

FILED

2001 MAY -2 P 11: 54

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2001*

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**ENROLLED**

SENATE BILL NO. 689

(By Senator Jackson, et al )

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PASSED April 14, 2001

In Effect 90 days from Passage

**ENROLLED**  
**Senate Bill No. 689**

(BY SENATORS JACKSON, KESSLER, FANNING AND MINEAR)

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[Passed April 14, 2001; in effect ninety days from passage.]

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AN ACT to amend and reenact sections thirteen-a, twenty-two-a and thirty-a, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the surface coal mining and reclamation act; preblast survey requirements; notification to certain owners and occupants of nearby man-made dwellings and structures; and expanding the operations to which the requirements apply.

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

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

**ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

**§22-3-13a. Preblast survey requirements.**

1 (a) At least thirty days prior to commencing blasting, as  
2 defined in section twenty-two-a of this article, an operator  
3 or an operator's designee shall make the following notifi-  
4 cations in writing to all owners and occupants of man-  
5 made dwellings or structures that the operator or opera-  
6 tor's designee will perform preblast surveys in accordance  
7 with subsection (f) of this section:

8 (1) For surface mining operations that are less than two  
9 hundred acres in a single permitted area or less than three  
10 hundred acres of contiguous or nearly contiguous area of  
11 two or more permitted areas, the required notifications  
12 shall be to all owners and occupants of man-made dwell-  
13 ings or structures within five tenths of a mile of the  
14 permitted area or areas;

15 (2) For all other surface mining operations, the required  
16 notifications shall be to all owners and occupants of man-  
17 made dwellings or structures within five tenths of a mile  
18 of the permitted area or areas or seven tenths of a mile of  
19 the proposed blasting site, whichever is greater;

20 (3) For permitted surface disturbance of underground  
21 mines, the required notifications shall be to all owners and  
22 occupants of man-made dwellings or structures within  
23 five-tenths of a mile of the permitted surface area or areas.

24 (b) Within thirty days of the effective date of this  
25 section, any operator identified in subdivision (2), subsec-  
26 tion (a) of this section that has already completed preblast  
27 surveys for man-made dwellings or structures within five  
28 tenths of a mile of the permit area and has commenced  
29 operations by the effective date of this section shall notify  
30 in writing all additional owners and occupants of man-  
31 made dwellings or structures within seven tenths of a mile  
32 of the proposed blasting site. Except for those dwellings  
33 or structures for which the operator secures a written  
34 waiver or executes an affidavit in accordance with the  
35 requirements of subsection (c) of this section, the operator  
36 or the operator's designee must perform the additional

37 preblast surveys in accordance with subsection (f) of this  
38 section within ninety days of the effective date of this  
39 section.

40 (c) An occupant or owner of a man-made dwelling or  
41 structure within the areas described in subdivision (1) or  
42 (2), subsection (a) of this section may waive the right to a  
43 preblast survey in writing. If a dwelling is occupied by a  
44 person other than the owner, both the owner and the  
45 occupant must waive the right to a preblast survey in  
46 writing. If an occupant or owner of a man-made dwelling  
47 or structure refuses to allow the operator or the operator's  
48 designee access to the dwelling or structure and refuses to  
49 waive in writing the right to a preblast survey or to the  
50 extent that access to any portion of the structure, under-  
51 ground water supply or well is impossible or impractical  
52 under the circumstances, the preblast survey shall indicate  
53 that access was refused, impossible or impractical. The  
54 operator or the operator's designee shall execute a sworn  
55 affidavit explaining the reasons and circumstances  
56 surrounding the refusals. The office of explosives and  
57 blasting may not determine the preblast survey to be  
58 incomplete because it indicates that access to a particular  
59 structure, underground water supply or well was refused,  
60 impossible or impractical. The operator shall send copies  
61 of all written waivers and affidavits executed pursuant to  
62 this subsection to the office of explosives and blasting.

63 (d) If a preblast survey was waived by the owner and  
64 was within the requisite area and the property was sold,  
65 the new owner may request a preblast survey from the  
66 operator.

67 (e) An owner within the requisite area may request, from  
68 the operator, a preblast survey on structures constructed  
69 after the original preblast survey.

