

HB 2257

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



# ENROLLED

*Com. Sub. for*  
HOUSE BILL No. *2257*

(By Delegate s. *Kiss and Wallace* )



Passed *March 11,* 1995

In Effect *Ninety Days from* Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 2257**

(BY DELEGATES KISS AND WALLACE)

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[Passed March 11, 1995; in effect ninety days from passage.]

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AN ACT to amend and reenact section sixty-three, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to underground mines; miners' health, safety and training; fees for certificate of approval and permit; providing that the fees collected for certificates of approval and permits be placed in the "Miners' Health, Safety and Training Fund"; providing for expenditure of moneys placed in the fund; and setting forth the responsibility for compliance of operations with the mining laws, notices of violations and clarifying the responsibility of the office of miner's health, safety and training.

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

That section sixty-three, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**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; certificate of approval not transferable; section to be printed on certificates of approval; creation of miners' health, safety and training fund; deposits into same; and expenditures from same.**

1 (a) After the first day of July, one thousand nine hundred  
2 dred seventy-one, no mine may be opened or reopened  
3 unless prior approval has been obtained from the director  
4 of the office of miners' health, safety and training, which  
5 approval may not be unreasonably withheld. The opera-  
6 tor must pay for this approval a fee of one hundred dol-  
7 lars, which payment must be tendered with the application  
8 for approval: *Provided*, That mines producing coal solely  
9 for the operator's use shall be issued a permit without  
10 charge if coal production will be less than fifty tons a  
11 year.

12 Within thirty days after the first day of January of  
13 each year, the holder of a permit to open a mine must  
14 apply for the extension of that permit for an additional  
15 year. Such extension, evidenced by a document issued by  
16 the director, shall be granted as a matter of right for a fee  
17 of one hundred dollars if, at the time application is made,  
18 the permit holder is in compliance with the provisions of  
19 section seventy-seven of this article and has paid or other-  
20 wise appealed all coal mine assessments issued to the mine  
21 if operated by the permit holder and imposed under arti-  
22 cle one of this chapter. Applications for extension of  
23 these permits not submitted within the time required shall  
24 be processed as an application to open or reopen a mine  
25 and must be accompanied by a fee of one hundred dol-  
26 lars.

27 (b) Permits issued pursuant to this section are not  
28 transferable.

29 (c) If the operator of a mine is not the permit holder  
30 as defined in subsection (a) of this section, then the opera-

31 tor must apply for and obtain a certificate of approval to  
32 operate the mine on which the permit is held prior to com-  
33 mencing operations. An operator who is not the permit  
34 holder operating the mine on the tenth day of April, one  
35 thousand nine hundred ninety-three, must apply for a  
36 certificate of approval on or before the first day of July,  
37 one thousand nine hundred ninety-three. The operator  
38 must pay a fee of one hundred dollars, which payment  
39 must be tendered with the application for approval. Such  
40 approval, evidenced by a certificate issued by the director,  
41 shall be granted if, at the time application is made, the  
42 applicant is in compliance with the provisions of section  
43 seventy-seven of this article and has paid or otherwise  
44 appealed all coal mine assessments imposed on him or her  
45 for the certificate of approval under article one of this  
46 chapter.

47 (d) In addition to the director's authority to file a peti-  
48 tion for enforcement under subdivision (4), subsection (a),  
49 section twenty-one, article one of this chapter, if an opera-  
50 tor holding a certificate of approval issued pursuant to  
51 subsection (c) of this section, has been assessed a civil  
52 penalty in accordance with section twenty-one, article one  
53 of this chapter and implementing rules, and the penalty  
54 has become final, and the operator has failed to pay the  
55 penalty within the time prescribed in the order assessing  
56 the penalty, the director or the authorized representative of  
57 the director, by certified mail, return receipt requested,  
58 shall send a notice to the operator advising the operator of  
59 the unpaid penalty. If the penalty is not paid in full within  
60 sixty days from the issuance of the notice of delinquency  
61 by the director, then the director may revoke the  
62 operator's certificate of approval: *Provided*, That the  
63 operator to whom the delinquency notice is issued has  
64 thirty days from receipt thereof to request, by certified  
65 mail, return receipt requested, a public hearing held in  
66 accordance with the procedures of section seventeen, arti-  
67 cle one of this chapter, and implementing rules, including  
68 application for temporary relief. Once an operator's cer-  
69 tificate of approval is revoked pursuant to this subsection,

70 that operator is prohibited from obtaining any certificate  
71 of approval under the provisions of this section to operate  
72 any other mine until that operator pays the delinquent  
73 penalties that have become final.

