable to  
67 the certified person, if any, of discharging a certified person  
68 for violation of the employer's substance abuse screening  
69 policy and program. The notification shall be accompanied  
70 by a record of the test showing positive results or other  
71 violation. Notice shall result in the immediate temporary  
72 suspension of all certificates held by the certified person who  
73 failed the screening, pending a hearing before the board of  
74 appeals pursuant to section two of this article.

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

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

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

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

6 (b) All hearings of the Board of Appeals pursuant to this  
7 section shall be conducted in accordance with the provisions  
8 of subsection (c), section thirty-one, article one of this  
9 chapter. The Board of Appeals may suspend the certificate  
10 or certificates of a certified person for violation of this article

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

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

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

**§22A-1A-3. Disclosure of records exempt; exceptions.**

1 Records of substance abuse and alcohol screening tests,  
2 written or otherwise, received by the Office of Miners'  
3 Health, Safety and Training, its employees, agents and  
4 representatives are confidential communications and are  
5 exempt from disclosure under article one, chapter  
6 twenty-nine-b of the code, except as follows:

7 (a) Where release of the information is authorized solely  
8 pursuant to a written consent form signed voluntarily by the  
9 person tested. The consent form shall contain the following:

10 (1) The name of the person who is authorized to obtain  
11 the information;

12 (2) The purpose of the disclosure;

13 (3) The precise information to be disclosed;

14 (4) The duration of the consent; and

15 (5) The signature of the person authorizing the release of  
16 the information;

17 (b) Where the release of the information is compelled by  
18 the Board of Appeals or a court of competent jurisdiction;

19 (c) Where the release of the information is relevant to a  
20 legal claim asserted by the person tested;

21 (d) Where the information is used by the entity  
22 conducting the substance abuse or alcohol screening test in  
23 defense of a civil or administrative action related to the  
24 testing or results, or to consult with its legal counsel; or

25 (e) Where release of the information is deemed  
26 appropriate by the Board of Appeals or a court of competent  
27 jurisdiction in a disciplinary proceeding.

**§22A-1A-4. Effective date.**

1 The provisions of this article are effective beginning  
2 January 1, 2013.

**ARTICLE 2. UNDERGROUND MINES.**

**§22A-2-2. Submittal of detailed ventilation plan to director.**

1 (a) A mine operator shall submit a detailed ventilation  
2 plan and any addendums to the director for review and  
3 comment. The mine operator shall review the plan with the  
4 director and address concerns to the extent practicable. The  
5 operator shall deliver to the miners' representative employed  
6 by the operator at the mine, if any, a copy of the operator's  
7 proposed annual ventilation plan at least ten days prior to the  
8 date of submission. The miners' representative, if any, shall  
9 be afforded the opportunity to submit written comments to  
10 the operator prior to such submission; in addition the miners'  
11 representative, if any, may submit written comments to the  
12 director. The director shall submit any concern that is not  
13 addressed to the United States Department of Labor - Mine  
14 Safety and Health Administration [MSHA] through  
15 comments to the plan. The mine operator shall provide a  
16 copy of the plan to the director ten days prior to the submittal  
17 of the plan to MSHA.

18 (b) The operator shall give the director a copy of the  
19 MSHA-approved plan and any addendums as soon as the  
20 operator receives the approval.

21 (c) In the event of an unforeseen situation requiring  
22 immediate action on a plan revision, the operator shall submit  
23 the proposed revision to the director and the miners'  
24 representative, if any, employed by the operator at the mine  
25 when the proposed revision is submitted to MSHA. The  
26 director shall work with the operator to review and comment on  
27 the proposed plan revision to MSHA as quickly as possible.

28 (d) Upon approval by MSHA, the plan is enforceable by  
29 the director. The approved plan and all revisions and

30 addendums thereto shall be posted on the mine bulletin board  
31 and made available for inspection by the miners at that mine  
32 for the period of time that they are in effect.

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

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

18 (b) It is the duty of the mine foreman or the assistant mine  
19 foreman of every coal mine in this state to see that every person  
20 employed to work in the mine is, before beginning work therein,  
21 instructed in the particular danger incident to his or her work in  
22 the mine, and furnished a copy of the mining laws and rules of  
23 the mine. It is the duty of every mine operator who employs  
24 apprentices, as that term is used in sections three and four, article  
25 eight of this chapter to ensure that the apprentices are effectively

26 supervised with regard to safety practices and to instruct  
27 apprentices in safe mining practices. Every apprentice shall work  
28 under the direction of the mine foreman or his or her assistant  
29 mine foreman and they are responsible for his or her safety. The  
30 mine foreman or assistant mine foreman may delegate the  
31 supervision of an apprentice to an experienced miner, but the  
32 foreman and his or her assistant mine foreman remain responsible  
33 for the apprentice. During the first one hundred twenty days of  
34 employment in a mine, the apprentice shall work within sight and  
35 sound of the mine foreman, assistant mine foreman, or an  
36 experienced miner, and in a location that the mine foreman,  
37 assistant mine foreman or experienced miner can effectively  
38 respond to cries for help of the apprentice. The location shall be  
39 on the same side of any belt, conveyor or mining equipment.

