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**WEST VIRGINIA CODE CHAPTER 22a**  
**ARTICLE 1**

WV Legislature

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

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

(b) The division of health, safety and training shall have as its purpose the supervision of the execution and enforcement of the provisions of this chapter and, in carrying out the aforesaid purposes, it shall give prime consideration to the protection of the safety and health of persons employed within or at the mines of this state. In addition, the division shall, consistent with the aforesaid prime consideration, protect and preserve mining property and property used in connection therewith.

**§22A-1-2. Definitions.**

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

(a) General. —

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

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

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

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

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

(6) Mine: The term “mine” includes the shafts, slopes, drifts, or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

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

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

(9) Permissible: The term “permissible” means any equipment, device, or explosive that has been approved as permissible by the federal Mine Safety and Health Administration and/or the United States Bureau of Mines and meets all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by that agency or the bureau.

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

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

(b) Office of Miners’ Health, Safety and Training. —

(1) Board of appeals: The term “board of appeals” means as provided for in §22A-5-1 *et seq.* of this code.

(2) Director: The term “director” means the Director of the Office of Miners’ Health, Safety, and Training provided for in §22A-1-3 of this code.

(3) Mine inspector: The term “mine inspector” means a state mine inspector provided for in §22A-1-8 of this code.

(4) Office: The term “office” means, when referring to a specific office, the Office of Miners’ Health, Safety, and Training provided for in this article. The term “office”, when used generically, includes any office, board, agency, unit, organizational entity, or component thereof.

(c) Mine areas. —

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

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

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

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

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

(6) Mechanical working section: The term “mechanical working section” means an area of a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working places that are generally contiguous; and (C) which is of such size to permit necessary supervision during shift operation, including pre-shift and on-shift examinations and tests required by law.

- (7) Panel: The term “panel” means workings that are or have been developed off of submain entries which do not exceed 3,000 feet in length.
- (8) Return air: The term “return air” means a volume of air that has passed through and ventilated all the working places in a mine section.
- (9) Shaft: The term “shaft” means a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals and material, in connection with the mining of coal.
- (10) Slope: The term “slope” means a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.
- (11) Working face: The term “working face” means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.
- (12) Working place: The term “working place” means the area of a coal mine in by the last open crosscut.
- (13) Working section: The term “working section” means all areas of the coal mine from the loading point of the section to and including the working faces.
- (14) Working unit: The term “working unit” means an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a single loading machine; a continuous mining unit by a single continuous mining machine, which is comprised of a number of working places.
- (d) Mine personnel. —
- (1) Assistant mine foreman: The term “assistant mine foreman” means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.
- (2) Certified electrician: The term “certified electrician” means any person who is qualified as a mine electrician and who has passed an examination given by the office, or has at least three years of experience in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a non-coal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the office or any person who is qualified as a mine electrician in any state that recognizes certified electricians licensed in West Virginia.
- (3) Certified person: The term “certified person”, when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, means a person who is qualified under the provisions of this law to perform such duty.

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

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

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

(7) Shot firer: The term “shot firer” means any person having had at least two years of practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering, and who has demonstrated his or her knowledge of mine gases, and approved gas detecting devices by examination and certification given him or her by the office.

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

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

(e) Electrical. —

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

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

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

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

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

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

(7) Effectively grounded: The term “effectively grounded” is an expression which means

grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits, or systems so grounded.

(8) Flame-resistant cable, portable: The term “flame-resistant cable, portable” means a portable flame-resistant cable that has passed the flame tests of the federal Mine Safety and Health Administration.

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

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

(11) High voltage: The term “high voltage” means voltages of more than 1,000 volts.

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

(13) Low voltage: The term “low voltage” means up to and including 660 volts.

(14) Medium voltage: The term “medium voltage” means voltages from 661 to 1,000 volts.

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

(16) Neutral (derived): The term “neutral (derived)” means a neutral point or connection established by the addition of a “zig-zag” or grounding transformer to a normally underground power system.

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

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

(19) Wye-connected: The term “wye-connected” means a power system connection in which one end of each phase windings or transformers or a.c. generators are connected together to

form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.

(20) Zig-zag transformer (grounding transformer): The term “zig-zag transformer (grounding transformer)” means a transformer intended primarily to provide a neutral point for grounding purposes.

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

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

(b) The director is the chief executive officer of the office. Subject to provisions of law, he or she shall organize the office into those offices, sections, agencies and other units of activity found by the director to be desirable for the orderly, efficient and economical administration of the office. The director may appoint any other employees needed for the operation of the office and may prescribe their powers and duties and fix their compensation within amounts appropriated.

