

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 417

BY SENATORS BOSO AND CARMICHAEL

[Introduced January 28, 2016;

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

1 A BILL to repeal §22A-6-1, §22A-6-2, §22A-6-3, §22A-6-4, §22A-6-5, §22A-6-6, §22A-6-7,
2 §22A-6-8, §22A-6-9, §22A-6-10, §22A-6-11, §22A-6-12, §22A-6-13 and §22A-6-14 of the
3 Code of West Virginia, 1931, as amended; to amend and reenact §22A-1-1, §22A-1-2,
4 §22A-1-3, §22A-1-4, §22A-1-5, §22A-1-6, §22A-1-7, §22A-1-8, §22A-1-9, §22A-1-11,
5 §22A-1-12, §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20 and §22A-1-21; to
6 amend said code by adding thereto a new section, designated §22A-1-3a; and to amend
7 and reenact §22A-2-3, §22A-2-4, §22A-2-8, §22A-2-12, §22A-2-14, §22A-2-20,
8 §22A-2-25, §22A-2-36, §22A-2-55 and §22A-2-77 of said code, all relating to preserving
9 employment and promoting health and safety in the coal industry; creating the 2016 Coal
10 Jobs and Safety Act; reorganizing the Office of Miners' Health, Safety and Training;
11 providing for appointment of deputy directors; segregating office into districts; continuing
12 the Board of Coal Mine Health and Safety within the Office of Miners' Health; redefining
13 qualifications for members of board; abolishing coal mine safety and technical review
14 committee; providing for promulgation of rules; removing probationary period and
15 permanent tenure for mine inspectors; providing for mine inspectors, safety instructors,
16 electrical inspectors and surface inspectors to serve at the will and discretion of director,
17 barring conflicts of interest; changing requirements for requesting immediate inspection
18 and requiring request in writing; providing for representative of operator to accompany
19 representative of director on inspections; providing for findings, orders, notices; removing
20 requirement that entire mine be given closure order when director determines area of
21 imminent danger does not include entire mine; providing that all orders or decisions of
22 director subject to judicial review; requiring director to file civil actions in circuit court of
23 county where mine is located; removing requirement that civil penalties be deposited in
24 Special Health, Safety and Training Fund; requiring all working places be examined for
25 hazards once per shift; eliminating requirement to use obsolete equipment; eliminating
26 requirement that operator provide safety committee anonometers and smoke tubes;

27 providing that miners may return to underground working areas if ventilation restored and
 28 mine determined to be safe; changing intervals hinged man doors required; increasing the
 29 number of apprentices under supervision of trainer; removing authority of director to
 30 propose emergency rules; changing who may receive fire boss report; providing for
 31 instruction of persons affected by revisions to roof control plans; eliminating requirement
 32 that man trip be idle one hour before transporting men; and requiring filing of mine
 33 operator report with director quarterly instead of monthly.

Be it enacted by the Legislature of West Virginia:

1 That §22A-6-1, §22A-6-2, §22A-6-3, §22A-6-4, §22A-6-5, §22A-6-6, §22A-6-7, §22A-6-8,
 2 §22A-6-9, §22A-6-10, §22A-6-11, §22A-6-12, §22A-6-13 and §22A-6-14 of the Code of West
 3 Virginia, 1931, as amended, be repealed; that §22A-1-1, §22A-1-2, §22A-1-3, §22A-1-4,
 4 §22A-1-5, §22A-1-6, §22A-1-7, §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12, §22A-1-13
 5 §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20 and §22A-1-21 of said code be amended and
 6 reenacted; that said code be amended by adding thereto a new section, designated §22A-1-3a;
 7 and that §22A-2-3, §22A-2-4, §22A-2-8, §22A-2-12, §22A-2-14, §22A-2-20, §22A-2-25,
 8 §22A-2-36, §22A-2-55 and §22A-2-77 of said code be amended and reenacted, all to read as
 9 follows:

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

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

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

5 (b) The ~~division of~~ office of health, safety and training shall have as its purpose the

6 supervision of the execution and enforcement of the provisions of this chapter and, in carrying out
7 the aforesaid purposes, it shall give prime consideration to the protection of the safety and health
8 of persons employed within or at the mines of this state. ~~In addition, the division shall, consistent~~
9 ~~with the aforesaid prime consideration,~~ Consistent with the primary purposes, the office shall
10 protect and preserve mining property and property used in connection therewith.

§22A-1-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, the following
2 definitions apply to this chapter:

3 (a) *General.*

4 (1) Accident: The term "accident" means any mine explosion, mine ignition, mine fire, or
5 mine inundation, or injury to, or death of any person.

6 (2) Agent: The term "agent" means any person charged with responsibility for the
7 operation of all or a part of a mine or the supervision of the miners in a mine.

8 (3) Approved: The term "approved" means in strict compliance with mining law, or, in the
9 absence of law, accepted by a recognized standardizing body or organization whose approval is
10 generally recognized as authoritative on the subject.

11 (4) Face equipment: The term "face equipment" means mobile or portable mining
12 machinery having electric motors or accessory equipment normally installed or operated in by the
13 last open crosscut in an entry or room.

14 (5) Imminent danger: The term "imminent danger" means the existence of any condition
15 or practice in a coal mine which could reasonably be expected to cause death or serious physical
16 harm before such condition or practice can be abated.

17 (6) Mine: The term "mine" includes the shafts, slopes, drifts or inclines connected with, or
18 intended in the future to be connected with, excavations penetrating coal seams or strata, which

19 excavations are ventilated by one general air current or divisions thereof, and connected by one
20 general system of mine haulage over which coal may be delivered to one or more points outside
21 the mine, and the surface structures or equipment connected or associated therewith which
22 contribute directly or indirectly to the mining, preparation or handling of coal, or construction
23 thereof.

24 (7) Miner: The term "miner" means any individual working in a coal mine.

25 (8) Operator: The term "operator" means any firm, corporation, partnership or individual
26 operating any coal mine, or part thereof, or engaged in the construction of any facility associated
27 with a coal mine.

28 (9) Permissible: The term "permissible" means any equipment, device or explosive that
29 has been approved as permissible by the federal mine safety and health administration and/or
30 the United States bureau of mines and meets all requirements, restrictions, exceptions, limitations
31 and conditions attached to such classification by that agency or the bureau.

32 (10) Person: The term "person" means any individual, partnership, association,
33 corporation, firm, subsidiary of a corporation or other organization.

34 (11) Work of preparing the coal: The term "work of preparing the coal" means the
35 breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous
36 coal or lignite and such other work of preparing such coal as is usually done by the operator of
37 the coal mine.

38 (b) *Office of miners' health, safety and training.*

39 (1) Board: The term "board" means the Board of Coal Mine Health and Safety which
40 advises the director with respect to rule making.

41 ~~(4)~~ (2) Board of appeals: The term "board of appeals" means as provided for in article five
42 of this chapter.

43 ~~(2)~~ (3) Director: The term "director" means the director of the office of miners' health,
44 safety and training provided ~~for~~ in section three of this article.

45 ~~(3)~~ (4) Mine inspector: The term "mine inspector" means a state mine inspector provided
46 ~~for~~ in section eight of this article.

47 ~~(4)~~ (5) Mine inspectors' examining board: The term "mine inspectors' examining board"
48 shall mean the mine inspectors' examining board provided ~~for~~ in article nine of this chapter.

49 ~~(5)~~ (6) Office: The term "office" means, when referring to a specific office, the office of
50 miners' health, safety and training provided ~~for~~ in this article. The term "office", when used
51 generically, includes any office, board, agency, unit, organizational entity or component thereof.

52 (c) *Mine areas.*

53 (1) Abandoned workings: The term "abandoned workings" means excavation, either
54 caved or sealed, that is deserted and in which further mining is not intended, or open workings
55 which are ventilated and not inspected regularly.

56 (2) Active workings: The term "active workings" means all places in a mine that are
57 ventilated and inspected regularly.