40 (c) Persons whose duties require them to use an approved  
41 methane detecting device or other approved methane  
42 detectors shall be examined at least annually as to their  
43 competence by a qualified official from the Office of Miners'  
44 Health, Safety and Training and a record of the examination  
45 shall be kept by the operator and the office. Approved  
46 methane detecting devices and other approved methane  
47 detectors shall be given proper maintenance and shall be  
48 tested before each working shift. Each operator shall provide  
49 for the proper maintenance and care of the permissible  
50 approved methane detecting device or any other approved  
51 device for detecting methane and oxygen deficiency by a  
52 person trained in the maintenance, and, before each shift, care  
53 shall be taken to ensure that the approved methane detecting  
54 device or other device is in a permissible condition and  
55 maintained according to manufacturer's specifications.

**§22A-2-16. Examinations of reports of fire bosses.**

1 The mine foreman shall, each day, read carefully and  
2 countersign with ink or indelible pencil all reports entered in

3 the record book of the fire bosses. The mine foreman shall  
4 supervise the fire boss or fire bosses, except as provided in  
5 section twenty-one of this article. No less frequently than bi-  
6 weekly, the superintendent or, if there is no superintendent,  
7 the senior person at the mine shall obtain complete copies of  
8 the books of the fire bosses, and acknowledge that he or she  
9 has reviewed such copies and acted accordingly. This  
10 acknowledgment shall be made by signing a book prescribed  
11 by the director for that purpose.

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

1 (a) It is the duty of the fire boss, or a certified person  
2 acting as such, to prepare a danger signal (a separate signal  
3 for each shift) with red color at the mine entrance at the  
4 beginning of his or her shift or prior to his or her entering the  
5 mine to make his or her examination and, except for those  
6 persons already on assigned duty, no person except the mine  
7 owner, operator or agent, and only then in the case of  
8 necessity, shall pass beyond this danger signal until the mine  
9 has been examined by the fire boss or other certified person  
10 and the mine or certain parts thereof reported by him or her  
11 to be safe. When reported by him or her to be safe, the danger  
12 sign or color thereof shall be changed to indicate that the  
13 mine is safe in order that employees going on shift may begin  
14 work. Each person designated to make the fire boss  
15 examinations shall be assigned a definite underground area of  
16 the mine, and, in making his or her examination shall  
17 examine all active working places in the assigned area and  
18 make tests with an approved device for accumulations of  
19 methane and oxygen deficiency; examine seals and doors;  
20 examine and test the roof, face and ribs in the working places  
21 and on active roadways and travelways, approaches to  
22 abandoned workings, accessible falls in active sections and

23 areas where any person is scheduled to work or travel  
24 underground. He or she shall place his or her initials and the  
25 date at or near the face of each place he or she examines.  
26 Should he or she find a condition which he or she considers  
27 dangerous to persons entering the areas, he or she shall place  
28 a conspicuous danger sign at all entrances to the place or  
29 places. Only persons authorized by the mine management  
30 may enter the places while the sign is posted and only for the  
31 purpose of eliminating the dangerous condition. Upon  
32 completing his or her examination he or she shall report by  
33 suitable communication system or in person the results of this  
34 examination to a certified person designated by mine  
35 management to receive and record the report, at a designated  
36 station on the surface of the premises of the mine or  
37 underground, before other persons enter the mine to work in  
38 coal-producing shifts. He or she shall also record the results  
39 of his or her examination with ink or indelible pencil in a  
40 book prescribed by the director, kept for the purpose at a  
41 place on the surface of the mine designated by mine  
42 management. All records of daily and weekly reports, as  
43 prescribed herein, shall be open for inspection by interested  
44 persons.

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

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

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

**§22A-2-24. Control of coal dust; rock dusting.**

1 (a) In all mines, dangerous accumulations of fine, dry  
2 coal and coal dust shall be removed from the mine, and all  
3 dry and dusty operating sections and haulageways and  
4 conveyors and back entries shall be rock dusted or dust  
5 allayed by other methods as may be approved by the director.

6 (b) All mines or locations in mines that are too wet or too  
7 high in incombustible content for a coal dust explosion to  
8 initiate or propagate are not required to be rock dusted during  
9 the time any of these conditions prevail. Coal dust and other  
10 dust in suspension in unusual quantities shall be allayed by  
11 sprinkling or other dust allaying devices.

12 (c) In all dry and dusty mines or sections thereof, rock  
13 dust shall be applied and maintained upon the roof, floor and  
14 sides of all operating sections, haulageways and parallel  
15 entries connected thereto by open crosscuts. Back entries  
16 shall be rock dusted. Rock dust shall be so applied to include  
17 the last open crosscut of rooms and entries, and to within  
18 forty feet of faces. Rock dust shall be maintained in a  
19 quantity that the incombustible content of the mine dust that  
20 could initiate or propagate an explosion shall not be less than  
21 eighty percent. The incombustible content of mine dust in  
22 return entries shall also be equal to or greater than eighty  
23 percent.