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

(d) The Director of the Office of Miners' Health, Safety and Training shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years' education or training in underground mining safety, and three years' experience in underground mining and shall have at least three years of experience in a position of responsibility in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. Special reference shall be given to his or her administrative experience and ability. The director shall devote all of his or her time to the duties of the position of director and shall not be directly interested financially in any mine in this or any other state nor shall the director, either directly or indirectly, be a majority owner of, or have control of or a controlling interest in, a mine in this or any other state. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee: Provided, That, in the event of a vacancy in the position of director, the Governor may fill the director's position on an interim basis by appointing an acting director to exercise the powers of the director. The acting director shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years' education, training or experience in underground coal mining safety and shall have at least three years of experience in a position of responsibility in at least one discipline relating to the duties and responsibilities for which the acting director will be responsible during his or her interim service in the office of director. The interim service appointment cannot last for more than one year, after which a permanent director must be appointed.

(e) The director shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of his or her official duties, the director shall take the oath required of public officials prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the

Governor, in the penal sum of \$10,000. The executed oath and bond shall be filed in the Office of the Secretary of State. Premiums on the bond shall be paid from office funds.

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

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

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

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

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

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

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

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

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

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

(8) Make annually a full and complete written report of the administration of the office to the Governor and the Legislature of the state for the year ending June 30. The report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (excluding oil and gas) produced in the state, the number of individuals employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the office from all sources identifying each source of the funds, the expenditures of the office, the surplus or deficit of the office at the beginning and end of the year, the amount of fines collected, the amount of

finer imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the office, the number of inspections made by each inspector, the number and type of violations found by each inspector. However, no inspector may be identified by name in this report. Such reports shall be filed with the Governor and the Legislature on or before December 31 of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Coal Mine Safety and Technical Review Committee established pursuant to article six of this chapter; and

(3) The Board of Appeals provided for pursuant to the provisions of article five of this chapter.

(b) Nothing in this article may authorize the director or the secretary of the Department of Commerce, Labor and Environmental resources to alter, discontinue or abolish any office, board or commission or the functions thereof, which are established by status.

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

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

**§22A-1-7. Savings provisions.**

All orders, determinations, rules, permits, grants, contracts, certificates, licenses and privileges which have been issued, made, granted, or allowed to become effective by the Governor, any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which were transferred from the Division of Energy to the Secretary of the Department of Commerce, Labor and Environmental Resources, to the director, or to the office, and which were in effect on the date such transfer occurred, shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked in accordance with law by the Governor, the secretary, the director, or other authorized official, a court of competent jurisdiction or by operation of law.

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

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

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

(2) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

Each original appointment shall be made by the director for a probationary period of not more than one year.

(3) The director shall prepare a register of qualified eligible candidates for mine inspector. Candidates shall be selected from the register. In the event the number of qualified eligible candidates on the register is three or fewer, the director shall undertake efforts to develop a new register containing more than three qualified eligible candidates.

(4) The director shall make each appointment from among the three candidates on the register having the highest grades. The director may, for good cause and at least 30 days prior to making an appointment, strike any candidate from the register. The director shall immediately notify the candidate in writing of their removal. Upon his or her written request, the candidate can be placed back upon the register. Such a request may not be unreasonably denied by the director.

(5) The name of any candidate passed over for appointment for three years shall be deleted from the register.

(b) After having served for a probationary period of one year to the satisfaction of the director, a mine inspector is eligible for permanent tenure, subject to dismissal only for cause in accordance with the applicable provisions of §22A-1-12 of this code. A mine inspector, while in office, may not be directly or indirectly interested as an employee, owner, lessor, operator, stockholder, superintendent, or engineer of any coal mine. Before entering upon the discharge of the duties as a mine inspector, he or she shall take the oath of office

prescribed by Section 5, Article IV of the Constitution of West Virginia, a certificate of which oath shall be filed in the office of the Secretary of State.

(c) The inspectors, inspectors-at-large, and assistant inspectors-at-large, together with the director, shall make all inspections authorized by this article and §22A-2-1 *et seq.* of this code and shall perform such other duties as are imposed upon mine inspectors by this chapter and by any applicable legislative rules.

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

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

(b) To be eligible for employment as a mine safety instructor, the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits;

(2) Have had at least five years of practical experience in coal mines, at least two of which have been in mines in this state: *Provided*, That graduation from any accredited college of mining engineering may be considered equivalent to two years of practical experience;

(3) Have had practical experience with dangerous gases found in coal mines, and have good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices, and applicable mining laws and rules; and

(4) Hold a West Virginia foreman-fireboss certification; or have at least three years of experience as an actual working team member of a mine rescue team; or have at least three years of experience as a member of a first aid team or emergency medical technician team; or have had at least three years of experience as the safety director; or have had at least three years of experience as an active member of a mine safety committee.