74 (e) Notwithstanding any provision in this chapter or  
75 any regulation promulgated hereunder to the contrary,  
76 every firm, corporation, partnership or individual referred  
77 to in subsection (h) of this section shall have the sole and  
78 independent responsibility and duty for ensuring that their  
79 operations are conducted at all times in compliance with  
80 all the mining laws and regulations of this state and this  
81 responsibility may not be deemed to have been assigned,  
82 in whole or in part, to any third person by operation of  
83 law.

84 (f) Every firm, corporation, partnership or individual  
85 referred to in subsection (h) of this section shall have the  
86 sole and independent responsibility and duty for all notic-  
87 es of violations and associated assessments and penalties  
88 levied against it for violations of the mining laws and regu-  
89 lations of this state, except in those cases where a third  
90 person is found to have willfully contributed to the act or  
91 omission which gave rise to the violation, in which case,  
92 such third person shall be jointly liable for such notices of  
93 violations and associated assessments and penalties.

94 (g) Nothing contained in this chapter may be con-  
95 strued as limiting or in anyway delegating to any third  
96 person the responsibility of the office of miner's health,  
97 safety and training, in issuing certificates of approval to  
98 every firm, corporation, partnership or individual referred  
99 to in subsection (h) of this section, to regulate such of  
100 their activities as are covered by the mining laws and regu-  
101 lations which are the responsibility of this state to enforce,  
102 so as to ensure their competency and overall qualifications  
103 and thereby protect the safety of the workers whom that  
104 office is charged with protecting.

105 (h) Every firm, corporation, partnership or individual  
106 that contracts to perform services or construction at a coal

107 mine is deemed to be an operator and beginning the first  
108 day of January, one thousand nine hundred ninety-five,  
109 must apply for and obtain a certificate of approval prior to  
110 commencing operations: *Provided*, That these persons  
111 may be required to obtain only one certificate annually:  
112 *Provided, however*, That persons including, but not limit-  
113 ed to, consultants, mine vendors, office equipment suppli-  
114 ers, and maintenance and delivery personnel are excluded  
115 from this requirement to obtain a certificate of approval.  
116 Operators who are required to obtain a certificate of ap-  
117 proval pursuant to this subsection must pay a fee of one  
118 hundred dollars which must be tendered with the applica-  
119 tion for approval. This approval, evidenced by a certifi-  
120 cate issued by the director, shall be granted if, at the time  
121 application is made, the applicant has paid or otherwise  
122 appealed all coal mine assessments imposed on him or her  
123 under article one of this chapter.

124 Within thirty days after the first day of January of  
125 each year, the holder of a certificate of approval must  
126 apply for the extension of that approval for an additional  
127 year. Applications for extension must be accompanied by  
128 a fee of one hundred dollars. An extension shall be grant-  
129 ed if, at the time application is made, the applicant has  
130 paid or otherwise appealed all coal mine assessments im-  
131 posed on him or her under article one of this chapter. No  
132 assessment imposed upon an operator which is either: (1)  
133 An applicant under this subsection or (2) a certificate of  
134 approval holder under this subsection, which has become  
135 delinquent, may be imposed upon: (1) Any permit holder  
136 or applicant therefor under subsection (a) of this section;  
137 or (2) any certificate of approval holder or applicant  
138 therefor under subsection (c) of this section.

139 (i) The provisions of this section shall be printed on  
140 the reverse side of every permit issued under subsection  
141 (a) and certificate of approval issued under subsection (d)  
142 herein.

143 (j) The district mine inspector shall conduct a  
144 preinspection of the area proposed for underground min-

145 ing prior to issuance of any new opening permit approval.

146 (k) After the thirtieth day of June, one thousand nine  
147 hundred ninety-six, all moneys collected by the office of  
148 miners' health, safety and training for the approval fees set  
149 forth in subsections (a), (c) and (e) of this section shall be  
150 deposited with the treasurer of the state of West Virginia in  
151 a special account in accordance with the provisions of  
152 subsection (f), section twenty-one, article one of this chap-  
153 ter, and entitled, "Health, Safety and Training Fund." Ex-  
154 penditures from the fund herein created may be made  
155 only pursuant to appropriation by the Legislature.

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

*Ronely Schoonall*  
Chairman Senate Committee

*Ernest C. Moore*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Carroll E. Adams*  
Clerk of the Senate

*Donald L. Huff*  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
President of the Senate

*Paul E. Cumber*  
Speaker of the House of Delegates

The within *is disapproved* this the *24th*  
day of *March*, 1995.

*Yaston Casper*  
Governor





PRESENTED TO THE

GOVERNOR

Date 3/24/95

Time 3:52 PM