24 (d) Rock dust shall not contain more than five percent by  
25 volume of quartz or free silica particles and shall be  
26 pulverized so that one hundred percent will pass through a

27 twenty mesh screen and seventy percent or more will pass  
28 through a two hundred mesh screen.

29 (e) If requested by the director, an operator shall provide  
30 records establishing the quantity of bulk and bag rock dust  
31 purchased for a period not to exceed the immediately  
32 preceding six months.

**§22A-2-43. Actions to detect and respond to excess methane.**

1 The following actions are required to detect and respond  
2 to excess methane:

3 (a) *Hand-held testing required.* -- In any mine, no  
4 electrical equipment or permissible diesel powered equipment  
5 may be brought in by the last open crosscut until a qualified  
6 person tests for methane. If one percent or more methane is  
7 present, the equipment may not be taken into the area until  
8 the methane concentration is reduced to less than one percent.  
9 Thereafter, subsequent methane examinations shall be made  
10 at least every twenty minutes while any electrical or diesel  
11 powered equipment is present and energized.

12 (b) *Location of tests.* -- Tests for methane concentrations  
13 under this section shall be made at least twelve inches from  
14 the roof, face, ribs and floor.

15 (c) *Working places and intake air courses.* --

16 (1) When one percent or more methane is present in a  
17 working place or an intake air course, including an air course  
18 in which a belt conveyor is located or in an area where  
19 mechanized mining equipment is being installed or removed:

20 (A) Except intrinsically safe atmospheric monitoring  
21 systems (AMS), electrically powered equipment in the

22 affected area shall be de-energized and other mechanized  
23 equipment shall be shut off.

24 (B) Changes or adjustments shall be made at once to the  
25 ventilation system to reduce the concentration of methane to  
26 less than one percent.

27 (C) No other work shall be permitted in the affected area  
28 until the methane concentration is less than one percent.

29 (2) When one and five-tenths percent or more methane is  
30 present in a working place or an intake air course, including  
31 an air course in which a belt conveyor is located or in an area  
32 where mechanized mining equipment is being installed or  
33 removed:

34 (A) Except for the mine foreman, assistant mine foreman,  
35 or individuals authorized by the mine foreman or assistant  
36 mine foreman, all individuals shall be withdrawn from the  
37 affected area. If a federal or state mine inspector is present in  
38 the area of the mine where one and five-tenths percent or  
39 more of methane is detected, the federal or state mine  
40 inspector and the miners' representative, if any, may remain  
41 in the area with the mine foreman, assistant mine foreman or  
42 other individuals authorized by the mine foreman or assistant  
43 mine foreman.

44 (B) Except for intrinsically safe AMS, electrically  
45 powered equipment in the affected area shall be disconnected  
46 at the power source.

47 (d) *Return air split.--*

48 (1) When one percent or more methane is present in a  
49 return air split between the last working place on a working  
50 section and where that split of air meets another split of air or

51 the location at which the split is used to ventilate seals or  
52 worked-out areas, changes or adjustments shall be made at  
53 once to the ventilation system to reduce the concentration of  
54 methane in the return air to less than one percent.

55 (2) When one and five-tenths percent or more methane is  
56 present in a return air split between the last working place on  
57 a working section and where that split of air meets another  
58 split of air or the location where the split is used to ventilate  
59 seals or worked-out areas, except for the mine foreman,  
60 assistant mine foreman or individuals authorized by the mine  
61 or assistant mine foreman, all individuals shall be withdrawn  
62 from the affected area. If a federal or state mine inspector is  
63 present in the area of the mine where one and five-tenths  
64 percent or more of methane is detected, the federal or state  
65 mine inspector and the miners' representative, if any, may  
66 remain in the area with the mine foreman, assistant mine  
67 foreman or other individuals authorized by the mine foreman  
68 or assistant mine foreman.

69 (3) Other than intrinsically safe AMS, equipment in the  
70 affected area shall be de-energized, electric power shall be  
71 disconnected at the power source and other mechanized  
72 equipment shall be shut off.

73 (4) No other work shall be permitted in the affected area  
74 until the methane concentration in the return air is less than  
75 one percent.

76 (e) *Return air split alternative.* --

77 (1) The provisions of this paragraph may apply if:

78 (A) The quantity of air in the split ventilating the active  
79 workings is at least twenty seven thousand cubic feet per

80 minute in the last open crosscut or the quantity specified in  
81 the approved ventilation plan, whichever is greater.

82 (B) The methane content of the air in the split is  
83 continuously monitored during mining operations by an AMS  
84 that gives a visual and audible signal on the working section  
85 when the methane in the return air reaches one and five-  
86 tenths percent and the methane content is monitored as  
87 specified in the approved ventilation plan.