For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced miner prior to actually performing such duties.

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

(1) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

(2) If the director finds after investigation and examination that an applicant: (A) Is eligible for appointment; and (B) has passed each required examination with a grade of at least 75 percent or an overall combined average score of 80 percent, the director shall add the applicant's name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

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

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

**§22A-1-10. Mine inspectors may be appointed to fill vacancy in division.**

Notwithstanding any other provisions of law, if a vacancy occurs in any appointive position within the office, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position by the director.

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

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

(b) To be eligible for employment as an electrical inspector, the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits; and

(2) Have had five years of practical electrical experience in coal mines, at least two of which were in mines in this state, or a degree in electrical engineering from an accredited electrical engineering school and three years of practical electrical experience in underground coal mining. For the purposes of this section, practical electrical experience means the performance of duties requiring a person to be a certified electrician, as that term is defined in §22A-1-2(d)(2) of this code, prior to actually performing such duties.

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

(2) If the director finds after investigation and examination that an applicant: (A) Is eligible for appointment; and (B) has passed the required examinations with an average grade of at least 90 percent, the director shall add the applicant's name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(3) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

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

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

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

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

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

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits;

(2) Have had at least five years of practical experience in coal mines, at least two of which have been in mines of this state: *Provided*, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience;

(3) Have had practical experience with dangerous gases found in coal mines; and

(4) Have good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices, and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced underground miner prior to actually performing such duties.

(c) In order to qualify for appointment as an underground mine inspector, an eligible applicant shall submit to written, oral, and practical examinations administered by the director and furnish evidence of good health, character, and other facts establishing eligibility as the director may require. The examinations shall relate to the duties to be performed by an underground mine inspector and are subject to the approval of the director. If the director finds after investigation and examination that an applicant: (1) Is eligible for appointment; and (2) has passed each required examination, with a grade of at least 75 percent or an overall combined average score of 80 percent, the director shall add the applicant's name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(d) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(1) Any such appointment; and

(2) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

(e) Underground mine inspectors shall be paid an annual salary of not less than \$38,160;

assistant inspectors-at-large, not less than \$44,448; and inspectors-at-large, not less than \$46,104, each of which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. In accordance with established rules of the state's Travel Management Office, underground mine inspectors shall also be allowed and paid expenses necessarily incident to the performance of their official duties.

Reimbursement for expenses may be made only upon the timely submission of a properly itemized expense account settlement completed by the underground mine inspector, approved and countersigned by the director, or his or her designee, verifying that the expenses were actually incurred in the performance of official duties. Underground mine inspectors shall devote all of their time to the duties of the office and shall be afforded compensatory time or compensation of at least the regular rate for all time in excess of 40 hours per week.

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

(2) The director may remove an underground mine inspector at any time for the reasons set forth in §22A-1-12(e)(1) of this code. Upon such removal, the inspector shall be provided a written notice of removal, describing any causes for removal and setting forth with particularity the facts on which the removal was based. Not less than 20 reputable citizens, who are operators or employees in mines in this state, may petition the director for the removal of an underground mine inspector. If the petition is verified by at least one of the petitioners, based on actual knowledge of the affiant of the alleged facts, which, if true, warrant the removal of the inspector, the director shall cause an investigation of the alleged facts to be made. If, after the investigation, the director finds that there is substantial evidence that warrants removal of the inspector, the director shall remove the inspector and provide him or her a written notice of removal, describing any causes for removal and setting forth with particularity the evidence found in the investigation. In all cases of removal, the inspector may request, in writing, a hearing before the Board of Coal Mine Health and Safety within 15 days of receipt of the notice of removal. The director shall provide the inspector written notice of the right to a hearing in the notice of removal.

(3) If the inspector requests a hearing in writing, the board shall promptly schedule a hearing and provide notice to the inspector of the time and place for such hearing, at which time and place the board shall hear all evidence offered in support of the removal and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at the hearing. A continuance may not be granted except for good cause shown. The administrator of the board, or in their absence a member of the board designated by the board, has the power to administer oaths and subpoena witnesses.

(4) If any removed mine inspector requests a hearing and thereafter willfully refuses or fails to appear before the board, or having appeared, refuses to answer under oath any relevant question on the basis that the testimony or answer might incriminate him or her or refuses

to waive immunity from prosecution because of any relevant matter about which the inspector may be asked to testify, then the inspector shall forfeit his or her position.