70 (f) The preblast survey shall include:

- 71 (1) The names, addresses or description of structure  
72 location and telephone numbers of the owner and the  
73 residents of the structure being surveyed and the structure  
74 number from the permit blasting map;
- 75 (2) The current home insurer of the owner and the  
76 residents of the structure;
- 77 (3) The names, addresses and telephone numbers of the  
78 surface mining operator and the permit number;
- 79 (4) The current general liability insurer of the surface  
80 mining operator;
- 81 (5) The name, address and telephone number of the  
82 person or firm performing the preblast survey;
- 83 (6) The current general liability insurer of the person or  
84 firm performing the preblast survey;
- 85 (7) The date of the preblast survey and the date it was  
86 mailed or delivered to the office of explosives and blasting;
- 87 (8) A general description of the structure and its appur-  
88 tenances, including, but not limited to: (A) The number of  
89 stories; (B) the construction materials for the frame and  
90 the exterior and interior finish; (C) the type of construction  
91 including any unusual or substandard construction; and  
92 (D) the approximate age of the structure;
- 93 (9) A general description of the survey methods and the  
94 direction of progression of the survey, including a key to  
95 abbreviations used;
- 96 (10) Written documentation and drawings, videos or  
97 photographs of the preblast defects and other physical  
98 conditions of all structures, appurtenances and water  
99 sources which could be affected by blasting;
- 100 (11) Written documentation and drawings, videos or  
101 photographs of the exterior and interior of the structure to  
102 indicate preblast defects and condition;

103 (12) Written documentation and drawings, videos or  
104 photographs of the exterior and interior of any appurte-  
105 nance of the structure to indicate preblast defects and  
106 condition;

107 (13) Sufficient exterior and interior photographs or  
108 videos, using a variety of angles, of the structure and its  
109 appurtenances to indicate preblast defects and the condi-  
110 tion of the structure and appurtenances;

111 (14) Written documentation and drawings, videos or  
112 photographs of any unusual or substandard construction  
113 technique and materials used on the structure or its  
114 appurtenances or both structure and appurtenances;

115 (15) Written documentation relating to the type of water  
116 supply, including a description of the type of system and  
117 treatment being used, an analysis of untreated water  
118 supplies, a water analysis of water supplies other than  
119 public utilities and information relating to the quantity  
120 and quality of water;

121 (16) When the water supply is a well, written documen-  
122 tation, where available, relating to the type of well; the  
123 well log; the depth, age and type of casing or lining; the  
124 static water level; flow data; the pump capacity; the  
125 drilling contractor; and the source or sources of the  
126 documentation;

127 (17) A description of any portion of the structure and  
128 appurtenances not documented or photographed and the  
129 reasons;

130 (18) The signature of the person performing the survey;  
131 and

132 (19) Any other information required by the chief which  
133 additional information shall be established by rule in  
134 accordance with article three, chapter twenty-nine-a of  
135 this code.

136 (g) Except for additional preblast surveys prepared  
137 within one hundred twenty days of the effective date of  
138 this section, pursuant to subsection (b) of this section, the  
139 preblast survey shall be submitted to the office of explo-  
140 sives and blasting at least fifteen days prior to the com-  
141 mencement of any production blasting. The office of  
142 explosives and blasting shall review each preblast survey  
143 as to form and completeness only and notify the operator  
144 of any deficiencies: *Provided*, That once all required  
145 surveys have been reviewed and accepted by the office of  
146 explosives and blasting, blasting may commence sooner  
147 than fifteen days after submittal. The office of explosives  
148 and blasting shall provide a copy of the preblast survey to  
149 the owner or occupant.

150 (h) The surface mining operator shall file notice of the  
151 preblast survey or the waiver in the office of the county  
152 clerk of the county commission of the county where the  
153 man-made dwelling or structure is located to notify the  
154 public that a preblast survey has been conducted or  
155 waived. The notice shall be on a form prescribed by the  
156 office of explosives and blasting.

157 (i) The chief of the office of explosives and blasting shall  
158 propose rules for legislative approval in accordance with  
159 article three, chapter twenty-nine-a of this code dealing  
160 with preblast survey requirements and setting the qualifi-  
161 cations for individuals and firms performing preblast  
162 surveys.

163 (j) The provisions of this section do not apply to the  
164 extraction of minerals by underground mining methods.

**§22-3-22a. Blasting restrictions; site specific blasting design  
requirement.**

1 (a) For purposes of this section, the term “production  
2 blasting” means blasting that removes the overburden to  
3 expose underlying coal seams and does not include con-  
4 struction blasting.

