# WEST VIRGINIA CODE CHAPTER 22A ARTICLE 7

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## §22A-7-1. Short title.

This article shall be cited as the West Virginia Miner Training, Education and Certification Act.

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

The Legislature hereby finds and declares that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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## §22A-7-3. Definitions.

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

"Board" means the Board of Coal Mine Health and Safety established by section four of this article.

"Mine" means any mine, including a "surface mine," as that term is defined in section three, article three, chapter twenty-two of this code, and in section two, article four of said chapter; and a "mine" as that term is defined in section two, article one of this chapter.

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

(a) The Board of Miner Training, Education and Certification is continued, and commencing July 1, 2010, is a separate independent board within the Department of Commerce. The board consists of six voting members and two ex officio, nonvoting members, who are selected in the following manner:

(1) One member shall be appointed by the Governor to represent the viewpoint of surface mine operators in this state. When such member is to be appointed, the Governor shall request from the major association representing surface coal operators in this state a list of three nominees to the board. The Governor shall select from said nominees one person to serve on the board. For purposes of this subsection, the major association representing the surface coal operators in this state is that association, if any, which represents surface mine operators accounting for over one half of the coal produced in surface mines in this state in the year prior to that year in which the appointment is made.

(2) Two members shall be appointed by the Governor to represent the interests of the underground operators of this state. When said members are to be appointed, the Governor shall request from the major association representing the underground coal operators in this state a list of six nominees to the board. The Governor shall select from said nominees two persons to serve on the board. For purposes of this subsection, the major association representing the underground operators in this state is that association, if any, which represents underground operators accounting for over one half of the coal produced in underground mines in this state in the year prior to that year in which the appointments are made.

(3) Three members shall be appointed by the Governor who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee organization of each district shall, upon request by the Governor, submit a list of three nominees for membership on the board. If such major employee organization is not so divided into administrative districts, such employee organization shall, upon request by the Governor, submit a list of twelve nominees for membership on the board. The Governor shall make such appointments from the persons so nominated: Provided, That in the event nominations are made by administrative districts, not more than one member shall be appointed from the nominees of any one district unless there are less than three such districts in this state.

(4) The Director of the Office of Miner's Health, Safety and Training or his or her designee, and the Health and Safety Administrator of the Board of Coal Mine Health and Safety shall serve as ex officio, nonvoting members.

(5) All appointments made by the Governor under this section shall be with the advice and consent of the Senate: Provided, That persons so appointed while the Senate of this state is

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not in session are permitted to serve up to one year in an acting capacity, or until the next session of the Legislature, whichever is less.

(b) The board shall be appointed by the Governor. Members serving on the effective date of this article may continue on the board until their terms expire. Appointed members serve for a term of three years. The board shall meet at the call of the chair, at the call of the director, or upon the request of any two members of the board: Provided, That no meeting of the board for any purpose shall be conducted unless the board members are notified at least five days in advance of a proposed meeting. In cases of an emergency, members may be notified of a board meeting by the most appropriate means of communication available.

(c) Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy nominations shall be submitted to the Governor within thirty days after the vacancy occurs. The vacancy shall be filled by the Governor within thirty days of receipt of the list of nominations.

(d) Each appointed member of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Any such amounts shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly certified by such members of the board.

(e) A quorum of the board is four members, with two representing the viewpoint of the operators and two representing the viewpoint of the labor organization. The board may act officially by a majority of those members who are present. No vote of the board may be taken unless all six voting members are present.

(f) In performing its functions, the board shall have access to the services of the Board of Coal Mine Health and Safety. The Board of Coal Mine Health and Safety shall provide administrative support and assistance, pursuant to section six, article six of this chapter, to enable the board to carry out its duties.

(g) Appropriations to the board to effectuate the purposes of this article shall be made to a budget account established for that purpose.

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

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

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

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

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

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

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

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

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

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

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

The Board of Coal Mine Health and Safety is directed to conduct a study of the overall program of education, training and examination associated with the various miner specialties requiring certification under this article or any other provision of this code. The study shall identify ways to enhance miner education and training to adequately reflect technological advances in coal mining techniques and best practices used in modern coal mines, and improve supervision of apprentice miners. Furthermore, the board shall place particular emphasis in its study on ways to improve education and training in the areas of proper mine ventilation, methane monitoring and equipment deenergization, fire-boss procedures and overall core mining competencies.

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## §22A-7-6. Duties of the director and office.

The director shall propose rules for legislative approval, pursuant to chapter twenty-nine-a of this code, that are necessary to establish a program to implement the provisions of this article. Such program shall include, but not be limited to, implementation of a program of instruction in each of the miner occupational specialties and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction which he or she is required to have prior to the receipt of a certificate.

The director is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education and such other persons as may be available in implementing the program of instruction and examinations.

The director may, at any time, make such recommendations to the board as he or she may deem appropriate.

The director shall supply any information upon request of the board as long as the information is not in violation of any other laws.

The director is authorized and directed to utilize such state and federal moneys and personnel as may be available to the office for educational and training purposes in the implementation of the provisions of this article.

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

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

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

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

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

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

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

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

(4) Selected policies and memoranda of the Office of Miners' Health, Safety and Training, the Board of Coal Mine Health and Safety, and from any safety analysis performed by the company;

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

(6) The board shall solicit input from mining companies on the substance of the training and discuss how the training shall be scheduled during the year.

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

(f) A mine foreman-fire boss who fails to complete the requirements of this section shall have his or her certification suspended pending completion of the continuing education requirements. During the pendency of the suspension, the individual may not perform statutory duties assigned to a mine foreman-fire boss under West Virginia law. The office

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shall send notice of any suspension to the last address the certified mine foreman-fire boss reported to the director. If the requirements are not met within two years of the suspension date, the director may file a petition with the Board of Appeals pursuant to the procedures set forth in section thirty-one, article one of this chapter and, upon determining that the requirements have not been met, the Board of Appeals may revoke the mine foreman-fire boss' certification, which shall not be renewed except upon successful completion of the examination prescribed by law for mine foremen-fire bosses or upon completion of other training requirements established by the board: Provided, That an individual having his or her mine foreman-fire boss certification suspended pursuant to this section who also holds a valid mine foreman-fire boss certification from another state may have the suspension lifted by completing training requirements established by the board.

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

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

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