(5) If the inspector fails to request a hearing in writing, or after requesting a hearing in writing and such hearing having been held, the board finds that the inspector should be removed based on a preponderance of the evidence, the board shall enter an order to that effect. Should the board find that the inspector should not have been removed, the inspector shall be reinstated. The decision of the board is final and is not subject to judicial review.

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

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

(b) To be eligible for employment as a surface mine inspector the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation and of temperate habits;

(2) Have had at least five years of practical experience in coal mines, at least two of which have been on surface mines in this state: *Provided*, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience; and

(3) Have good theoretical and practical knowledge of surface mines, surface mining methods, sound safety practices, and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced surface miner prior to actually performing the duties.

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

(1) If the director finds after investigation and examination that an applicant:: (A) Is eligible for appointment; and (B) has passed each required examination with a grade of at least 75 percent, or an overall combined average score of 80 percent, the director shall add the applicant's name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(2) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

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

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

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

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

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

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

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

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

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

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

of a certified person.

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

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

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

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

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

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

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

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

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

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

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

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

(F) Any mitigating circumstances.

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

(d) All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not for more than the balance of the shift. If the order is not terminated prior to the next working shift, all the employees on that shift who are idled by the order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of the shift.

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

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

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

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

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

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

(g) Each notice or order issued under this section shall be given promptly to the operator of

the coal mine or the operator's agent by an authorized representative of the director issuing the notice or order and all the notices and orders shall be in writing and shall be signed by the representative and posted on the bulletin board at the mine.

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

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

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

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

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

**§22A-1-16. Powers and duties of electrical inspectors as to inspections, findings and orders; reports of electrical inspectors.**

In order that the electrical inspector may properly perform the duties required of him or her, he or she shall devote his or her whole time and attention to the duties of the office, and the inspector has the right to enter any coal mine for the purpose of inspecting electrical equipment, and if he or she finds during an inspection any defects in the electrical equipment which are covered by law and may be detrimental to the lives or health of the workmen, the inspector has the authority to order the operator, in writing, to remedy such defects within a prescribed time, and to prohibit the continued operation of such electrical equipment after such time, unless such defects have been corrected.

The electrical inspector shall examine each mine in his or her division at least once each year or as often as the director may deem necessary.

It is the duty of the electrical inspector, after completing the examination of a mine, to prepare a report describing his or her findings in said mine in a manner and form designated by the director. The original report shall be forwarded to the operator or the operator's representative whose duty it is to post it in some conspicuous place open to examination by any interested person or persons. The report shall show the date of inspection, a list of equipment, and any other information that the director may deem necessary.

**§22A-1-17. Review of orders and notices by the director.**

(a) (1) An operator, issued an order pursuant to the provisions of section fifteen of this article, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the director for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. An operator, issued a notice pursuant to subsection (b), section fifteen of this article, or any representative of miners in any mine affected by such notice, may, if the operator believes that the period of the time fixed in such notice for the abatement of the violation is unreasonable, apply to the director for review of the notice within thirty days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. Upon receipt of such application, the director shall cause such investigation to be made as the director deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine to present information relating to the issuance and continuance of such order or the modification or termination thereof or to the time fixed in such notice. The filing of an application for review under this law does not operate as a stay of any order or notice.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing.

(b) Upon receiving the report of such investigation, the director shall make findings of fact, and issue a written decision, incorporating therein an order vacating, affirming, modifying or terminating the order, or the modification or termination of such order, or the notice complained of and incorporate findings therein.

(c) In view of the urgent need for prompt decision of matters submitted to the director under this law, all actions which the director takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of the issues involved.

(d) Pending completion of the investigation required by this section, the applicant may file with the director a written request that the director grant temporary relief from any modification or termination of any order, or from any order issued under section fifteen of this article, except an order issued under section sixteen of this article, together with a detailed statement giving reasons for granting such relief. The director may grant such relief, under such conditions as he or she may prescribe, if:

(1) A hearing has been held in which all parties were given an opportunity to be heard;

(2) The applicant shows that there is substantial likelihood that the findings of the director will be favorable to the applicant; and

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

No temporary relief shall be granted in the case of a notice issued under section fifteen of this article.

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**§22A-1-18. Posting of notices, orders and decisions; delivery to agent of operator; names and addresses to be filed by operators.**

(a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine, and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices, orders and decisions required by this law or rule to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice, order or decision required by this law to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or the operator's agent.

(b) The director shall cause a copy of any notice, order or decision required by this law to be given to an operator to be mailed immediately to a representative of the miners. Such notice, order or decision shall be available for public inspection.