88 (C) Rock dust is continuously applied with a mechanical  
89 duster to the return air course during coal production at a  
90 location in the air course immediately outby the most inby  
91 monitoring point.

92 (2) When one and five-tenths percent or more methane is  
93 present in a return air split between a point in the return  
94 opposite the section loading point and where that split of air  
95 meets another split of air or where the split of air is used to  
96 ventilate seals or worked-out areas:

97 (A) Changes or adjustments shall be made at once to the  
98 ventilation system to reduce the concentration of methane in  
99 the return air below one and five-tenths percent.

100 (B) Except for the mine foreman, assistant mine foreman  
101 or individuals authorized by the mine foreman or assistant  
102 mine foreman, all individuals shall be withdrawn from the  
103 affected area. If a federal or state mine inspector is present in  
104 the area of the mine where one and five-tenths percent or  
105 more of methane is detected, the federal or state mine  
106 inspector and the miners' representative, if any, may remain  
107 in the area with the mine foreman, assistant mine foreman or  
108 other individuals authorized by the mine foreman or assistant  
109 mine foreman.

110 (C) Except for intrinsically safe AMS, equipment in the  
111 affected area shall be de-energized, electric power shall be  
112 disconnected at the power source and other mechanized  
113 equipment shall be shut off.

114 (D) No other work shall be permitted in the affected area  
115 until the methane concentration in the return air is less than  
116 one and five-tenths percent.

117 (f) *Bleeders and other return air courses.*--

118 The concentration of methane in a bleeder split of air  
119 immediately before the air in the split joins another split of  
120 air, or in a return air course other than as described in  
121 subsections (d) and (e) of this section, shall not exceed two  
122 percent.

123 (g) *Machine mounted methane monitors.* --

124 (1) Approved methane monitors shall be installed and  
125 maintained on all face cutting machines, continuous miners,  
126 longwall face equipment and other mechanized equipment  
127 used to extract coal or load coal within the working place.

128 (2) The sensing device for methane monitors on longwall  
129 shearing machines shall be installed at the return air end of  
130 the longwall face. An additional sensing device also shall be  
131 installed on the longwall shearing machine, downwind and as  
132 close to the cutting head as practicable. An alternative  
133 location or locations for the sensing device required on the  
134 longwall shearing machine may be approved in the  
135 ventilation plan.

136 (3) The sensing devices of methane monitors shall be  
137 installed as close to the working face as practicable.

138 (4) Methane monitors shall be maintained in permissible  
139 and proper operating condition and shall be calibrated with a  
140 known air-methane mixture at least once every fifteen days  
141 and a record of the calibration shall be recorded with ink or  
142 indelible pencil by the person performing the calibration in a  
143 book prescribed by the director and maintained on the  
144 surface. Calibration records shall be retained for inspection  
145 for at least one year from the date of the test. To assure that  
146 methane monitors are properly maintained and calibrated, the  
147 operator shall use persons properly trained in the  
148 maintenance, calibration, and permissibility of methane  
149 monitors to calibrate and maintain the devices.

150 (h) *Automatic de-energization of extraction apparatus.* --

151 When the methane concentration at any  
152 machine-mounted methane monitor reaches one percent, the  
153 monitor shall give a warning signal. The warning signal  
154 device of the methane monitor shall be visible to a person  
155 operating the equipment on which the monitor is mounted.  
156 The methane monitor shall automatically de-energize the  
157 extraction apparatus on the machine on which it is mounted,  
158 but not the machine as a whole to facilitate proper mining  
159 procedures, when:

160 (1) The methane concentration at any machine-mounted  
161 methane monitor reaches one and twenty-five one hundredths  
162 percent for a sustained period; or

163 (2) The monitor is not operating properly.

164 The machine's extraction apparatus may not again be  
165 started in that place until the methane concentration measured  
166 by the methane monitor is less than one percent.

167 (i) *Compliance schedule for machine refit.*--

168        Within one hundred twenty days of the effective date of  
169 the amendments to this section, the Board of Coal Mine  
170 Health and Safety shall promulgate legislative rules pursuant  
171 to article three, chapter twenty-nine-a of this code  
172 establishing calibration procedures, defining the term  
173 “sustained period” for purposes of implementing this section,  
174 and establishing a compliance schedule setting forth the time  
175 frame in which all new and existing face cutting machines,  
176 continuous miners, longwall face equipment and other  
177 mechanized equipment used to extract coal or load coal  
178 within the working place shall be refitted with methane  
179 monitors. Enforcement of subsections (g) and (h) of this  
180 section shall not commence until after the time frame is  
181 established by rule.

**§22A-2-43a. Operation of cutting and mining machines; repair  
and maintenance of same.**

1        (a) *Qualified person to operate cutting machine.* -- No  
2 person shall be placed in charge of a coal-cutting machine in  
3 any mine who is not a qualified person, capable of  
4 determining the safety of the roof and sides of the working  
5 places and of detecting the presence of explosive gas, unless  
6 they are accompanied by a certified or qualified person who  
7 has passed such an examination.

8        (b) *Operation of mining machines.* -- Machine operators  
9 and helpers shall use care while operating mining machines.  
10 They shall examine the roof of the working place to see that  
11 it is safe before starting to operate the machine. They shall  
12 not move the machine while the cutter chain is in motion.  
13 Additionally, no person shall operate the cutterhead on any  
14 continuous miner while the machine is moving from place to  
15 place underground: *Provided,* That a cutterhead may be  
16 operated during clean up or when the machine is extracting  
17 coal.

18 (c) *Repair and maintenance of mining machines.* -- (1)  
19 Repairs or maintenance shall not be performed on mining  
20 machines until the power is off and locked and tagged, if  
21 required by law, and the machinery is blocked against  
22 motion, except where machinery motion is necessary to make  
23 adjustments. For purposes of this subsection, the following  
24 terms shall have the following meanings:

25 (A) "Maintenance" means the labor of keeping machinery  
26 in good working order and includes cleaning, clearing  
27 jammed material or conducting examinations on or in close  
28 proximity to machinery; and

29 (B) "Repair" means to fix, mend, or restore to good  
30 working order.

31 (d) Methods to comply with the standard to prevent  
32 inadvertent or unexpected motion include:

33 (A) Opening the circuit breaker for the affected  
34 machinery, provided no energized parts or conductors are  
35 exposed, and placing the run selector switch for startup of the  
36 machinery in the "off" position. On longwall machinery, this  
37 would include placing the lockout switch in the lockout  
38 position in the area where the repair or maintenance is being  
39 performed. A qualified electrician is required to de-energize  
40 a circuit breaker if there are exposed energized parts or  
41 conductors; or

42 (B) Opening the circuit breaker at the power center that  
43 supplies power for the affected machinery and disengaging  
44 the power cable coupler that supplies power to the  
45 machinery; or

46 (C) Opening a manual visible disconnect switch, either  
47 within the circuit or onboard the machinery, and securing the

48 switch against reenergization, as required by law. A control  
49 circuit start-stop switch does not constitute a manual  
50 disconnect; or

51 (D) In cases such as steeply inclined belt conveyors and  
52 suspended loads, when removing the power alone will not  
53 ensure against unintentional or inadvertent movement, the  
54 machinery shall be physically blocked, in addition to  
55 removing the power by one of the three methods described  
56 above. Physical blocking may be achieved by the use of such  
57 devices as bars, chocks or clamps.

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

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

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

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

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

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

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

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

47 (3) Any person that, without the authorization of the  
48 operator or the director, knowingly removes or attempts to  
49 remove any self-contained self-rescue device or lifeline cord  
50 from the mine or mine site with the intent to permanently  
51 deprive the operator of the device or lifeline cord or  
52 knowingly tampers with or attempts to tamper with the device

53 or lifeline cord shall be guilty of a felony and, upon  
54 conviction thereof, shall be imprisoned in a state correctional  
55 facility for not less than one year nor more than ten years or  
56 fined not less than \$10,000 nor more than \$100,000, or both.

57 (g) (1) A wireless emergency communication device  
58 approved by the director and provided by the operator shall  
59 be worn by each person underground. The wireless  
60 emergency communication device shall, at a minimum, be  
61 capable of receiving emergency communications from the  
62 surface at any location throughout the mine. Each operator  
63 shall train each miner in the use of the device and provide  
64 refresher training courses for all underground employees  
65 during each calendar year. The operator shall install in or  
66 around the mine any and all equipment necessary to transmit  
67 emergency communications from the surface to each wireless  
68 emergency communication device at any location throughout  
69 the mine.

70 (2) Any person that, without the authorization of the  
71 operator or the director, knowingly removes or attempts to  
72 remove any wireless emergency communication device or  
73 related equipment, from the mine or mine site with the intent  
74 to permanently deprive the operator of the device or  
75 equipment or knowingly tampers with or attempts to tamper  
76 with the device or equipment shall be guilty of a felony and,  
77 upon conviction thereof, shall be imprisoned in a state  
78 correctional facility for not less than one year nor more than  
79 ten years or fined not less than \$10,000 nor more than  
80 \$100,000, or both.

81 (h) (1) A wireless tracking device approved by the  
82 director and provided by the operator shall be worn by each  
83 person underground. In the event of an accident or other  
84 emergency, the tracking device shall, at a minimum, be  
85 capable of providing real-time monitoring of the physical

86 location of each person underground: *Provided*, That no  
87 person shall discharge or discriminate against any miner  
88 based on information gathered by a wireless tracking device  
89 during nonemergency monitoring. Each operator shall train  
90 each miner in the use of the device and provide refresher  
91 training courses for all underground employees during each  
92 calendar year. The operator shall install in or around the mine  
93 all equipment necessary to provide real-time emergency  
94 monitoring of the physical location of each person  
95 underground.

