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HB 2617

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**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 1999



**ENROLLED**

**House Bill No. 2617**

(By Delegates Michael, Warner and Federick)



Passed March 13, 1999

In Effect from Passage

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SENATE OF WEST VIRGINIA

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**H. B. 2617**

(BY DELEGATES MICHAEL, WARNER AND FREDERICK)

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[Passed March 13, 1999; in effect from passage.]

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AN ACT to amend article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-nine; and to amend and reenact section sixty-three, article two of said chapter, all relating to office of miners' health, safety and training; administration; enforcement; reciprocity of mine foreman certification and experienced miner certification; fees for permits and certificates of approval; providing that the fees collected for certificates be placed in the operating permit fees fund and providing for expenditure of moneys placed in the fund.

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

That article one, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-nine; and that section sixty-three, article two of said chapter be amended and reenacted, all to read as follows:

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

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

1 (a) Beginning the first day of April, one thousand nine  
2 hundred ninety-nine, and notwithstanding any other provisions  
3 in this code to the contrary, the director, in consultation with the  
4 board of miner training, education and certification, established  
5 pursuant to the provisions of article seven of this chapter, shall  
6 make reciprocity of mine foreman certification and experienced  
7 miner certification available to any person certified by a state  
8 which accepts West Virginia's mine foreman or experienced  
9 miner certifications, if that state's qualifications, examination  
10 and certification criteria are substantially equivalent to those  
11 utilized by this state.

12 (b) A person requesting either of these certifications by  
13 reciprocity shall submit photographic identification, a current  
14 copy of his or her certification card or certificate, verifiable  
15 documentation of all degrees held, continuing education  
16 successfully completed, and documentation of other training, if  
17 required for the certification, and shall also comply with any  
18 other criteria as the director, in consultation with the board of  
19 miner training, education and certification, may reasonably  
20 require from time to time to effectively carry out the provisions  
21 of this section: *Provided*, That the criteria shall include, but is  
22 not limited to, the following minimum requirements: (1) When  
23 a reciprocity agreement applicable to mine foreman certifica-  
24 tion has been established with another state, any applicant  
25 holding a mine foreman certificate from that state shall take the  
26 component of the West Virginia mine foreman certification  
27 examination that pertains only to specific West Virginia mining  
28 laws and rules and shall pass the examination with a score of at  
29 least eighty percent prior to being issued a West Virginia mine  
30 foreman certificate; (2) when a reciprocity agreement applica-  
31 ble to experienced miner certification has been established with  
32 another state, any applicant holding an experienced miner's  
33 certificate from that state shall receive hazard training in  
34 accordance with provisions contained in 30 CFR Part 48.11 if  
35 the applicant is an underground miner, or in accordance with  
36 the provisions contained in 30 CFR Part 48.31 if the applicant  
37 is a surface miner, and shall receive instruction in West  
38 Virginia mining laws and rules pertinent to any duties that are

39 or will be assigned the miner prior to the miner performing any  
 40 duties; and (3) records of all training and instruction shall be  
 41 kept in a book provided exclusively for that purpose which shall  
 42 be made available upon request to an authorized representative  
 43 of the director and to authorized representatives of miners in or  
 44 at the mine.

**ARTICLE 2. UNDERGROUND MINES.**

**§22A-2-63. No mine to be opened or reopened without prior approval of the director of the office of miners' health, safety and training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferable; section to be printed on certificates of approval.**

1 (a) No mine may be opened or reopened unless prior  
 2 approval has been obtained from the director of the office of  
 3 miners' health, safety and training. The director may not  
 4 unreasonably withhold approval. The operator shall pay a fee of  
 5 one hundred dollars for the approval, which shall be tendered  
 6 with the application for approval: *Provided*, That mines  
 7 producing coal solely for the operator's use shall be issued a  
 8 permit without charge if coal production will be less than fifty  
 9 tons a year.

10 Within thirty days after the first day of January of each  
 11 year, the holder of a permit to open a mine shall apply for the  
 12 extension of the permit for an additional year. The permit,  
 13 evidenced by a document issued by the director, shall be  
 14 granted as a matter of right for a fee of one hundred dollars if,  
 15 at the time application is made, the permit holder is in compli-  
 16 ance with the provisions of section seventy-seven of this article  
 17 and has paid or otherwise appealed all coal mine assessments  
 18 issued to the mine if operated by the permit holder and imposed  
 19 under article one of this chapter. Applications for extension of  
 20 permits not submitted within the time required shall be pro-  
 21 cesses as an application to open or reopen a mine and shall be  
 22 accompanied by a fee of one hundred dollars.

23 (b) Permits issued pursuant to this section are not transfer-  
 24 able.