(c) In order to ensure prompt compliance with any notice, order or decision issued under this law, the authorized representative of the director may deliver such notice, order or decision to an agent of the operator and such agent shall immediately take appropriate measures to ensure compliance with such notice, order or decision.

(d) Each operator of a coal mine shall file with the director the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the director. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order or decision issued under this law affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the director the name and address of such person and the name and address of a principal official of such person who has overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection does not make such official subject to any penalty under this law.

**§22A-1-19. Judicial review.**

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

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

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

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

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

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

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

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

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

**§22A-1-20. Injunctions.**

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

**§22A-1-21. Penalties.**

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

(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of §29A-3-1 et seq. of this code.

(3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (4) of this subsection which shall not be more than \$250 for each occurrence of the violation. Any miner issued a violation under this subsection shall either appeal the violation or pay the civil penalty within 30 days after receipt of the violation. Any violation not appealed or paid within 30 days shall become delinquent.

Any civil penalty that becomes delinquent on or after July 1, 2019, and has not been paid shall be deemed a failure by the miner to perform a duty mandated pursuant to this article for purposes of §22A-1-31 of this code.

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

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as

modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under §22A-1-20 of this code and, upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this subdivision.

(b) (1) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under §22A-1-15 of this code, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under §22A-1-22(a) or §22A-1-22(b) of this code, shall be assessed a civil penalty by the director under subdivision (5), subsection (a) of this section of not more than \$5,000 and for a second or subsequent violation assessed a civil penalty of not more than \$10,000, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2) of this subsection.

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

- (A) Violations involving fatalities and serious injuries;
- (B) Failure or refusal to comply with any order issued under §22A-1-15 of this code;
- (C) Operation of a mine in the face of a closure order;
- (D) Violations involving an imminent danger;
- (E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or
- (F) A discrimination violation under §22A-1-22 of this code.

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

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated

in a final decision issued under this law, except an order incorporated in a decision issued under §22A-1-22(a) or §22A-1-22(b) of this code, any director, officer, or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

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

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

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

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

**§22A-1-22. Discrimination.**

(a) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that the person believes or knows that such miner or representative: (1) Has notified the director, his or her authorized representative, or an operator, directly or indirectly, of any alleged violation or danger; (2) has filed, instituted or caused to be filed or instituted any proceeding under this law; (3) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this law. No miner or representative shall be discharged or in any other way discriminated against or caused to be discriminated against because a miner or representative has done subdivision (1), (2) or (3) above.

(b) Any miner or a representative of miners who believes that he or she has been discharged or otherwise discriminated against, or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order, may, within thirty days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Mailing of the notice of hearing to the charged party at the party's last address of record as reflected in the records of the office is adequate notice to the charged party. Such notice shall be by certified mail, return receipt requested. Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision within forty-five days, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his or her former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there was no such violation, it shall issue an order denying the application. Such order shall incorporate the board's finding therein. If the proceedings under this section relative to discharge are not completed within forty-five days of the date of discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the miner the board shall not reinstate the miner until the final determination.

(c) Whenever an order is issued under this section, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses including the attorney's fees as determined by the board to have been reasonably incurred by the applicant for, or in

connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

WV Legislature

**§22A-1-23. Records and reports.**

In addition to such records as are specifically required by this law, every operator of a coal mine shall establish and maintain such records, make such reports and provide such information, as the director may reasonably require, from time to time, to enable the director to perform his or her functions under this law. The director is authorized to compile, analyze and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this law, all records, information, reports, findings, notices, orders or decisions required or issued pursuant to or under this law may be published, from time to time, may be released to any interested person and shall be made available for public inspection.

**§22A-1-24. Mine foreman examiner for mine foremen-fire bosses and assistant mine foremen-fire bosses; salary.**

The director shall appoint a mine foreman examiner to examine and certify mine foremen-fire bosses, assistant mine foremen-fire bosses and mine examiners or fire bosses. Such mine foremen examiners shall be paid a minimum salary of \$31,032 per year.

WV Legislature

**§22A-1-25. Duties of mine foreman examiner.**

The duties of the mine foreman examiner are to:

- (a) Prepare and conduct examinations of mine foremen, assistant mine foremen and fire bosses;
- (b) Prepare and certify to the director a register of all persons who successfully completed the examination with a passing grade of eighty percent.

**§22A-1-26. Place and time for examinations.**

The director shall determine the location where the mine foreman examiner shall meet for the purpose of holding examinations and at least two weeks' notice of the time and place where the examinations are to be held shall be given.