58 (3) Drift: The term "drift" means a horizontal or approximately horizontal opening through
59 the strata or in a coal seam and used for the same purposes as a shaft.

60 (4) Excavations and workings: The term "excavations and workings" means any or all
61 parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries,
62 rooms and working places, whether abandoned or in use.

63 (5) Inactive workings: The term "inactive workings" includes all portions of a mine in which
64 operations have been suspended for an indefinite period, but have not been abandoned.

65 (6) Mechanical working section: The term "mechanical working section" means an area
66 of a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working

67 places that are generally contiguous; and (C) which is of such size to permit necessary
68 supervision during shift operation, including preshift and on-shift examinations and tests required
69 by law.

70 (7) Panel: The term "panel" means workings that are or have been developed off of
71 submain entries which do not exceed three thousand feet in length.

72 (8) Return air: The term "return air" means a volume of air that has passed through and
73 ventilated all the working places in a mine section.

74 (9) Shaft: The term "shaft" means a vertical opening through the strata that is or may be
75 used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals
76 and material, in connection with the mining of coal.

77 (10) Slope: The term "slope" means a plane or incline roadway, usually driven to a coal
78 seam from the surface and used for the same purposes as a shaft.

79 (11) Working face: The term "working face" means any place in a coal mine in which work
80 of extracting coal from its natural deposit in the earth is performed during the mining cycle.

81 (12) Working place: The term "working place" means the area of a coal mine in by the last
82 open crosscut.

83 (13) Working section: The term "working section" means all areas of the coal mine from
84 the loading point of the section to and including the working faces.

85 (14) Working unit: The term "working unit" means an area of a mine in which coal is mined
86 with a set of production equipment; a conventional mining unit by a single loading machine; a
87 continuous mining unit by a single continuous mining machine, which is comprised of a number
88 of working places.

89 (d) *Mine personnel.*

90 (1) Assistant mine foreman: The term "assistant mine foreman" means a certified person

91 designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of
92 the persons employed therein.

93 (2) Certified electrician: The term "certified electrician" means any person who is qualified
94 as a mine electrician and who has passed an examination given by the office, or has at least three
95 years of experience in performing electrical work underground in a coal mine, in the surface work
96 areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine
97 equipment manufacturing industry or in any other industry using or manufacturing similar
98 equipment, and has satisfactorily completed a coal mine electrical training program approved by
99 the office or any person who is qualified as a mine electrician in any state that recognizes certified
100 electricians licensed in West Virginia.

101 (3) Certified person: The term "certified person", when used to designate the kind of
102 person to whom the performance of a duty in connection with the operation of a mine shall be
103 assigned, means a person who is qualified under the provisions of this law to perform such duty.

104 (4) Interested persons: The term "interested persons" includes the operator, members of
105 any mine safety committee at the mine affected and other duly authorized representatives of the
106 mine workers and the office.

107 (5) Mine foreman: The term "mine foreman" means the certified person whom the operator
108 or superintendent shall place in charge of the inside workings of the mine and of the persons
109 employed therein.

110 (6) Qualified person: The term "qualified person" means a person who has completed an
111 examination and is considered qualified on record by the office.

112 (7) Shot firer: The term "shot firer" means any person having had at least two years of
113 practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering,
114 and who has demonstrated his or her knowledge of mine gases, the use of a flame safety lamp,

115 and other approved detecting devices by examination and certification given him or her by the
116 office.

117 (8) Superintendent: The term "superintendent" means the person who has, on behalf of
118 the operator, immediate supervision of one or more mines.

119 (9) Supervisor: The term "supervisor" means a superintendent, mine foreman, assistant
120 mine foreman or any person specifically designated by the superintendent or mine foreman to
121 supervise work or employees and who is acting pursuant to such specific designation and
122 instructions.

123 (e) *Electrical.*

124 (1) Armored cable: The term "armored cable" means a cable provided with a wrapping of
125 metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

126 (2) Borehole cable: The term "borehole cable" means a cable designed for vertical
127 suspension in a borehole or shaft and used for power circuits in the mine.

128 (3) Branch circuit: The term "branch circuit" means any circuit, alternating current or direct
129 current, connected to and leading from the main power lines.

130 (4) Cable: The term "cable" means a standard conductor (single conductor cable) or a
131 combination of conductors insulated from one another (multiple conductor cable).

132 (5) Circuit breaker: The term "circuit breaker" means a device for interrupting a circuit
133 between separable contacts under normal or abnormal conditions.

134 (6) Delta connected: The term "delta connected" means a power system in which the
135 windings or transformers or a.c. generators are connected to form a triangular phase relationship,
136 and with phase conductors connected to each point of the triangle.

137 (7) Effectively grounded: The term "effectively grounded" is an expression which means
138 grounded through a grounding connection of sufficiently low impedance (inherent or intentionally

139 added or both) so that fault grounds which may occur cannot build up voltages in excess of limits
140 established for apparatus, circuits or systems so grounded.

141 (8) Flame-resistant cable, portable: The term "flame-resistant cable, portable" means a
142 portable flame-resistant cable that has passed the flame tests of the federal mine safety and
143 health administration.

144 (9) Ground or grounding conductor (mining): The term "ground or grounding conductor
145 (mining)", also referred to as a safety ground conductor, safety ground and frame ground, means
146 a metallic conductor used to connect the metal frame or enclosure of any equipment, device or
147 wiring system with a mine track or other effective grounding medium.

148 (10) Grounded (earthed): The term "grounded (earthed)" means that the system, circuit
149 or apparatus referred to is provided with a ground.

150 (11) High voltage: The term "high voltage" means voltages of more than one thousand
151 volts.

152 (12) Lightning arrestor: The term "lightning arrestor" means a protective device for limiting
153 surge voltage on equipment by discharging or by passing surge current; it prevents continued
154 flow of follow current to ground and is capable of repeating these functions as specified.

155 (13) Low voltage: The term "low voltage" means up to and including six hundred sixty
156 volts.

157 (14) Medium voltage: The term "medium voltage" means voltages from six hundred sixty-
158 one to one thousand volts.

159 (15) Mine power center or distribution center: The term "mine power center or distribution
160 center" means a combined transformer or distribution unit, complete within a metal enclosure from
161 which one or more low-voltage power circuits are taken.

162 (16) Neutral (derived): The term "neutral (derived)" means a neutral point or connection

163 established by the addition of a "zig-zag" or grounding transformer to a normally underground
164 power system.

165 (17) Neutral point: The term "neutral point" means the connection point of transformer or
166 generator windings from which the voltage to ground is nominally zero, and is the point generally
167 used for system groundings in wye-connected a.c. power system.

168 (18) Portable (trailing) cable: The term "portable (trailing) cable" means a flexible cable or
169 cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or
170 other external source of electric energy where permanent mine wiring is prohibited or is
171 impracticable.

172 (19) Wye-connected: The term "wye-connected" means a power system connection in
173 which one end of each phase windings or transformers or a.c. generators are connected together
174 to form a neutral point, and a neutral conductor may or may not be connected to the neutral point,
175 and the neutral point may or may not be grounded.

176 (20) Zig-zag transformer (grounding transformer): The term "zig-zag transformer
177 (grounding transformer)" means a transformer intended primarily to provide a neutral point for
178 grounding purposes.

§22A-1-3. Director of the Office of Miners' Health, Safety and Training.

1 (a) The Director of the office of Miners' Health, Safety and Training is responsible for
2 surface and underground safety inspections of coal mines and the administration of the office of
3 Miners' Health, Safety and Training.

4 (b) The director is the chief executive officer of the office. Subject to provisions of law, he
5 or she shall organize the office into those offices, sections, agencies and other units of activity
6 found by the director to be desirable for the orderly, efficient and economical administration of the
7 office. The office shall have two deputy directors appointed by director who shall serve at the will

8 and pleasure of the director. The director may appoint any other employees needed for the
9 operation of the office and may prescribe their powers and duties and fix their compensation within
10 amounts appropriated.