25 (c) If the operator of a mine is not the permit holder as  
26 defined in subsection (a) of this section, then the operator shall  
27 apply for and obtain a certificate of approval to operate the  
28 mine on which the permit is held prior to commencing opera-  
29 tions. The operator shall pay a fee of one hundred dollars,  
30 which payment shall be tendered with the application for  
31 approval. The approval, evidenced by a certificate issued by the  
32 director, shall be granted if, at the time application is made, the  
33 applicant is in compliance with the provisions of section  
34 seventy-seven of this article and has paid or otherwise appealed  
35 all coal mine assessments imposed on the applicant for the  
36 certificate of approval under article one of this chapter.

37 (d) In addition to the director's authority to file a petition  
38 for enforcement under subdivision (4), subsection (a), section  
39 twenty-one, article one of this chapter, if an operator holding a  
40 certificate of approval issued pursuant to subsection (c) of this  
41 section, has been assessed a civil penalty in accordance with  
42 section twenty-one, article one of this chapter, and its imple-  
43 menting rules, and the penalty has become final, fails to pay the  
44 penalty within the time prescribed in the order, the director or  
45 the authorized representative of the director, by certified mail,  
46 return receipt requested, shall send a notice to the operator  
47 advising the operator of the unpaid penalty. If the penalty is not  
48 paid in full within sixty days from the issuance of the notice of  
49 delinquency by the director, then the director may revoke the  
50 operator's certificate of approval: *Provided*, That the operator  
51 to whom the delinquency notice is issued has thirty days from  
52 receipt of the delinquency notice to request, by certified mail,  
53 return receipt requested, a public hearing held in accordance  
54 with the procedures of section seventeen, article one of this  
55 chapter, and its implementing rules, including application for  
56 temporary relief. Once the operator's certificate of approval is  
57 revoked pursuant to this subsection, the operator may not obtain  
58 any certificate of approval under the provisions of this section  
59 to operate any other mine until that operator pays the delinquent  
60 penalties that have become final.

61 (e) Every firm, corporation, partnership or individual that  
62 contracts to perform services or construction at a coal mine is

63 considered to be an operator and shall apply for and obtain a  
64 certificate of approval prior to commencing operations:  
65 *Provided*, That these persons shall only be required to obtain  
66 one certificate annually: *Provided, however*, That persons such  
67 as, but not limited to, consultants, mine vendors, office equip-  
68 ment suppliers and maintenance and delivery personnel are  
69 excluded from this requirement to obtain a certificate of  
70 approval. Operators who are required to obtain a certificate of  
71 approval pursuant to the provisions of this subsection shall pay  
72 a fee of one hundred dollars which shall be tendered with the  
73 application for approval. Approval evidenced by a certificate  
74 issued by the director, shall be granted if, at the time the  
75 application is made, the applicant has paid or otherwise  
76 appealed all coal mine assessments imposed on the applicant  
77 under article one of this chapter.

78       Within thirty days after the first day of January of each  
79 year, the holder of a certificate of approval shall apply for the  
80 extension of that approval for an additional year. Applications  
81 for extension shall be accompanied by a fee of one hundred  
82 dollars. An extension shall be granted if, at the time application  
83 is made, the applicant has paid or otherwise appealed all coal  
84 mine assessments imposed on the applicant under article one of  
85 this chapter. All delinquent assessments which have been  
86 imposed upon a certificate of approval holder or applicants  
87 under this section may not be imposed upon any permit holder  
88 or certificate of approval holder or any applicant pursuant to  
89 subsection (a) or (c) of this section.

90       (f) The provisions of this section shall be printed on the  
91 reverse side of every permit issued under subsection (a) of this  
92 section and certificate of approval issued under subsection (e)  
93 of this section.

94       (g) The district mine inspector shall conduct a pre-inspec-  
95 tion of the area proposed for underground mining prior to  
96 issuance of any new opening permit approval.

97       (h) All moneys collected by the office of miners' health,  
98 safety and training for the approval fees set forth in subsections  
99 (a), (c) and (e) of this section shall be deposited with the

100 treasurer of the state of West Virginia to the credit of the  
101 general administration—operating permit fees fund. The  
102 operating permit fees fund shall be used by the director who is  
103 authorized to expend the moneys in the fund for the administra-  
104 tion of this chapter.

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

*Paul Schooner*  
Chairman Senate Committee

*Joe F. Smith*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Harriet E. Thomas*  
Clerk of the Senate

*Dorothy S. Day*  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
President of the Senate

*Robert M. DeLoach*  
Speaker of the House of Delegates

The within approved this the 2nd  
day of April, 1999.

*Jeff Gunderman*  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/30/99

Time 3:35 pm