The examinations shall be given at any location where there are at least five men to be tested and adequate facilities to conduct such examination. The office of the secretary to the mine foreman examiner shall be located in the capitol complex in Charleston. All records pertaining to the examinations shall be kept at such office.

**§22A-1-27. Preparation of examinations; notice of intention to take examination; investigation of applicants.**

The mine foreman examiner shall, with the approval of the director, prepare and, from time to time, modify examinations to be administered applicants for certification as mine foremen and fire bosses.

All persons who desire to appear for examination shall notify the mine foreman examiner of their intentions to appear, if possible, not less than ten days prior to the date set for the examination. The mine foreman examiner shall inquire into the character and qualifications of the applicants who present themselves for examination.

**§22A-1-28. Certificates of qualification heretofore granted.**

Certificates of qualification of service heretofore granted shall have equal value with certificates of qualifications granted under this law.

WV Legislature

**§22A-1-29. Mine foreman examiner to certify successful applicants to director.**

The mine foreman examiner shall certify to the director, on a form furnished by the director, every person whose examination shall disclose the person's fitness for the duties of mine foreman, assistant mine foreman and fire boss, as above classified, and the director shall prepare certificates of qualification for the successful applicants and send them to the mine foreman examiner for distribution.

**§22A-1-30. Record of examination.**

The mine foreman examiner shall send to the director the answers and all other papers of the applicants, together with the tally sheets and a list of the questions and answers as prepared by the mine foreman examiner which shall be filed in the office as public documents.

WV Legislature

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

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

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

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

The board of appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the

Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet based program in lieu of physically attending the hearing.

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

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

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

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

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

**§22A-1-32. Certification of mine foreman or assistant mine foreman whose license to engage in similar activities suspended in another state.**

Any person whose license, certificate or similar authority to perform any supervisory or fire boss duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.

WV Legislature

**§22A-1-33. Mine rescue stations; equipment.**

The director is hereby authorized to purchase, equip and operate for the use of said office such mine rescue stations and equipment as he or she may deem necessary.

WV Legislature

**§22A-1-34. Mine rescue crews.**

The director is hereby authorized to have trained and employed at the rescue stations, operated by the office within the state, such rescue crews as he or she may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of \$32 per month, and captains shall receive \$35 per month, payable on requisition approved by the director. The director may remove any member of a rescue crew at any time.

**§22A-1-35. Mine rescue teams.**

(a) The operator shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

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

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

(3) A West Virginia Office of Miners' Health, Safety, and Training Mine Rescue Team shall serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4) for all mines with no backup team available within a one-hour drive to the mine. The operator shall contact the office and notify them of the need for mine rescue services beginning July 1, 2019. The director shall utilize surplus funds from the West Virginia Office of Miners' Health, Safety, and Training's special revenue fund to provide backup mine rescue services.

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

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

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than 70 mines within the two-hour ground travel limit as defined in this subsection.

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

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

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

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

(i) Upon completion of the initial training, all mine rescue team members shall receive at least 40 hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

- (1) Sessions underground at least once every six months;
- (2) The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;
- (3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus; and
- (4) Mine map training and ventilation procedures.

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

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

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

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

(3) The mine operator shall provide two-way communication and a lifeline or its equivalent at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than 1,000 feet in by the fresh air base: Provided, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine

rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: Provided, however, That the mine operator shall provide a lifeline or its equivalent in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member's breathing apparatus depletes to 60 atmospheres, or its equivalent.

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

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

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

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

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

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

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

(7) Two oxygen indicators;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least 1,000 feet in length; and

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

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing

apparatuses shall inspect and test the apparatuses at intervals not exceeding 30 days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

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

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with §22A-1-15 of this code.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have 24 hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within 30 days of the effective date of this statute: Provided, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator's mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

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

**§22A-1-36. Mandatory safety programs; penalties.**

(a) The director, in consultation with the state Board of Coal Mine Health and Safety, shall promulgate rules in accordance with §29A-1-1 et seq. of this code, detailing the requirements for mine safety programs to be established by coal operators, as provided in §22A-1-36(b) of this code. The rules may require different types of safety programs to be developed, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, or any other factor deemed relevant by the director.

(b) Within six months of the date when the rules required in §22A-1-36(a) of this code become final, each operator shall develop and submit to the director a comprehensive mine safety program for each mine, in accordance with such rules. Each employee of the mine shall be afforded an opportunity to review and submit comments to the director regarding the modification or revision of such program, prior to submission of such program to the director. Upon submission of such program the director has 90 days to approve, reject, or modify such program. If the program is rejected, the director shall give the operator a reasonable time to correct and resubmit such program. An up-to-date copy of each program shall be placed on file in the office and further copies shall be made available to the miners of each mine and their representatives. Each operator shall undertake all efforts necessary to assure total compliance with the appropriate safety program at each mine and shall fully implement all portions of such program. Once approved, a comprehensive mine safety program shall not be subject to annual review by the director: Provided, That a program may be subject to annual review by the director after a fatality or serious accident involving bodily harm has occurred, or, if the operator has shown a pattern of mine safety violations as defined by §22A-1-15(2) of this code, such a finding shall also warrant annual review by the director. The director shall promulgate emergency rules in order to comply with this subsection.