11 (c) The director shall be appointed by the Governor, by and with the advice and consent
12 of the Senate, and shall serve at the will and pleasure of the Governor.

13 (d) The Director of the Office of Miners' Health, Safety and Training shall be a citizen of
14 West Virginia, shall be a competent person of good repute and temperate habits with a
15 demonstrated interest and five years' education or training in underground mining safety, and
16 three years' experience in underground mining and shall have at least three years of experience
17 in a position of responsibility in at least one discipline relating to the duties and responsibilities for
18 which the director will be responsible upon assumption of the office of director. Special reference
19 shall be given to his or her administrative experience and ability. The director shall devote all of
20 his or her time to the duties of the position of director and shall not be directly interested financially
21 in any mine in this or any other state nor shall the director, either directly or indirectly, be a majority
22 owner of, or have control of or a controlling interest in, a mine in this or any other state. The
23 director shall not be a candidate for or hold any other public office, shall not be a member of any
24 political party committee and shall immediately forfeit and vacate his or her office as director in
25 the event he or she becomes a candidate for or accepts appointment to any other public office or
26 political party committee: *Provided*, That, in the event of a vacancy in the position of director, the
27 Governor may fill the director's position on an interim basis by appointing an acting director to
28 exercise the powers of the director. The acting director shall be a citizen of West Virginia, shall
29 be a competent person of good repute and temperate habits with a demonstrated interest and
30 five years' education, training or experience in underground coal mining safety and shall have at
31 least three years of experience in a position of responsibility in at least one discipline relating to

32 the duties and responsibilities for which the acting director will be responsible during his or her
33 interim service in the office of director. The interim service appointment can not last for more than
34 one year, after which a permanent director must be appointed.

35 (e) The director shall be allowed and paid necessary expenses incident to the performance
36 of his or her official duties. Prior to the assumption of his or her official duties, the director shall
37 take the oath required of public officials prescribed by section five, article IV of the Constitution of
38 West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum
39 of \$10,000. The executed oath and bond shall be filed in the Office of the Secretary of State.
40 Premiums on the bond shall be paid from office funds.

§22A-1-3a. Districts and deputy directors.

1 (a) The office shall be divided into four districts.

2 (1) District 1 consists of mines in Barbour, Berkeley, Brooke, Calhoun, Doddridge, Gilmer,
3 Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Lewis, Marion, Marshall, Mineral,
4 Monongalia, Morgan, Ohio, Pendleton, Pleasants, Preston, Randolph, Richie, Taylor, Tucker,
5 Tyler, Upshur, Wetzel, Wirt and Wood counties.

6 (2) District 2 consists of mines in McDowell, Mercer, Monroe, Summers and Wyoming
7 counties.

8 (3) District 3 consists of mines in Boone, Cabell, Lincoln, Logan, Mason, Mingo, Putnam
9 and Wayne counties.

10 (4) District 4 consists of mines in Clay, Fayette, Greenbrier, Jackson, Kanawha, Nicholas,
11 Pocahontas, Raleigh, Roane and Webster counties.

12 (b) The director shall appoint two deputy directors for the office.

13 (1) The deputy directors shall be citizens of West Virginia with one deputy director having
14 maintained a residence within District 1 for five consecutive years prior to his or her appointment

15 and the other deputy director having a residence within Districts 2, 3 or 4 for five consecutive
16 years prior to his or her appointment.

17 (2) The deputy directors of the Office of Miners' Health, Safety and Training shall be
18 competent persons of good repute and temperate habits with a demonstrated interest and five
19 years' education or training in underground mining safety, and three years' experience in
20 underground mining and shall have at least three years of experience in a position of responsibility
21 in at least one discipline relating to the duties and responsibilities for which the deputy directors
22 will be responsible upon assumption of the office of deputy director. Special reference shall be
23 given to his or her administrative experience and ability. The deputy directors shall devote all of
24 his or her time to the duties of the position of deputy director and shall not be directly interested
25 financially in any mine in this or any other state nor shall the deputy director, either directly or
26 indirectly, be a majority owner of, or have control of or a controlling interest in, a mine in this or
27 any other state. The deputy directors may not hold office or be a member of the United Mine
28 Workers Association or any other miner representative. The deputy directors may not be a
29 candidate for or hold any other public office, may not be a member of any political party committee
30 and shall immediately forfeit and vacate his or her office as director in the event he or she
31 becomes a candidate for or accepts appointment to any other public office or political party
32 committee.

33 (3) The deputy directors are allowed and paid necessary expenses incident to the
34 performance of their official duties.

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

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

3 and safety inspections and enforcement and training in coal mines, underground clay mines, open
4 pit mines, cement manufacturing plants and underground limestone and sandstone mines.

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

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

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

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

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

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

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

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

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

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

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

48 (10) Institute civil actions for relief, including permanent or temporary injunctions,
49 restraining orders, or any other appropriate action in the appropriate federal or state court
50 whenever any operator or the operator's agent violates or fails or refuses to comply with any lawful

51 order, notice or decision issued by the director or his or her representative.

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

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

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

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

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

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

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

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

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

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

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

5 ~~(2) The coal mine safety and technical review committee established pursuant to article~~
6 ~~six of this chapter;~~

7 ~~(3)~~ (2) The board of miner training, education and certification established pursuant to
8 article seven of this chapter;

9 ~~(4)~~ (3) The mine inspectors' examining board established pursuant to article nine of this
10 chapter; and

11 ~~(5)~~ (4) The board of appeals provided for pursuant to the provisions of article five of this
12 chapter.

13 (b) Nothing in this article may authorize the director or the secretary of the Department of
14 Commerce, labor and environmental resources to alter, discontinue or abolish any office, board
15 or commission or the functions thereof, which are established by statute.

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

1 ~~The director has the power and authority to propose or promulgate rules to organize the~~
2 ~~office and to carry out and implement the provisions of this chapter relating to health and safety~~
3 ~~inspections and enforcement. All rules in effect on the effective date of this article which pertain~~
4 ~~to the provisions of this chapter as they relate to health and safety inspection and enforcement~~
5 ~~shall remain in effect until changed or superseded by the director, or as appropriate. Except when~~
6 ~~specifically exempted by the provisions of this chapter, all rules or changes thereto shall be~~
7 ~~proposed or promulgated by the director in accordance with the provisions of chapter twenty-nine-~~

8 ~~a of this code.~~

9 (a) The director has the power and authority to propose or promulgate rules to carry out
10 and implement the provisions of this chapter relating to health and safety inspections and
11 enforcement. All rules in effect on the effective date of this article which pertain to the provisions
12 of this chapter as they relate to health and safety inspection and enforcement shall remain in
13 effect until changed or superseded by the director, or as appropriate. All rules or changes thereto
14 shall be proposed or promulgated by the director in accordance with the provisions of chapter
15 twenty-nine-a of this code. Except as provided in section (b) of this section, the director has the
16 power and authority to propose or promulgate rules to organize the office.

17 (b) The Board of Coal Mine Health and Safety is continued and is a board within the office.
18 The board consists of the director and six voting members who are residents of this state, and
19 who are appointed as follows:

20 (1) The Governor shall appoint, by and with the advice and consent of the Senate, three
21 board members to represent the viewpoint of those operators in this state. When those members
22 are to be appointed, the Governor shall request from the major trade association representing
23 operators in the state a list of three nominees for each such position on the board. At least one
24 nominee shall be from District 1 and at least one nominee shall be from District 2, 3, or 4. These
25 nominees shall be persons with special experience and competence in health and safety. There
26 shall be submitted with such list a summary of the qualifications of each nominee. For purposes
27 of this subdivision, the major trade association representing operators in this state is that
28 association which represents operators accounting for over one half of the coal produced in mines
29 in this state in the year prior to the year in which the appointment is to be made and "operators in
30 this state" means any operator owning a mine situated within this state.

