WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

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ENROLLED

House Bill No. 2617
(By Delegates Michael, Warner and Federick)

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Passed March 13, 1999

In Effect from Passage
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.

(a) Beginning the first day of April, one thousand nine hundred ninety-nine, 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.

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.

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

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

(b) Permits issued pursuant to this section are not transferable.
(c) If the operator of a mine is not the permit holder as defined in subsection (a) of this section, then the operator shall apply for and obtain a certificate of approval to operate the mine on which the permit is held prior to commencing operations. The operator shall pay a fee of one hundred dollars, which payment shall be tendered with the application for approval. The approval, evidenced by a certificate issued by the director, shall be granted if, at the time application is made, the applicant is in compliance with the provisions of section seventy-seven of this article and has paid or otherwise appealed all coal mine assessments imposed on the applicant for the certificate of approval under article one of this chapter.

(d) In addition to the director’s authority to file a petition for enforcement under subdivision (4), subsection (a), section twenty-one, article one of this chapter, if an operator holding a certificate of approval issued pursuant to subsection (c) of this section, has been assessed a civil penalty in accordance with section twenty-one, article one of this chapter, and its implementing rules, and the penalty has become final, fails to pay the penalty within the time prescribed in the order, the director or the authorized representative of the director, by certified mail, return receipt requested, shall send a notice to the operator advising the operator of the unpaid penalty. If the penalty is not paid in full within sixty days from the issuance of the notice of delinquency by the director, then the director may revoke the operator’s certificate of approval: Provided, That the operator to whom the delinquency notice is issued has thirty days from receipt of the delinquency notice to request, by certified mail, return receipt requested, a public hearing held in accordance with the procedures of section seventeen, article one of this chapter, and its implementing rules, including application for temporary relief. Once the operator’s certificate of approval is revoked pursuant to this subsection, the operator may not obtain any certificate of approval under the provisions of this section to operate any other mine until that operator pays the delinquent penalties that have become final.

(e) Every firm, corporation, partnership or individual that contracts to perform services or construction at a coal mine is
considered to be an operator and shall apply for and obtain a certificate of approval prior to commencing operations: 

Provided, That these persons shall only be required to obtain one certificate annually: Provided, however, That persons such as, but not limited to, consultants, mine vendors, office equipment suppliers and maintenance and delivery personnel are excluded from this requirement to obtain a certificate of approval. Operators who are required to obtain a certificate of approval pursuant to the provisions of this subsection shall pay a fee of one hundred dollars which shall be tendered with the application for approval. Approval evidenced by a certificate issued by the director, shall be granted if, at the time the application is made, the applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant under article one of this chapter.

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

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

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

(h) All moneys collected by the office of miners’ health, safety and training for the approval fees set forth in subsections (a), (c) and (e) of this section shall be deposited with the
treauser of the state of West Virginia to the credit of the
general administration—operating permit fees fund. The
operating permit fees fund shall be used by the director who is
authorized to expend the moneys in the fund for the administra-
tion of this chapter.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor