

ENROLLED
COMMITTEE SUBSTITUTE for
H. B. 4351

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

[By Request of the Executive]

[Passed March 6, 2012; in 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.

(a) To assist the Division of Homeland Security and Emergency Management in implementing and operating the Mine and Industrial Accident Rapid Response System, the Office of Miners' Health, Safety and Training shall, on a quarterly basis, provide the emergency operations center with a mine emergency contact list. In the event of any change in the information contained in the mine emergency contact list, the changes shall be provided immediately to the emergency operations center. The mine emergency contact list shall include the following information:

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

(2) The names and telephone numbers of all district mine inspectors, including at least one telephone number for each inspector at which each inspector may be reached at any time; (3) A current listing of all regional offices or districts of the Office of Miners' Health, Safety and Training, including a detailed description of the geographical areas served by each regional office or district; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Make annually a full and complete written report of the administration of the office to the Governor and the Legislature of the state for the year ending June 30. The report shall include the number of visits and inspections

of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (excluding oil and gas) produced in the state, the number of individuals employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the office from all sources identifying each source of the funds, the expenditures of the office, the surplus or deficit of the office at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the office, the number of inspections made by each inspector, the number and type of violations found by each inspector. However, no inspector may be identified by name in this report. Such reports shall be filed with the Governor and the Legislature on or before December 31 of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

(9) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records or other documents relevant or material to any hearing, investigation or examination of any mine permitted by this chapter. Any witness so called or subpoenaed shall receive \$40 per diem and shall receive mileage at the rate of \$.15 for each mile actually traveled, which shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly certified by the witness.

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

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

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

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

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

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

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

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

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

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

The director is directed to conduct a study of the minimum qualifications for mine inspectors, the minimum compensation paid to mine inspectors and the overall training program established for mine inspectors. The study shall identify ways to attract and retain new, qualified mine inspectors to minimize the effect of the anticipated retirement of a significant number of current inspectors. Additionally, the study shall examine ways to improve the training programs for mine inspectors by focusing on technological advances in coal mining techniques, best practices used in modern coal mines and proper mine ventilation. Further, the director shall perform an assessment of the resources and qualification of inspectors necessary to approve mine ventilation plans. Finally, the study shall make recommendations on how to reassess mine inspection priorities to ensure that mines having a history of numerous safety violations are inspected more frequently than mines having a history of comparatively few safety violations while preserving the minimum number of inspections required by the code. By December 31, 2012, the Office of Miners' Health, Safety and Training shall report to the Legislature's Joint Committee on Government and Finance with recommendations regarding the implementation of its 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.

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

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

(c) Mine inspectors shall devote their full-time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen of this article, exists in the mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in the mine. No other person shall, with the intent of undermining the integrity of an unannounced mine inspection, provide advance notice of any inspection or of an inspector's presence at a mine to any person at that mine. Any

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

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

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

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

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

§22A-1-21. Penalties.

(a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than \$5,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

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

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

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

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under section twenty of this article and, upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this subdivision.

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

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

- (A) Violations involving fatalities and serious injuries;
- (B) Failure or refusal to comply with any order issued under section fifteen of this article;
- (C) Operation of a mine in the face of a closure order;
- (D) Violations involving an imminent danger;
- (E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

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

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

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-two of this article, any director, officer or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

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

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

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

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

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

(a) To the extent permitted by law, any person meeting with, or providing a statement to, the director may request to do so on a confidential basis without the consent, presence, involvement or knowledge of any third party. Upon such a request, the director shall keep the identity of any individual providing such a statement and

the statement itself confidential, to the extent permitted by law, and the statement shall be exempt from disclosure under article one, chapter twenty-nine-b of this code. Nothing in this section precludes a person from being represented when speaking with the director. Further, nothing in this section precludes a person under subpoena or who is voluntarily speaking with the director from authorizing any other person from participation in such meeting or statement.

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

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

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

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

- (A) Amphetamines,
- (B) Cannabinoids/THC,
- (C) Cocaine,
- (D) Opiates,
- (E) Phencyclidine (PCP),
- (F) Benzodiazepines,
- (G) Propoxyphene,

- (H) Methadone,
- (I) Barbiturates, and
- (J) Synthetic narcotics.

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

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

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

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

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

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

(e) Suspension or revocation of a certified person's certificate as a miner or other miner specialty in another jurisdiction by the applicable regulatory or licensing authority for substance abuse-related matters shall result in the

director immediately and temporarily suspending the certified person's West Virginia certificate until such time as the certified person's certification is reinstated in the other jurisdiction.