31 (2) The Governor shall appoint, by and with the advice and consent of the Senate, three

32 members who can reasonably be expected to represent the viewpoint of the working miners of
33 this state. At least one nominee shall be from District 1 and at least one nominee shall be from
34 District 2, 3, or 4. When members are to be appointed, the Governor shall request from the major
35 employee organization representing coal miners as well as the three largest operators by coal
36 production within this state a list of five nominees for each position on the board. The major trade
37 association representing operators shall advise the Governor of the three largest operators in the
38 state. The highest ranking official within the major employee organization representing coal
39 miners and chief executive officers of the three largest operators by coal production within this
40 state shall submit a list of five nominees for each such position on the board. These nominees
41 shall have a background in health and safety. The Governor shall make the appointments from
42 the requested lists of nominees;

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

45 (4) The members shall serve a four year term and are eligible for reappointment for
46 another four year term.

47 (5) Each member of the board not otherwise employed by the state shall be paid the same
48 compensation, and each member of the board shall be paid the expense reimbursement, as is
49 paid to members of the Legislature for their interim duties as recommended by the Citizens'
50 Legislative Compensation Commission and authorized by law for each day or portion thereof
51 engaged in the discharge of official duties. In the event the expenses are paid by a third party,
52 the member shall not be reimbursed by the state. The reimbursement shall be paid out of the
53 State Treasury upon a requisition upon the State Auditor, properly certified by the Office of Miners'
54 Health, Safety and Training. No employer shall prohibit a member of the board from exercising
55 leave of absence from his or her place of employment in order to attend a meeting of the board

56 or a meeting of a subcommittee of the board, or to prepare for a meeting of the board, any contract
57 of employment to the contrary notwithstanding.

58 (c) The board shall adopt as standard rules the "coal mine health and safety provisions of
59 this chapter". The Board of Coal Mine Health and Safety shall devote its time toward promulgating
60 rules in those areas specifically directed by this chapter and those necessary to prevent fatal
61 accidents and injuries.

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

65 (e) The board shall develop, promulgate and revise, as may be appropriate, rules as are
66 necessary and proper to effectuate the purposes of article two of this chapter and to prevent the
67 circumvention and evasion thereof.

68 (f) In considering the promulgation of rules, the board shall consider and commission, with
69 the consent of the director, the latest available scientific data in the field, the technical feasibility
70 of standards, and experience gained under this and other safety statutes. The board shall also
71 consider the need to protect and preserve mining, mining property, and property used in
72 connection therewith.

73 (g) No rules promulgated by the board shall reduce or compromise the level of safety or
74 protection afforded miners below the level of safety or protection afforded by the Federal Mine
75 Safety and Health Act of 1977, as amended, or the rules promulgated thereunder.

76 (h) Any miner or any coal operator has the power to petition the circuit court of the county
77 where they reside or where their mining operations occur for a determination as to whether any
78 rule promulgated or revised reduces the protection afforded miners below that provided by the
79 Federal Mine Safety and Health Act of 1977, as amended, or the rules promulgated thereunder,

80 or is otherwise contrary to law. However, any rule properly promulgated by the board pursuant
81 to the terms and conditions of this chapter creates a rebuttable presumption that said rule does
82 not reduce the protection afforded miners below that provided by the Federal Mine Safety and
83 Health Act of 1977, as amended, or the rules promulgated thereunder.

§22A-1-7. Savings provisions.

1 All orders, determinations, rules, permits, grants, contracts, certificates, licenses and
2 privileges which have been issued, made, granted, or allowed to become effective by the
3 Governor, any state department or agency or official thereof, or by a court of competent
4 jurisdiction, in the performance of functions which were transferred from the division of energy to
5 the secretary of the Department of Commerce ~~labor and environmental resources~~, to the director,
6 or to the office, and which were in effect on the date such transfer occurred, shall continue in
7 effect according to their terms until modified, terminated, superseded, set aside or revoked in
8 accordance with law by the Governor, the secretary, the director, or other authorized official, a
9 court of competent jurisdiction or by operation of law.

§22A-1-8. Mine inspectors; regions and districts; employment; tenure; oath.

1 Notwithstanding any other provisions of this code to the contrary, mine inspectors shall be
2 selected, serve and be removed as provided in this article.

3 ~~The director shall divide the state into a sufficient number of regions, so as to equalize, as~~
4 ~~far as practical, the work of each inspector.~~ The director may assign inspectors to districts and
5 may designate and assign not more than one inspector-at-large and one assistant inspector-at-
6 large to each region. The director may designate the places of abode of inspectors at points
7 convenient to the mines of their respective districts, and, in the case of inspectors-at-large and
8 assistant inspectors-at-large, their respective regions.

9 All mine inspectors appointed after the Mine Inspectors' Examining Board has certified to

10 the director an adequate register of qualified eligible candidates, so long as the register contains
11 the names of at least three qualified eligible candidates, shall be appointed from the names on
12 such register. ~~Each original appointment shall be made by the director for a probationary period~~
13 ~~of not more than one year.~~

14 The director shall make each appointment from among the three qualified eligible
15 candidates on the register having the highest grades: *Provided*, That the director may, for good
16 cause, at least thirty days prior to making an appointment, strike any name from the register.
17 Upon striking any name from the register, the director shall immediately notify in writing each
18 member of the mine inspectors' examining board of the action, together with a detailed statement
19 of the reasons therefor. Thereafter, if the mine inspectors' examining board finds, after hearing,
20 that the action of the director was arbitrary or unreasonable, it may then order the name of any
21 candidate so stricken from the register to be reinstated thereon. The reinstatement is effective
22 from the date of removal from the register.

23 The name of any candidate passed over for appointment for three years shall be deleted
24 from the register.

25 ~~After having served for a probationary period of one year to the satisfaction of the director,~~
26 ~~a mine inspector has permanent tenure, subject to dismissal only for cause in accordance with~~
27 ~~the applicable provisions of section twelve of this article. No mine inspector, while in office, may~~
28 ~~be directly or indirectly interested as an employee, owner, lessor, operator, stockholder,~~
29 ~~superintendent or engineer of any coal mine. Before entering upon the discharge of the duties~~
30 ~~as a mine inspector, he or she shall take the oath of office prescribed by section 5, article IV of~~
31 ~~the Constitution of West Virginia, a certificate of which oath shall be filed in the office of the~~
32 ~~Secretary of State.~~

33 Mine inspectors shall serve at the will and discretion of the director. No mine inspector,

34 while in office, may be directly or indirectly interested as an employee, owner, lessor, operator,
35 stockholder, superintendent or engineer of any coal mine. No mine inspector may hold office or
36 be a member of any employee organization.

37 The inspectors, inspectors-at-large and assistant inspectors-at-large, together with the
38 director, shall make all inspections authorized by this article and article two of this chapter and
39 shall perform such other duties as are imposed upon mine inspectors by this chapter and by any
40 applicable legislative rules.

§22A-1-9. Mine safety instructors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to mine safety instructors.

1 (a) The office shall employ a sufficient number of mine safety instructors as the director
2 determines to be reasonably necessary in fully and effectively carrying out the applicable
3 provisions of this chapter.

4 (b) To be eligible for employment as a mine safety instructor, the applicant shall be: (1) A
5 citizen of West Virginia, in good health, not less than twenty-four years of age, of good character
6 and reputation, and of temperate habits; (2) a person who has had at least five years of practical
7 experience in coal mines, at least two years of which has been in mines in this state: *Provided,*
8 That graduation from any accredited college of mining engineering may be considered equivalent
9 to two years of practical experience; (3) a person who has had practical experience with
10 dangerous gases found in coal mines, and who has a good theoretical and practical knowledge
11 of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws
12 and rules; and (4) a person who possesses a West Virginia foreman-fireboss certification; or a
13 person who has had at least three years of experience as an actual working team member of a
14 mine rescue team, or at least three years of experience as a member of a first aid team or

15 emergency medical technician team; or a person who has had at least three years of experience
16 as the safety director, or the equivalent as approved by the Mine Inspectors' Examining Board, of
17 a mine; or a person who has had at least three years of experience as an active member of a
18 mine safety committee. For the purpose of this section, practical experience means the
19 performance of normal mining duties requiring a person to hold a certificate of competency and
20 qualification as an experienced miner prior to actually performing such duties.