96 (2) Any person that, without the authorization of the  
97 operator or the director, knowingly removes or attempts to  
98 remove any wireless tracking device or related equipment,  
99 approved by the director, from a mine or mine site with the  
100 intent to permanently deprive the operator of the device or  
101 equipment or knowingly tampers with or attempts to tamper  
102 with the device or equipment shall be guilty of a felony and,  
103 upon conviction thereof, shall be imprisoned in a state  
104 correctional facility for not less than one year nor more than  
105 ten years or fined not less than \$10,000 nor more than  
106 \$100,000, or both.

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

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

1 (a) For the purposes of this section, the term "accident"  
2 means:

3 (1) The death of an individual at a mine;

4 (2) An injury to an individual at a mine which has a  
5 reasonable potential to cause death;

6 (3) The entrapment of an individual;

7 (4) The unplanned inundation of a mine by a liquid or gas;

8 (5) The unplanned ignition or explosion of gas or dust;

9 (6) The unplanned ignition or explosion of a blasting  
10 agent or an explosive;

11 (7) An unplanned fire in or about a mine not extinguished  
12 within five minutes of ignition;

13 (8) An unplanned roof fall at or above the anchorage zone  
14 in active workings where roof bolts are in use or an  
15 unplanned roof or rib fall in active workings that impairs  
16 ventilation or impedes passage;

17 (9) A coal or rock outburst that causes withdrawal of  
18 miners or which disrupts regular mining activity for more  
19 than one hour;

20 (10) An unstable condition at an impoundment, refuse  
21 pile or culm bank which requires emergency action in order  
22 to prevent failure, or which causes individuals to evacuate an  
23 area, or the failure of an impoundment, refuse pile or culm  
24 bank;

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

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

30 (b) Whenever any accident occurs in or about any coal mine  
31 or the machinery connected therewith, it is the duty of the  
32 operator or the mine foreman in charge of the mine to give  
33 notice, within fifteen minutes of ascertaining the occurrence of  
34 an accident, to the Mine and Industrial Accident Emergency  
35 Operations Center at the statewide telephone number established  
36 by the Director of the Division of Homeland Security and  
37 Emergency Management pursuant to the provisions of article  
38 five-b, chapter fifteen of this code stating the particulars of the  
39 accident: *Provided*, That the operator or the mine foreman in  
40 charge of the mine may comply with this notice requirement by  
41 immediately providing notice to the appropriate local  
42 organization for emergency services as defined in section eight,  
43 article five of said chapter, or the appropriate local emergency  
44 telephone system operator as defined in article six, chapter  
45 twenty-four of this code: *Provided, however*, That if,  
46 immediately upon ascertaining the occurrence of an accident, the  
47 operator or the mine foreman in charge of the mine provides  
48 notice to the local organization for emergency services as  
49 defined in section eight, article five, chapter fifteen of this code,  
50 or the appropriate local emergency telephone system operator as  
51 defined in article six, chapter twenty-four of this code, then, in  
52 order to comply with this subsection, the operator or mine  
53 foreman in charge of the mine shall also give notice to the Mine  
54 and Industrial Accident Emergency Operations Center at the  
55 statewide number identified in this subsection within fifteen  
56 minutes of completing the telephone call to the local  
57 organization for emergency services or the appropriate local  
58 emergency telephone system operator, as applicable: *Provided*,  
59 *further*, That nothing in this subsection shall be construed to  
60 relieve the operator from any reporting or notification  
61 requirement under federal law.

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

65 operator if it is determined that the operator or the mine foremen  
 66 in charge of the mine failed to give immediate notice as required  
 67 in this section: *Provided*, That the director may waive imposition  
 68 of the civil administrative penalty at any time if he or she finds  
 69 that the failure to give immediate notice was caused by  
 70 circumstances wholly outside the control of the operator:  
 71 *Provided, however*, That the assessment of the civil  
 72 administrative penalty set forth in this subsection may be  
 73 appealed to the Board of Appeals, and the Board of Appeals  
 74 may, by unanimous vote, reduce the amount of the civil  
 75 administrative penalty upon a finding of mitigating  
 76 circumstances warranting the imposition of a lesser amount.

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

## **ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.**

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

1 (a) The board shall adopt as standard rules the “coal mine  
 2 health and safety provisions of this chapter”. Such standard

3 rules and any other rules shall be adopted by the board  
4 without regard to the provisions of chapter twenty-nine-a of  
5 this code. The Board of Coal Mine Health and Safety shall  
6 devote its time toward promulgating rules in those areas  
7 specifically directed by this chapter and those necessary to  
8 prevent fatal accidents and injuries.

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

13 (c) The board shall develop, promulgate and revise, as  
14 may be appropriate, rules as are necessary and proper to  
15 effectuate the purposes of article two of this chapter and to  
16 prevent the circumvention and evasion thereof, all without  
17 regard to the provisions of chapter twenty-nine-a of this code:

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

26 (2) No rules promulgated by the board shall reduce or  
27 compromise the level of safety or protection afforded miners  
28 below the level of safety or protection afforded by this  
29 chapter.