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

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

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

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

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

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

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

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

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

- (1) The name of the person who is authorized to obtain the information;
- (2) The purpose of the disclosure;
- (3) The precise information to be disclosed;
- (4) The duration of the consent; and
- (5) The signature of the person authorizing the release of the information;

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

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

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

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

§22A-1A-4. Effective date.

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

ARTICLE 2. UNDERGROUND MINES.

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

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

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

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

(d) Upon approval by MSHA, the plan is enforceable by the director. The approved plan and all revisions and addendums thereto shall be posted on the mine bulletin board and made available for inspection by the miners at that mine 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.

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

(b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in the mine is, before beginning work therein, instructed in the particular danger incident to his or her work in the mine, and furnished a copy of the mining laws and rules of the mine. It is the duty of every mine operator who employs apprentices, as that term is used in sections three and four, article eight of this chapter to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his or her assistant mine foreman remain responsible for the apprentice. During the first one hundred twenty days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in a location that the mine foreman, assistant mine foreman or experienced miner can effectively respond to cries for help of the apprentice. The location shall be on the same side of any belt, conveyor or mining equipment.

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

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

The mine foreman shall, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book of the fire bosses. The mine foreman shall supervise the fire boss or fire bosses, except as provided in section twenty-one of this article. No less frequently than bi-weekly, the superintendent or, if there is no superintendent, the senior person at the mine shall obtain complete copies of the books of the fire bosses, and

acknowledge that he or she has reviewed such copies and acted accordingly. This acknowledgment shall be made by signing a book prescribed 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.

(a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his or her shift or prior to his or her entering the mine to make his or her examination and, except for those persons already on assigned duty, no person except the mine owner, operator or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him or her to be safe. When reported by him or her to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make the fire boss examinations shall be assigned a definite underground area of the mine, and, in making his or her examination shall examine all active working places in the assigned area and make tests with an approved device for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test the roof, face and ribs in the working places and on active roadways and travelways, approaches to abandoned workings, accessible falls in active sections and areas where any person is scheduled to work or travel underground. He or she shall place his or her initials and the date at or near the face of each place he or she examines. Should he or she find a condition which he or she considers dangerous to persons entering the areas, he or she shall place a conspicuous danger sign at all entrances to the place or places. Only persons authorized by the mine management may enter the places while the sign is posted and only for the purpose of eliminating the dangerous condition. Upon completing his or her examination he or she shall report by suitable communication system or in person the results of this examination to a certified person designated by mine management to receive and record the report, at a designated station on the surface of the premises of the mine or underground, before other persons enter the mine to work in coal-producing shifts. He or she shall also record the results of his or her examination with ink or indelible pencil in a book prescribed by the director, kept for the purpose at a place on the surface of the mine designated by mine management. All records of daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.

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

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

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

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

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

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

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

(d) Rock dust shall not contain more than five percent by volume of quartz or free silica particles and shall be pulverized so that one hundred percent will pass through a twenty mesh screen and seventy percent or more will pass through a two hundred mesh screen.

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

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

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

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

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

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

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

(A) Except intrinsically safe atmospheric monitoring systems (AMS), electrically powered equipment in the affected area shall be de-energized and other mechanized equipment shall be shut off.

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

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

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

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

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

(d) *Return air split.--*

(1) When one percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air or the location at which the split is used to ventilate seals or worked-out areas, changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air to less than one percent.

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

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

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

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

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

(A) The quantity of air in the split ventilating the active workings is at least twenty seven thousand cubic feet per minute in the last open crosscut or the quantity specified in the approved ventilation plan, whichever is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When the methane concentration at any machine-mounted methane monitor reaches one percent, the monitor shall give a warning signal. The warning signal device of the methane monitor shall be visible to a person operating the equipment on which the monitor is mounted. The methane monitor shall automatically de-energize

the extraction apparatus on the machine on which it is mounted, but not the machine as a whole to facilitate proper mining procedures, when:

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

(2) The monitor is not operating properly.

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

(i) Compliance schedule for machine refit.--

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

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

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

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

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

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

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

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

(A) Opening the circuit breaker for the affected machinery, provided no energized parts or conductors are exposed, and placing the run selector switch for startup of the machinery in the "off" position. On longwall machinery, this would include placing the lockout switch in the lockout position in the area were the repair or

maintenance is being performed. A qualified electrician is required to de-energize a circuit breaker if there are exposed energized parts or conductors; or