(c) Any person violating any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

**§22A-1-37. Certification of surface mine foremen.**

(a) In every surface mine, regulated under the provisions of article three or four, chapter twenty-two of this code, where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article seven of this chapter as a mine foreman. Each applicant for certification as a mine foreman shall, at the time of issuance of a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had at least three years' experience in surface mining, which shall include at least eighteen months' experience on or at a working section of a surface mine, or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had at least two years' practical experience in a surface mine, which shall include at least eighteen months' experience on or at a working section of a surface mine; and (3) have demonstrated knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, state and federal mining laws and regulations and other subjects, by completing such training, education and examinations as may be required under article seven of this chapter.

(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one person, one or more assistant mine foreman may be designated. Such persons shall act under the instruction of the mine foreman who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article seven of this chapter. Each applicant for certification as assistant mine foreman shall, at the time of issuance of a certificate of competency, possess all of the qualifications required of a mine foreman: Provided, That at the time of certification the person is required to have at least two years' experience in surface mining, which shall include eighteen months on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had twelve months' practical experience in a surface mine, all of which shall have been on or at a working section.

(c) The director shall promulgate such rules as may be necessary to carry out the provisions of this section.

**§22A-1-38. Applicability and enforcement of laws safeguarding life and property; rules; authority of director regarding enforcing safety laws.**

All provisions of this chapter intended to safeguard life and property shall extend to all surface-mining operations, regulated under articles three and four, chapter twenty-two of this code, insofar as such laws are applicable thereto. The director shall promulgate reasonable rules in accordance with the provisions of chapter twenty-nine-a of this code to protect the safety of those employed in and around surface mines. The enforcement of all laws and rules relating to the safety of those employed in and around surface mines is hereby vested in the director and shall be enforced according to the provisions of this chapter.

**§22A-1-39. Reciprocity of mine foreman certification and experienced miner certification.**

(a) Beginning April 1, 1999, and notwithstanding any other provisions in this code to the contrary, the director, in consultation with the board of miner training, education and certification, established pursuant to the provisions of article seven of this chapter, shall make reciprocity of mine foreman certification and experienced miner certification available to any person certified by a state which accepts West Virginia's mine foreman or experienced miner certifications, if that state's qualifications, examination and certification criteria are substantially equivalent to those utilized by this state.

(b) A person requesting either of these certifications by reciprocity shall submit photographic identification, a current copy of his or her certification card or certificate, verifiable documentation of all degrees held, continuing education successfully completed, and documentation of other training, if required for the certification, and shall also comply with any other criteria as the director, in consultation with the board of miner training, education and certification, may reasonably require from time to time to effectively carry out the provisions of this section: Provided, That the criteria shall include, but is not limited to, the following minimum requirements: (1) When a reciprocity agreement applicable to mine foreman certification has been established with another state, any applicant holding a mine foreman certificate from that state shall take the component of the West Virginia mine foreman certification examination that pertains only to specific West Virginia mining laws and rules and shall pass the examination with a score of at least eighty percent prior to being issued a West Virginia mine foreman certificate; (2) when a reciprocity agreement applicable to experienced miner certification has been established with another state, any applicant holding an experienced miner's certificate from that state shall receive hazard training in accordance with provisions contained in 30 CFR Part 48.11 if the applicant is an underground miner, or in accordance with the provisions contained in 30 CFR Part 48.31 if the applicant is a surface miner, and shall receive instruction in West Virginia mining laws and rules pertinent to any duties that are or will be assigned the miner prior to the miner performing any duties; and (3) records of all training and instruction shall be kept in a book provided exclusively for that purpose which shall be made available upon request to an authorized representative of the director and to authorized representatives of miners in or at the mine.

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

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

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

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

**§22A-1-41. The Coal Jobs and Safety Act of 2015; legislative findings.**

(a) Legislative findings. --

(1) In the past six years, West Virginia's coal industry has been battered by constant judicial and regulatory assaults, which have disproportionately raised the cost of mining coal in West Virginia compared with production costs in other coal producing states. These increased costs of production have caused West Virginia coal to become uncompetitive with other coals in the declining worldwide and domestic coal markets.