30 (3) Any miner or representative of any miner, or any coal  
31 operator has the power to petition the circuit court of  
32 Kanawha County for a determination as to whether any rule  
33 promulgated or revised reduces the protection afforded

34 miners below that provided by this chapter, or is otherwise  
35 contrary to law: *Provided*, That any rule properly  
36 promulgated by the board pursuant to the terms and  
37 conditions of this chapter creates a rebuttable presumption  
38 that said rule does not reduce the protection afforded miners  
39 below that provided by this chapter.

40 (4) The director shall cause proposed rules and a notice  
41 thereof to be posted as provided in section eighteen, article  
42 one of this chapter. The director shall deliver a copy of such  
43 proposed rules and accompanying notice to each operator  
44 affected. A copy of such proposed rules shall be provided to  
45 any individual by the director's request. The notice of  
46 proposed rules shall contain a summary in plain language  
47 explaining the effect of the proposed rules.

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

54 (6) On or before the last day of any period fixed for the  
55 submission of written data or comments under subdivision (5)  
56 of this section, any interested person may file with the board  
57 written objections to a proposed rule, stating the grounds  
58 therefor and requesting a public hearing on such objections.  
59 As soon as practicable after the period for filing such  
60 objections has expired, the board shall release a notice  
61 specifying the proposed rules to which objections have been  
62 filed and a hearing requested.

63 (7) Promptly after any such notice is released by the  
64 board under subdivision (6) of this section, the board shall  
65 issue notice of, and hold a public hearing for the purpose of

66 receiving relevant evidence. Within sixty days after  
67 completion of the hearings, the board shall make findings of  
68 fact which shall be public, and may promulgate such rules  
69 with such modifications as it deems appropriate. In the event  
70 the board determines that a proposed rule should not be  
71 promulgated or should be modified, it shall within a  
72 reasonable time publish the reasons for its determination.

73 (8) All rules promulgated by the board shall be published  
74 in the State Register and continue in effect until modified or  
75 superseded in accordance with the provisions of this chapter.

76 (d) To carry out its duties and responsibilities, the board  
77 is authorized to employ such personnel, including legal  
78 counsel, experts and consultants, as it deems necessary. In  
79 addition, the board, within the appropriations provided for by  
80 the Legislature, may conduct or contract for research and  
81 studies and is entitled to the use of the services, facilities and  
82 personnel of any agency, institution, school, college or  
83 university of this state.

84 (e) The director shall within sixty days of a coal mining  
85 fatality or fatalities provide the board with all available  
86 reports regarding such fatality or fatalities.

87 The board shall review all reports and any recommended  
88 rules submitted by the director, receive any additional  
89 information it requests, and may, on its own initiative,  
90 investigate the circumstances surrounding a coal mining  
91 fatality or fatalities and ascertain the cause or causes of such  
92 coal mining fatality or fatalities. In order to investigate a coal  
93 mining fatality or fatalities, a majority of the board must vote  
94 in favor of commencing an investigation. Within ninety days  
95 of the receipt of the Federal Mine Safety and Health  
96 Administration's fatal accident report and the director's report  
97 and recommended rules, the board shall review and consider

98 the presentation of said report and rules and the results of its  
99 own investigation, if any, and, if a majority of all voting  
100 board members determines that additional rules can assist in  
101 the prevention of the specific type of fatality, the board shall  
102 either accept and promulgate the director's recommended  
103 rules, amend the director's recommended rules or draft new  
104 rules, as are necessary to prevent the recurrence of such  
105 fatality. If the board chooses to amend the director's  
106 recommended rules or draft its own rules, a vote is required  
107 within one hundred twenty days as to whether to promulgate  
108 the amended rule or the rule drafted by the board: *Provided,*  
109 That the board may, by majority vote, find that exceptional  
110 circumstances exist and the deadline cannot be met:  
111 *Provided, however* That under no circumstances shall such  
112 deadline be extended by more than a total of ninety days. A  
113 majority vote of the board is required to promulgate any such  
114 rule.

115 The board shall annually, not later than July 1, review the  
116 major causes of coal mining injuries during the previous  
117 calendar year, reviewing the causes in detail, and shall  
118 promulgate such rules as may be necessary to prevent the  
119 recurrence of such injuries.

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

124 (1) The number of fatalities during the previous calendar  
125 year, the apparent reason for each fatality as determined by  
126 the office of miners' health, safety and training and the action,  
127 if any, taken by the board to prevent such fatality;

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

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

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

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

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

139 (7) In addition to the report by the board, as herein  
140 contained, each individual member of said board has right to  
141 submit a separate report, setting forth any views contrary to  
142 the report of the board, and the separate report, if any, shall  
143 be appended to the report of the board and be considered a  
144 part thereof.