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

(C) Opening a manual visible disconnect switch, either within the circuit or onboard the machinery, and securing the switch against reenergization, as required by law. A control circuit start-stop switch does not constitute a manual disconnect; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Whenever any accident occurs in or about any coal mine or the machinery connected therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice, within fifteen minutes of ascertaining the occurrence of an accident, to the Mine and Industrial Accident Emergency Operations Center at the statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management pursuant to the provisions of article five-b, chapter fifteen of this code stating the particulars of the accident: *Provided*, That the operator or the mine foreman in charge of the mine may comply with this notice requirement by immediately providing notice to the appropriate local organization for emergency services as defined in section eight, article five of said chapter, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code: *Provided, however*, That if, immediately upon ascertaining the occurrence of an accident, the operator or the mine foreman in charge of the mine provides notice to the local organization for emergency services as defined in section eight, article five, chapter fifteen of this code, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code, then, in order to comply with this subsection, the operator or mine foreman in charge of the mine shall also give notice to the Mine and Industrial Accident Emergency Operations Center at the statewide number identified in this subsection within fifteen minutes of completing the telephone call to the local organization for emergency services or the appropriate local emergency telephone system operator, as applicable: *Provided, further*, That nothing in this subsection shall be construed to relieve the operator from any reporting or notification requirement under federal law.

(c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant to rules authorized in this section, a civil administrative penalty of \$100,000 on the operator if it is determined that the operator or the

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

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

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-4. Board powers and duties.

(a) The board shall adopt as standard rules the "coal mine health and safety provisions of this chapter". Such standard rules and any other rules shall be adopted by the board without regard to the provisions of chapter twenty-nine-a of this code. The Board of Coal Mine Health and Safety shall devote its time toward promulgating rules in those areas specifically directed by this chapter and those necessary to prevent fatal accidents and injuries.

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

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

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

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

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

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

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

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

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

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

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

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

The board shall review all reports and any recommended rules submitted by the director, receive any additional information it requests, and may, on its own initiative, investigate the circumstances surrounding a coal mining fatality or fatalities and ascertain the cause or causes of such coal mining fatality or fatalities. In order to investigate a coal mining fatality or fatalities, a majority of the board must vote in favor of commencing an investigation. Within ninety days of the receipt of the Federal Mine Safety and Health Administration's fatal accident report and the director's report and recommended rules, the board shall review and consider the presentation of said report and rules and the results of its own investigation, if any, and, if a majority of all voting board members determines that additional rules can assist in the prevention of the specific type of fatality, the board shall either accept and promulgate the director's recommended rules, amend the director's recommended rules or draft new rules, as are necessary to prevent the recurrence of such fatality. If the board chooses to amend the director's recommended rules or draft its own rules, a vote is required within one hundred twenty days as to

whether to promulgate the amended rule or the rule drafted by the board: *Provided*, That the board may, by majority vote, find that exceptional circumstances exist and the deadline cannot be met: *Provided, however* That under no circumstances shall such deadline be extended by more than a total of ninety days. A majority vote of the board is required to promulgate any such rule.

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

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

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

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

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

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

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

(6) Any other information the board deems appropriate;

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

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

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

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

The Board of Coal Mine Health and Safety is directed to study the mandatory substance abuse screening policy and program requirements of article one-a of this chapter and make recommendations to the director regarding: (a) Establishment of guidelines to be employed by the Board of Appeals when administering disciplinary actions to certified persons pursuant to article one-a of this chapter; (b) requiring certification by the Office of Miners' Health, Safety and Training of persons who regularly work at mines who are not presently required to

obtain certification; and (c) establishment of additional minimum requirements, parameters, methodologies and protocols to be integrated into the substance abuse screening policy and program requirements of article one-a of this chapter. By August 31, 2012, the board shall submit its report to the director. The director is authorized to propose for legislative promulgation, legislative rules pursuant to article three, chapter twenty-nine-a of this code regarding the implementation of the findings of this study. These rules shall be initially promulgated as emergency rules by the director pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of the code by December 31, 2012, and shall include the establishment of certification requirements recommended by the board for persons who regularly work at mines that are not presently required to obtain certification and establishment of guidelines to be employed by the Board of Appeals when administering disciplinary actions to certified persons pursuant to article one-a of this chapter.

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

§22A-7-5. Board powers and duties.

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

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

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

(d) The board shall set minimum standards for a program of continuing education and training of certified persons and other miners on an annual basis: *Provided*, That the standards shall be consistent with the provisions of section seven of this article. Prior to issuing the standards, the board shall conduct public hearings at which the parties who may be affected by its actions may be heard. The education and training shall be provided in a manner determined by the director to be sufficient to meet the standards established by the board.

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

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

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

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

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

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

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

ARTICLE 12. UNDERGROUND ACCIDENT INVESTIGATIONS. §22A-12-1. Report on enforcement procedures.

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