21 (c) (1) In order to qualify for appointment as a mine safety instructor, an eligible applicant
22 shall submit to written, oral and practical examinations administered by the Mine Inspectors'
23 Examining Board and furnish evidence of good health, character and other facts establishing
24 eligibility as the board may require. The examinations shall relate to the duties to be performed
25 by a mine safety instructor and, subject to the approval of the Mine Inspectors' Examining Board,
26 may be prepared by the director.

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

33 (d) Mine safety instructors shall be paid an annual salary of not less than \$37,400, which
34 shall be fixed by the director, who shall take into consideration ability, performance of duty and
35 experience. Mine safety instructors shall devote all of their time to the duties of the office.

36 ~~(e) Except as expressly provided in this section to the contrary, all provisions of this article~~
37 ~~relating to the eligibility, qualification, appointment, tenure and removal of underground mine~~
38 ~~inspectors, as well as those provisions relating to compensatory time and reimbursement for~~

39 ~~necessary expenses, are applicable to mine safety instructors.~~ Mine safety instructors shall serve
40 at the will and discretion of the director. No mine safety instructor, while in office, may be directly
41 or indirectly interested as an employee, owner, lessor, operator, stockholder, superintendent or
42 engineer of any coal mine. No mine safety instructor may hold office or be a member of any
43 employee organization.

§22A-1-11. Employment of electrical inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to electrical inspectors.

1 (a) The office shall employ a sufficient number of electrical inspectors as the director
2 determines to be reasonably necessary in fully and effectively carrying out the applicable
3 provisions of this chapter.

4 (b) To be eligible for employment as an electrical inspector, the applicant shall be: (1) A
5 citizen of West Virginia, in good health, not less than twenty-four years of age, of good character
6 and reputation, and of temperate habits; and (2) a person who has had five years of practical
7 electrical experience in coal mines, at least two of which were in mines in this state, or a degree
8 in electrical engineering from an accredited electrical engineering school and three years of
9 practical electrical experience in underground coal mining. For the purposes of this section,
10 practical electrical experience means the performance of duties requiring a person to be a certified
11 electrician, as that term is defined in subdivision (2), subsection (d), section two of this article,
12 prior to actually performing such duties.

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

17 by an electrical inspector and, subject to approval of the mine inspectors' examining board, may
18 be prepared by the director.

19 (2) If the board finds after investigation and examination that an applicant: (A) Is eligible
20 for appointment; and (B) has passed the required examinations with an average grade of at least
21 ninety percent, the board shall add the applicant's name and grades to the register of qualified
22 eligible candidates and promptly certify its action in writing to the director. The director shall then
23 appoint one of the candidates from the three having the highest grades.

24 (d) Electrical inspectors shall be paid an annual salary of not less than \$42,828, which
25 shall be fixed by the director, who shall take into consideration ability, performance of duty and
26 experience. Electrical inspectors shall devote all of their time to the duties of the office.

27 ~~(e) Except as expressly provided in this section to the contrary, all provisions of this article~~
28 ~~relating to the eligibility, qualifications, appointment, tenure and removal of underground mine~~
29 ~~inspectors, as well as those provisions relating to compensatory time and reimbursement for~~
30 ~~necessary expenses, are applicable to mine electrical inspectors. Electrical inspectors shall serve~~
31 ~~at the will and discretion of the director. No electrical inspector, while in office, may be directly or~~
32 ~~indirectly interested as an employee, owner, lessor, operator, stockholder, superintendent or~~
33 ~~engineer of any coal mine. No electrical inspector may hold office or be a member of any~~
34 ~~employee organization.~~

**§22A-1-12. Employment of underground mine inspectors; eligibility; qualifications;
examinations; salary and expenses; reinstatement; removal.**

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

4 (b) To be eligible for employment as a mine inspector the applicant shall be: (1) A citizen

5 of West Virginia, in good health, not less than twenty-four years of age, of good character and
6 reputation and of temperate habits; (2) a person who has had at least five years of practical
7 experience in coal mines, at least two years of which have been in mines of this state: *Provided,*
8 That graduation from any accredited college of mining engineering may be considered the
9 equivalent of two years of practical experience; (3) a person who has had practical experience
10 with dangerous gases found in coal mines; and (4) a person who has a good theoretical and
11 practical knowledge of mines, mining methods, mine ventilation, sound safety practices and
12 applicable mining laws and rules. For the purpose of this section, practical experience means the
13 performance of normal mining duties requiring a person to hold a certificate of competency and
14 qualification as an experienced underground miner prior to actually performing such duties.

15 (c) In order to qualify for appointment as an underground mine inspector, an eligible
16 applicant shall submit to written, oral and practical examinations administered by the mine
17 inspectors' examining board and furnish evidence of good health, character and other facts
18 establishing eligibility as the board may require. The examinations shall relate to the duties to be
19 performed by an underground mine inspector and, subject to the approval of the mine inspectors'
20 examining board, may be prepared by the director. If the board finds after investigation and
21 examination that an applicant: (1) Is eligible for appointment; and (2) has passed each required
22 examination, with a grade of at least seventy-five percent or an overall combined average score
23 of eighty percent, the board shall add the applicant's name and grades to the register of qualified
24 eligible candidates and promptly certify its action in writing to the director. The director shall then
25 appoint one of the candidates from the three having the highest grades.

26 (d) Underground mine inspectors shall be paid an annual salary of not less than \$38,160;
27 assistant inspectors-at-large, not less than \$44,448; inspectors-at-large, not less than \$46,104,
28 each of which shall be fixed by the director, who shall take into consideration ability, performance

29 of duty, and experience. In accordance with established rules of the state's travel management
30 office, underground mine inspectors shall also be allowed and paid expenses necessarily incident
31 to the performance of their official duties: *Provided*, That no reimbursement for expenses may be
32 made other than upon the timely submittal of a properly itemized expense account settlement
33 completed by the underground mine inspector, approved and countersigned by the director, or
34 his or her designated representative, verifying that the expenses were actually incurred in the
35 performance of official duties. Underground mine inspectors shall devote all of their time to the
36 duties of the office and shall be afforded compensatory time or compensation of at least the
37 regular rate for all time in excess of forty hours per week.

38 ~~(e) (1) An underground mine inspector, after having received a permanent appointment,~~
39 ~~may be removed from office only for physical or mental impairment, incompetency, neglect of~~
40 ~~duty, public intoxication, malfeasance in office or other similarly good cause.~~

41 ~~(2) Proceedings for the removal of an underground mine inspector may be initiated by the~~
42 ~~director whenever there is reasonable cause to believe that adequate cause exists, warranting~~
43 ~~removal. The proceeding may be initiated by a verified petition, filed with the mine inspectors'~~
44 ~~examining board by the director, setting forth with particularity the facts alleged. Not less than~~
45 ~~twenty reputable citizens, who are operators or employees in mines in this state, may petition the~~
46 ~~director for the removal of an underground mine inspector. If the petition is verified by at least~~
47 ~~one of the petitioners, based on actual knowledge of the affiant of the alleged facts, which, if true,~~
48 ~~warrant the removal of the inspector, the director shall cause an investigation of the alleged facts~~
49 ~~to be made. If, after the investigation, the director finds that there is substantial evidence, which,~~
50 ~~if true, warrants removal of the inspector, the director shall file a petition with the board requesting~~
51 ~~removal of the inspector.~~

52 ~~(3) On receipt of a petition by the director seeking removal of an underground mine~~