(2) Coal production in West Virginia has fallen from one hundred sixty-five million tons in 2008 to approximately one hundred fifteen million tons in 2014, a decline of thirty-one percent. Much of this decline has been concentrated in the southern coalfields.

(3) The number of active mines producing coal has decreased by more than fifty-three percent, from two hundred fifty-nine in 2008 to just one hundred twenty-one today.

(4) During that same period, direct coal mining employment has decreased by approximately four thousand jobs, from a high of twenty-two thousand three hundred thirty-six in 2011 to just eighteen thousand two hundred today, a decline of nineteen percent.

(5) When the coal-related jobs multiplier, established by the West Virginia University and Marshall University Colleges of Business, 2010 Joint Economic Impact Report, is factored in the total direct and indirect jobs impact on the West Virginia economy shows a twenty thousand six hundred eighty-job decline in mining and mine-dependent employment in the state from one hundred thousand eleven six hundred eighty in 2011 to ninety-one thousand today. The impact of this damage to the West Virginia economy is demonstrated by the rapid rise of unemployment in the coalfields with some counties now reporting an unemployment rate of more than ten percent.

(6) The economic stress to the coal industry and to the state as a whole is evident in the estimated loss of nearly \$300 million in direct mining wages paid since 2011. This loss is exponentially higher when you factor in indirect wages lost as mining support jobs decline.

(7) As a direct result of the damage to the coal industry, West Virginia has also lost significant tax revenues, as coal severance taxes have declined by approximately twenty-four percent in just the past two years - from a high of \$527 million in 2012 to an estimated \$406 million in 2014. This damage reverberates through the total economy, with reductions in money available to fund schools, highways, basic services and health care - needs that increase when income and health care is lost with the loss of jobs.

(8) All of these challenges must be addressed and overcome if we are to continue to provide the economic foundation for our state's economy. The encouragement of economic growth and development in the coal industry in this state is in the public interest and promotes the general welfare of the people of this state.

(b) Coal Jobs and Safety Act of 2015. -- Therefore, in order to encourage the recovery of the West Virginia coal industry and to increase direct and indirect employment thus created, the Legislature enacts the Coal Jobs and Safety Act of 2015 and it is collectively comprised of:

(1) This section;

(2) The amendments to:

(A) Sections thirteen and nineteen, article three, chapter twenty-two of this code;

(B) Sections six and eight, article eleven, chapter twenty-two of this code;

(C) Section one, article one-a of this chapter;

(D) Sections six, twenty-eight and thirty-seven, article two of this chapter;

(E) Section one hundred one, article two-a, chapter twenty-two-a of this code; and

(F) Sections three hundred one, three hundred eight, three hundred nine, three hundred ten, four hundred two, four hundred three, four hundred four, four hundred five, five hundred one, six hundred one, six hundred two, six hundred three and six hundred four, article two-a of this chapter; and

(3) The following new sections:

(A) Section twenty-two-a, article eleven, chapter twenty-two of this code; and

(B) Section two hundred four-a, article two-a of this chapter that were adopted and enacted during the 2015 Regular Session of the Legislature.

**§22A-1-42. Surface ground control plan; automated external defibrillator.**

(a) The MSHA-approved surface ground control plan shall serve as the state-approved plan, and the operator, upon approval by MSHA, shall provide a copy of the MSHA-approved surface ground control plan to the director.

(b) Automated external defibrillators (AEDs) shall be required on all surface mining operations. The director shall promulgate emergency rules in order to comply with this section of code, giving special consideration to the climate sensitive nature of AEDs.

**§22A-1-43. Hold harmless clause; decision to enter mine.**

(a) If any injury or death shall occur to any person who has entered any mine, whether active workings, inactive workings, or abandoned workings, without permission, neither:

(1) The owner of that mine or property; nor

(2) The State of West Virginia or any of its political subdivisions, or any agency operating under color of law thereunder; nor

(3) Any person, organization, or entity involved in any rescue or attempted rescue of such person who has committed an entry without permission, shall be held liable in any court or other forum for such injury or death.

(b) The director is authorized to make the decision on whether a mine is too dangerous, and this decision is not subject to review by a court of this state.

(c) A company shall not be required or ordered to conduct rescue operations.

**§22A-1-44. Temporary exemption for environmental regulations.**

In the event of an unauthorized entry by any person or persons into any mine whether active workings, inactive workings, or abandoned workings, neither the owner of that mine or property, nor any other person, organization, or entity involved in any rescue or attempted rescue of such person, may be held liable for any violation of any environmental regulation, if such violation occurred as part of any rescue efforts.