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

1 The Board of Coal Mine Health and Safety is directed to  
2 study the safety of working or traveling in bleeder or gob  
3 areas of a longwall panel or pillar section of a mine where  
4 only one travelable entry in and out of the area exists. The  
5 study shall consider what additional roof control or other  
6 measures, if any, should be implemented to ensure that  
7 underground miners who work or travel in bleeder or gob  
8 areas of a longwall panel or pillar section having only one  
9 travelable entry in and out of the areas are at least as safe as  
10 miners working in comparable areas with multiple travelable  
11 entries in and out of the areas. By December 31, 2012, the  
12 board shall report to the Legislature's Joint Committee on

13 Government and Finance with recommendations regarding  
14 implementation of the findings of this study.

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

1 The Board of Coal Mine Health and Safety is directed  
2 to study the mandatory substance abuse screening policy  
3 and program requirements of article one-a of this chapter  
4 and make recommendations to the director regarding: (a)  
5 Establishment of guidelines to be employed by the Board of  
6 Appeals when administering disciplinary actions to certified  
7 persons pursuant to article one-a of this chapter; (b)  
8 requiring certification by the Office of Miners' Health,  
9 Safety and Training of persons who regularly work at mines  
10 who are not presently required to obtain certification; and  
11 (c) establishment of additional minimum requirements,  
12 parameters, methodologies and protocols to be integrated  
13 into the substance abuse screening policy and program  
14 requirements of article one-a of this chapter. By August 31,  
15 2012, the board shall submit its report to the director. The  
16 director is authorized to propose for legislative  
17 promulgation, legislative rules pursuant to article three,  
18 chapter twenty-nine-a of this code regarding the  
19 implementation of the findings of this study. These rules  
20 shall be initially promulgated as emergency rules by the  
21 director pursuant to the provisions of section fifteen, article  
22 three, chapter twenty-nine-a of the code by December 31,  
23 2012, and shall include the establishment of certification  
24 requirements recommended by the board for persons who  
25 regularly work at mines that are not presently required to  
26 obtain certification and establishment of guidelines to be  
27 employed by the Board of Appeals when administering  
28 disciplinary actions to certified persons pursuant to article  
29 one-a of this chapter.

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

**§22A-7-5. Board powers and duties.**

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

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

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

24 (d) The board shall set minimum standards for a program  
25 of continuing education and training of certified persons and  
26 other miners on an annual basis: *Provided*, That the  
27 standards shall be consistent with the provisions of section  
28 seven of this article. Prior to issuing the standards, the board

29 shall conduct public hearings at which the parties who may  
30 be affected by its actions may be heard. The education and  
31 training shall be provided in a manner determined by the  
32 director to be sufficient to meet the standards established by  
33 the board.

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

40 (f) The board may also, from time to time, conduct any  
41 hearings and other oversight activities required to ensure full  
42 implementation of programs established by it.

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

46 (h) The board may, upon its own motion or whenever  
47 requested to do so by the director, consider two certificates  
48 issued by this state to be of equal value or consider training  
49 provided or required by federal agencies to be sufficient to  
50 meet training and education requirements set by it, the  
51 director, or by the provisions of this code.

52 (i) As part of the annual training required by this section,  
53 the board shall include training of certified persons and other  
54 miners, instruction on miners' rights as they relate to the  
55 operation of unsafe equipment as provided in section  
56 seventy-one of article two of this chapter, his or her right to  
57 withdrawal from unsafe conditions as provided in section  
58 seventy-one-a of article two of this chapter and his or her  
59 rights under section twenty-two, article one of this chapter.

**§22A-7-5a. Study of miner training and education.**

1 The board is directed to conduct a study of the overall  
2 program of education, training and examination associated  
3 with the various miner specialties requiring certification  
4 under this article or any other provision of this code. The  
5 study shall identify ways to enhance miner education and  
6 training to adequately reflect technological advances in coal  
7 mining techniques and best practices used in modern coal  
8 mines, and improve supervision of apprentice miners.  
9 Furthermore, the board shall place particular emphasis in its  
10 study on ways to improve education and training in the areas  
11 of proper mine ventilation, methane monitoring and  
12 equipment de-energization, fire-boss procedures and overall  
13 core mining competencies. By December 31, 2012, the board  
14 shall report to the Legislature's Joint Committee on  
15 Government and Finance with recommendations regarding  
16 the implementation of the findings of this study.

**ARTICLE 12. UNDERGROUND ACCIDENT INVESTIGATIONS.**

**§22A-12-1. Report on enforcement procedures.**

1 The director shall, by December 31, 2013, report to the  
2 Legislature and Governor on the need for revisions in the  
3 state's underground mine safety enforcement procedures.  
4 The director shall initiate the study using appropriate  
5 academic resources and mining safety organizations to  
6 conduct a program review of state enforcement procedures to  
7 evaluate what reforms will assure that mining operations  
8 follow state mandated safety protocols. The report shall  
9 include recommended legislation, rules and policies, consider  
10 various options for improving inspections, accountability and  
11 equitable and timely administrative procedures that cause  
12 remediation of hazardous working conditions.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

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*Governor*