53 ~~inspector, the board shall promptly notify the inspector to appear before it at a time and place~~
54 ~~designated in the notice, which time shall be not less than fifteen days thereafter. There shall be~~
55 ~~attached to the copy of the notice served upon the inspector a copy of the petition filed with the~~
56 ~~board.~~

57 ~~(4) At the time and place designated in the notice, the board shall hear all evidence offered~~
58 ~~in support of the petition and on behalf of the inspector. Each witness shall be sworn, and a~~
59 ~~transcript shall be made of all evidence taken and proceedings had at the hearing. No~~
60 ~~continuance may be granted except for good cause shown. The chair of the board and the~~
61 ~~director have power to administer oaths and subpoena witnesses.~~

62 ~~(5) If any mine inspector against whom a petition has been filed willfully refuses or fails to~~
63 ~~appear before the board, or having appeared, refuses to answer under oath any relevant question~~
64 ~~on the basis that the testimony or answer might incriminate him or her or refuses to waive~~
65 ~~immunity from prosecution because of any relevant matter about which the inspector may be~~
66 ~~asked to testify, then the inspector shall forfeit his or her position.~~

67 ~~(6) If, after hearing, the board finds that the inspector should be removed, it shall enter an~~
68 ~~order to that effect. The decision of the board is final and is not subject to judicial review.~~

69 (e) Underground mine inspectors serve at the will and discretion of the director. No
70 underground mine inspector, while in office, may be directly or indirectly interested as an
71 employee, owner, lessor, operator, stockholder, superintendent or engineer of any coal mine. No
72 underground mine inspector may hold office or be a member of any employee organization.
73 Before discharging the duties as an underground mine inspector, he or she shall take the oath of
74 office prescribed by section 5, article IV of the Constitution, a certificate of which oath shall be
75 filed in the office of the Secretary of State.

§22A-1-13. Employment of surface mine inspectors; eligibility; qualifications;

examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.

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

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

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

20 (2) If the board finds after investigation and examination that an applicant is: (A) Eligible
21 for appointment; and (B) has passed each required examination with a grade of at least seventy-
22 five percent, or an overall combined average score of eighty percent, the board shall add the

23 applicant's name and grades to the register of qualified eligible candidates and promptly certify
24 its action in writing to the director. The director shall then appoint one of the candidates from the
25 three having the highest grades.

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

29 (e) ~~Except as expressly provided in this section to the contrary, all provisions of this article~~
30 ~~relating to the eligibility, qualification, appointment, tenure, and removal of underground mine~~
31 ~~inspectors, as well as those provisions relating to compensatory time and reimbursement for~~
32 ~~necessary expenses, are applicable to surface mine inspectors.~~ Underground mine inspectors
33 serve at the will and discretion of the director. No underground mine inspector, while in office,
34 may be directly or indirectly interested as an employee, owner, lessor, operator, stockholder,
35 superintendent or engineer of any coal mine. No underground mine inspector may hold office or
36 be a member of any employee organization. Before discharging the duties as an underground
37 mine inspector, he or she shall take the oath of office prescribed by section 5, article IV of the
38 Constitution of West Virginia, a certificate of which oath shall be filed in the office of the Secretary
39 of State.

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

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

6 information.

7 (b) If miners or one of their authorized representatives, have reason to believe, at any
8 time, that ~~dangerous conditions are existing~~ imminent danger exists or that the law is not being
9 complied with, they may request the director to have an immediate investigation made. The
10 request shall be written and signed by the miner or authorized representative and a copy of the
11 request shall be provided to the operator no later than at the time of inspection, except that the
12 operator or his or her agent shall be immediately notified if the complaint indicates that an
13 imminent danger exists. The name of the person providing the notice and the names of individual
14 miners referred may not appear in any copy or notification.

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

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

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

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

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

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

1 (a) If upon any inspection of a coal mine an authorized representative of the director finds

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§22A-1-19. Judicial review.

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

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

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

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

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

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

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

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

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

§22A-1-20. Injunctions.

1 The director may institute a civil action for relief, including a permanent or temporary
2 injunction, restraining order, or any other appropriate order in the circuit court of the county in
3 which the mine is located ~~or the circuit court of Kanawha County~~, whenever the operator or the
4 operator's agent: (a) Violates or fails or refuses to comply with any order or decision issued under
5 this law; or (b) interferes with, hinders or delays the director or his or her authorized representative

6 in carrying out the provisions of this law; or (c) refuses to admit such representatives to the mine;
7 or (d) refuses to permit the inspection of the mine, or the investigation of an accident or
8 occupational disease occurring in, or connected with, such mine; or (e) refuses to furnish any
9 information or report requested by the director in furtherance of the provisions of this law; or (f)
10 refuses to permit access to, and copying of, such records as the director determines necessary
11 in carrying out the provisions of this law. ~~Each~~ The court shall have jurisdiction to provide such
12 relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court
13 to enforce an order under clause (a) of this section shall continue in effect until the completion or
14 final termination of all proceedings for review of such order under this law, unless, prior thereto,
15 the circuit court granting such relief sets it aside or modifies it. In any action instituted under this
16 section to enforce an order or decision issued by the director after a public hearing, the findings
17 of the director, if supported by substantial evidence on the record considered as a whole, shall be
18 conclusive.

§22A-1-21. Penalties.

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

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

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

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

24 (5) If the person against whom a civil penalty is assessed fails to pay the penalty within
25 the time prescribed in the order, the director may file a petition for enforcement of the order in any
26 appropriate circuit court. The petition shall designate the person against whom the order is sought
27 to be enforced as the respondent. A copy of the petition shall immediately be sent by certified
28 mail, return receipt requested, to the respondent and to the representative of the miners at the
29 affected mine or the operator, as the case may be. The director shall certify and file in the court
30 the record upon which the order sought to be enforced was issued. The court has jurisdiction to
31 enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in
32 part, the order and decision of the director or it may remand the proceedings to the director for
33 any further action it may direct. The court shall consider and determine de novo all relevant issues,
34 except issues of fact which were or could have been litigated in review proceedings before a

35 circuit court under section twenty of this article and, upon the request of the respondent, those
36 issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings
37 the court shall determine the amount of the penalty to be imposed. Subject to the direction and
38 control of the Attorney General, attorneys appointed for the director may appear for and represent
39 the director in any action to enforce an order assessing civil penalties under this subdivision.

40 (b) (1) Any operator who knowingly violates a health or safety provision of this chapter or
41 health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses
42 to comply with any order issued under section fifteen of this article, or any order incorporated in
43 a final decision issued under this article, except an order incorporated in a decision under
44 subsection (a) of this section or subsection (b), section twenty-two of this article, shall be assessed
45 a civil penalty by the director under subdivision (5), subsection (a) of this section of not more than
46 \$5,000 and for a second or subsequent violation assessed a civil penalty of not more than
47 \$10,000, unless the director determines that it is appropriate to impose a special assessment for
48 the violation, pursuant to the provisions of subdivision (2) of this subsection.

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

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

59 unique aggravating circumstances; or

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

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

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

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

81 (e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce
82 any equipment for use in a coal mine, including, but not limited to, components and accessories

83 of the equipment, who willfully misrepresents the equipment as complying with the provisions of
84 this law, or with any specification or rule of the director applicable to the equipment, and which
85 does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction
86 thereof, is subject to the same fine and confinement that may be imposed upon a person under
87 subsection (d) of this section.

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

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

ARTICLE 2. UNDERGROUND MINES.

§22A-2-3. Fans.

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

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

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

30 (c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with
31 line brattice to provide adequate ventilation to the working faces: *Provided,* That auxiliary fans be

32 so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved
33 and maintained as permissible.

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

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

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

44 (g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not
45 intentionally be started, stopped, speed increased or decreased or the direction of the air current
46 changed without the approval of the general mine foreman, and, if he or she is not immediately
47 available, a representative of the office of miners' health, safety and training. A duly authorized
48 representative of the employees should be consulted if practical under the circumstances.

§22A-2-4. Ventilation of mines in general.

1 (a) The operator or mine foreman of every coal mine, whether worked by shaft, slope, or
2 drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines
3 the quantity of air passing through the last open crosscut between the intake and return in any
4 pair or set of entries shall be not less than nine thousand cubic feet of air per minute and as much
5 more as is necessary to dilute and render harmless and carry away flammable and harmful gases.
6 All working faces in a working section between the intake and return airway entries shall be

7 ventilated with a minimum quantity of three thousand cubic feet of air per minute and as much
8 more as is necessary to dilute and render harmless and carry away flammable and harmful gases.
9 The quantity of air reaching the last crosscut in pillar sections may be less than nine thousand
10 cubic feet of air per minute if at least nine thousand cubic feet of air per minute is being delivered
11 to the intake of the pillar line. The air current shall under any conditions have a sufficient volume
12 and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases.
13 ~~The operator shall provide to the safety committee access to anonometers and smoke tubes while~~
14 ~~performing their duties.~~ All active underground working places in a mine shall be ventilated by a
15 current of air containing not less than nineteen and five-tenths percent of oxygen, not more than
16 five-tenths percent of carbon dioxide, and no harmful quantities of other noxious or poisonous
17 gases.

18 (b) Airflow shall be maintained in all intake and return air courses of a mine, and where
19 multiple fans are used, neutral areas created by pressure equalization between main fans shall
20 not be permitted. Production activities in working faces shall cease while tubing, line brattice, or
21 other ventilation devices are being installed inby the machine operator.

22 (c) Properly installed and adequately maintained line brattice or other approved devices
23 shall be continuously used from the last open crosscut of an entry or room of each working section
24 to provide adequate ventilation to the working faces for the miners and to remove flammable,
25 explosive, and noxious gases, dust, and explosive fumes. When damaged by falls or otherwise,
26 such line brattice or other devices shall be repaired immediately.

27 (d) Brattice cloth used underground shall be of flame-resistant material. The space
28 between the line brattice or other approved device and the rib shall be large enough to permit the
29 flow of a sufficient volume and velocity of air to keep the working face clear of flammable,
30 explosive, and noxious gases, dust and explosive fumes.

31 (e) Each working unit newly developed in virgin coal hereafter, shall be ventilated by a
32 separate split of air: *Provided*, That in areas already under development and in areas where
33 physical conditions prevent compliance with this provision, the director may grant temporary relief
34 from compliance until such time as physical conditions make compliance possible. The quantity
35 of air reaching the last crosscut shall not be less than nine thousand cubic feet of air per minute
36 and shall under any condition have sufficient volume and velocity to reduce and carry away smoke
37 and flammable or harmful gases from each working face in the section.

38 (f) As working places advance, crosscuts for air shall be made not more than one-hundred-
39 five feet apart. Where necessary to render harmless and carry away noxious or flammable gases,
40 line brattice or other approved methods of ventilation shall be used so as to properly ventilate the
41 face. All crosscuts between the main intake and return airways not required for passage of air
42 and equipment shall be closed with stoppings substantially built with incombustible or fireresistant
43 material so as to keep working places well ventilated. In mines where it becomes necessary to
44 provide larger pillars for adequate roof support, working places shall not be driven more than two
45 hundred feet without providing a connection that will allow the free flow of air currents. In such
46 cases, a minimum of twelve thousand cubic feet of air a minute shall be delivered to the last open
47 crosscut and as much more as is necessary to dilute and render harmless and carry away
48 flammable and noxious gases.

49 (g) In special instances for the construction of sidetracks, haulageways, airways, or
50 openings in shaft bottom or slope bottom layouts where the size and strength of pillars is
51 important, the director may issue a permit approving greater distances. The permit shall specify
52 the conditions under which such places may be driven.

53 (h) In all mines a system of bleeder openings on air courses designed to provide positive
54 movement of air through and/or around abandoned or caved areas, sufficient to prevent

55 dangerous accumulation of gas in such areas and to minimize the effect of variations in
56 atmospheric pressure shall be made a part of pillar recovery plans projected after July 1, 1971.

57 (i) If a bleeder return is closed as a result of roof falls or water during pillar recovery
58 operations, pillar operations may continue without reopening the bleeder return if at least twenty
59 thousand cubic feet of air per minute is delivered to the intake of the pillar line.

60 (j) No operator or mine foreman shall permit any person to work where he or she is unable
61 to maintain the quantity and quality of the air current as heretofore required: *Provided*, That such
62 provisions shall not prohibit the employment of men to make place of employment safe.

63 (k) The ventilation of any mine shall be so arranged by means of air locks, overcasts, or
64 undercasts, that the use of doors on passageways where men or equipment travel may be kept
65 to a minimum. Where doors are used in a mine they shall be erected in pairs so as to provide a
66 ventilated air lock unless the doors are operated mechanically.

67 (l) A crosscut shall be provided at or near the face of each entry or room before such
68 places are abandoned.

69 (m) Overcasts or undercasts shall be constructed of incombustible material and
70 maintained in good condition.

71 (n) After January 1, 1987, all run through check curtains shall be substantially constructed
72 of translucent material, except that where belting material has to be used because of high velocity,
73 there shall be a window of translucent material at least thirty inches square or one half the height
74 of the coal seam, whichever is less.

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

1 (a) The duties of the mine foreman shall be to keep a careful watch over the ventilating
2 apparatus, the airways, traveling ways, pumps and drainage. He or she shall see that, as the

3 miners advance their excavations, proper breakthroughs are made so as to ventilate properly the
4 mine; that all loose coal, slate and rock overhead in the working places and along the haulways
5 are removed or carefully secured so as to prevent danger to persons employed in such mines,
6 and that sufficient suitable props, caps, timbers, roof bolts, or other approved methods of roof
7 supports are furnished for the places where they are to be used and delivered at suitable points.
8 The mine foreman shall have all water drained or hauled out of the working places where
9 practicable, before the miners enter, and such working places shall be kept dry as far as
10 practicable while the miners are at work. It shall be the duty of the mine foreman to see that
11 proper crosscuts are made, and that the ventilation is conducted by means of such crosscuts
12 through the rooms by means of checks or doors placed on the entries or other suitable places,
13 and he or she shall not permit any room to be opened in advance of the ventilation current. The
14 mine foreman or other certified persons designated by him or her, shall measure the air current
15 with an anemometer or other approved device at least weekly at the inlet and outlet at or near the
16 faces of the advanced headings, and shall keep a record of such measurements in a book or
17 upon a form prescribed by the director. Signs directing the way to outlets or escapeways shall be
18 conspicuously placed throughout the mine.

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

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

27 to be performed.

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

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

12 (b) It is the duty of the mine foreman or the assistant mine foreman of every coal mine in
13 this state to see that every person employed to work in the mine is, before beginning work therein,
14 instructed in the particular danger incident to his or her work in the mine, and furnished a copy of
15 the mining laws and rules of the mine. It is the duty of every mine operator who employs
16 apprentices, as that term is used in sections three and four, article eight of this chapter to ensure
17 that the apprentices are effectively supervised with regard to safety practices and to instruct
18 apprentices in safe mining practices. Every apprentice shall work under the direction of the mine
19 foreman or his or her assistant mine foreman and they are responsible for his or her safety. The
20 mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an

21 experienced miner, but the foreman and his or her assistant mine foreman remain responsible for
22 the apprentice. During the first one hundred twenty days of employment in a mine, the apprentice
23 shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced
24 miner, and in a location that the mine foreman, assistant mine foreman or experienced miner can
25 effectively respond to cries for help of the apprentice. The location shall be on the same side of
26 any belt, conveyor or mining equipment. Any miner holding a certificate of competency and
27 qualification, assistant mine foreman, or mine foreman may have three persons working with him
28 or her under his or her supervision and direction, as apprentices, for the purpose of learning and
29 being instructed in the duties and calling of mining. However, a miner who holds a certificate of
30 competency and qualification, assistant mine foreman, or mine foreman supervising apprentices
31 in an area where no coal is being produced or which is outby the working section may have as
32 many as five apprentices under his or her supervision and direction, as apprentices for the
33 purpose of learning and being instructed in the duties and calling of mining or where the operator
34 is using a production section under program for training of apprentice miners, approved by the
35 board of miner training, education and certification.

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

45 permissible condition and maintained according to manufacturer's specifications.

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

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

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

1 (a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger
2 signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his
3 or her shift or prior to his or her entering the mine to make his or her examination and, except for
4 those persons already on assigned duty, no person except the mine owner, operator or agent,
5 and only then in the case of necessity, shall pass beyond this danger signal until the mine has
6 been examined by the fire boss or other certified person and the mine or certain parts thereof
7 reported by him or her to be safe. When reported by him or her to be safe, the danger sign or
8 color thereof shall be changed to indicate that the mine is safe in order that employees going on

9 shift may begin work. Each person designated to make the fire boss examinations shall be
10 assigned a definite underground area of the mine, and, in making his or her examination shall
11 examine all active working places in the assigned area and make tests with an approved device
12 for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test
13 the roof, face and ribs in the working places and on active roadways and travelways, approaches
14 to abandoned workings, accessible falls in active sections and areas where any person is
15 scheduled to work or travel underground. He or she shall place his or her initials and the date at
16 or near the face of each place he or she examines. Should he or she find a condition which he or
17 she considers dangerous to persons entering the areas, he or she shall place a conspicuous
18 danger sign at all entrances to the place or places. Only persons authorized by the mine
19 management may enter the places while the sign is posted and only for the purpose of eliminating
20 the dangerous condition. Upon completing his or her examination he or she shall report by
21 suitable communication system or in person the results of this examination to a ~~certified~~
22 competent person designated by mine management to receive and record the report, at a
23 designated station on the surface of the premises of the mine or underground, before other
24 persons enter the mine to work in coal-producing shifts. He or she shall also record the results of
25 his or her examination with ink or indelible pencil in a book prescribed by the director, kept for the
26 purpose at a place on the surface of the mine designated by mine management. All records of
27 daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.

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

33 deficiency and methane.

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

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

ROOF--FACE--RIBS

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

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

15 (b) The operator, in accordance with the approved plan, shall provide at or near each
16 working face and at such other locations in the coal mine, as the director may prescribe, an ample
17 supply of suitable materials of proper size with which to secure the roof thereof of all working

18 places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect
19 the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes
20 are being drilled, roof bolts are being installed and in such other circumstances as may be
21 appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or
22 supported. When overhangs or brows occur along rib lines they shall be promptly removed. All
23 sections shall be maintained as near as possible on center. Except in the case of recovery work,
24 supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set
25 temporary supports on a working section without the direct immediate supervision of a certified
26 miner.

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

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

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

40 ~~(f) The immediate supervisor of each miner who will be engaged in any activity involving~~
41 ~~the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those~~

42 ~~parts of the roof control plan relevant to the type of mining and roof control to be pursued by such~~
43 ~~miner. The time and parts of the plan reviewed shall be recorded in a log book kept for such~~
44 ~~purpose. Each log book entry so recorded shall be signed by such immediate supervisor making~~
45 ~~such entry. Before implementing an approved revision to a roof control plan, all persons who are~~
46 ~~affected by the revision shall be instructed in its provisions.~~

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

HOISTING

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

1 (a) The operator of every coal mine worked by shaft shall provide and maintain a metal
2 tube, telephone or other approved means of communication from the top to the bottom and
3 intermediate landings of such shafts, suitably adapted to the free passage of sound, through
4 which conversation may be held between persons at the top and at the bottom of the shaft; a
5 standard means of signaling; an approved safety catch, bridle chains, automatic stopping device,
6 or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting
7 persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of
8 every machine used to lower or hoist persons in such shaft. Such operator shall have the
9 machinery used for lowering and hoisting persons into or out of the mine kept in safe condition,
10 equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified

11 electrician. Where a hoisting engineer is required, he or she shall be readily available at all times
12 when men are in the mine. He or she shall operate the empty cage up and down the shaft at
13 least one round trip at the beginning of each shift; ~~and after the hoist has been idle for one hour~~
14 ~~or more before hoisting or lowering men~~; there shall be cut out around the side of the hoisting
15 shaft or driven through the solid strata at the bottom thereof, a traveling way, not less than five
16 feet high and three feet wide to enable a person to pass the shaft in going from one side of it to
17 the other without passing over or under the cage or other hoisting apparatus. Positive stop blocks
18 or derails shall be placed near the top and at all intermediate landings of slopes and surface
19 inclines and at approaches to all shaft landings. A waiting station with sufficient room, ample
20 clearance from moving equipment, and adequate seating facilities shall be provided where men
21 are required to wait for man trips or man cages, and the miners shall remain in such station until
22 the man trip or man cage is available.

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

35 operated cages, elevators, or platforms. Cages and elevators shall have an emergency power
36 source unless provided with other escapeway facilities.

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

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

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

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

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

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

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

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

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

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

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

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

39 (g) (1) A wireless emergency communication device approved by the director and provided
40 by the operator shall be worn by each person underground. The wireless emergency
41 communication device shall, at a minimum, be capable of receiving emergency communications

42 from the surface at any location throughout the mine. Each operator shall train each miner in the
43 use of the device and provide refresher training courses for all underground employees during
44 each calendar year. The operator shall install in or around the mine any and all equipment
45 necessary to transmit emergency communications from the surface to each wireless emergency
46 communication device at any location throughout the mine.

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

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

63 (2) Any person that, without the authorization of the operator or the director, knowingly
64 removes or attempts to remove any wireless tracking device or related equipment, approved by
65 the director, from a mine or mine site with the intent to permanently deprive the operator of the

66 device or equipment or knowingly tampers with or attempts to tamper with the device or equipment
 67 shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional
 68 facility for not less than one year nor more than ten years or fined not less than \$10,000 nor more
 69 than \$100,000, or both fined and confined.

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

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

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

NOTE: The purpose of this bill is to preserve employment and promote health and safety in the coal industry. The bill creates the 2016 Coal Jobs and Safety Act. The bill reorganizes the Office of Miners' Health, Safety and Training. The bill provides for appointment of deputy directors. The bill divide said Office into districts. The bill continues Board of Coal Mine Health and Safety within the Office of Miners' Health. The bill redefines qualifications for members of board. The bill abolishes coal mine safety and technical review committee. The bill provides for the promulgation of rules. The bill removes probationary period and permanent tenure for mine inspectors. The bill provides for mine inspectors, safety instructors, electrical inspectors and surface inspectors to serve at will and discretion of director, bar conflicts of interest. The bill changes requirements for requesting immediate inspection and require request in writing. The bill provides for representative of operator to accompany representative of director on inspections. The bill provide for findings, orders, notices. The bill removes requirement that entire mine be given closure order when director

determines area of imminent danger does not include entire mine. The bill provides all orders or decisions of director are subject to judicial review. The bill provides director must file civil actions in circuit court of county where mine located. The bill removes requirement that civil penalties be deposited in Special Health, Safety and Training Fund. The bill requires all working places be examined for hazards once per shift. The bill eliminates requirement that operator provide safety committee anonometers and smoke tubes. The bill provides for miners return to underground working areas if ventilation restored and mine determined to be safe. The bill changes spacing interval for hinged man doors. The bill increases maximum number of apprentices under supervision of trainer. The bill restricts authority of director to propose emergency rules. The bill eliminates requirement to use obsolete equipment. The bill changes who may receive fire boss report. The bill provides for instruction of persons affected by revisions to roof control plans. The bill eliminates requirement that man trip be idle one hour before transporting men. The bill requires filing of mine operator report with director quarterly.

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