5 (b) For purposes of this section, the term “construction  
6 blasting” means blasting to develop haul roads, mine  
7 access roads, coal preparation plants, drainage structures  
8 or underground coal mine sites and does not include  
9 production blasting.

10 (c) For purposes of this section, the term “protected  
11 structure” means any of the following structures that are  
12 situated outside the permit area: An occupied dwelling; a  
13 temporarily unoccupied dwelling which has been occupied  
14 within the past ninety days; a public building; a structure  
15 for commercial purposes; a school; a church; a community  
16 or institutional building; and a public park or a water  
17 well.

18 (d) Production blasting is prohibited within three  
19 hundred feet of a protected structure or within one  
20 hundred feet of a cemetery.

21 (e) Blasting within one thousand feet of a protected  
22 structure shall have a site-specific blast design approved  
23 by the office of explosives and blasting. The site-specific  
24 blast design shall limit the type of explosives and detonat-  
25 ing equipment, the size, the timing and frequency of blasts  
26 to do the following:

27 (1) Prevent injury to persons; (2) prevent damage to  
28 public and private property outside the permit area; (3)  
29 prevent adverse impacts on any underground mine; (4)  
30 prevent change in the course, channel or availability of  
31 ground or surface water outside the permit area; and (5)  
32 reduce dust outside the permit area.

33 In the development of a site-specific blasting plan,  
34 consideration shall be given, but is not limited, to the  
35 physical condition, type and quality of construction of the  
36 protected structure, the current use of the protected  
37 structure and the concerns of the owner or occupant living  
38 in the protected structures identified in the blasting  
39 schedule notification area.



40 (f) An owner or occupant of a protected structure may  
41 waive the blasting prohibition within three hundred feet.  
42 If a protected structure is occupied by a person other than  
43 the owner, both the owner and the occupant of the pro-  
44 tected structure shall waive the blasting prohibition  
45 within three hundred feet in writing. The operator shall  
46 send copies of all written waivers executed pursuant to  
47 this subsection to the office of explosives and blasting.  
48 Written waivers executed and filed with the office of  
49 explosives and blasting are valid during the life of the  
50 permit or any renewals of the permit and are enforceable  
51 against any subsequent owners or occupants of the pro-  
52 tected structure.

53 (g) The provisions of this section do not apply to the  
54 following: (1) Underground coal mining operations; (2) the  
55 surface operations and surface impacts incident to an  
56 underground coal mine; and (3) the extraction of minerals  
57 by underground mining methods or the surface impacts of  
58 the underground mining methods: *Provided*, That nothing  
59 contained in this section may be construed to exempt any  
60 coal mining operation from the general performance  
61 standards as contained in section thirteen of this article  
62 and any rules promulgated pursuant to said section.

**§22-3-30a. Blasting requirements; liability and civil penalties in  
the event of property damage.**

1 (a) Blasting shall be conducted in accordance with the  
2 rules and laws established to regulate blasting.

3 (b) If the division of environmental protection estab-  
4 lishes after an inspection that a blast at a surface coal  
5 mine operation as defined by the provisions of subdivision  
6 (2), subsection (a), section thirteen-a of this article was not  
7 in compliance with the regulations governing blasting  
8 parameters and resulted in property damage to a protected  
9 structure, as defined in section twenty-two-a of this  
10 article, other than water wells, the following penalties

11 shall be imposed for each permit area or contiguous permit  
12 areas where the blasting was out of compliance:

13 (1) For the first offense, the operator shall be assessed a  
14 penalty of not less than one thousand dollars nor more  
15 than five thousand dollars.

16 (2) For the second offense and each subsequent offense  
17 within one year of the first offense, the surface mining  
18 operator shall be assessed a penalty of not less than five  
19 thousand dollars nor more than ten thousand dollars.

20 (3) For the third offense and any subsequent offense  
21 within one year of the first offense, or for the failure to pay  
22 any assessment set forth within a reasonable time estab-  
23 lished by the director, the surface mining operator's permit  
24 is subject to an immediate issuance of a cessation order, as  
25 set out in section sixteen of this article. The cessation  
26 order shall only be released upon written order of the  
27 director of the division of environmental protection when  
28 the following conditions have been met:

29 (A) A written plan has been established and filed with  
30 the director assuring that additional violations will not  
31 occur;

32 (B) The permittee has provided compensation for the  
33 property damages or the assurance of adequate compensa-  
34 tion for the property damages that have occurred; and

35 (C) A permittee shall provide such monetary and other  
36 assurances as the director considers appropriate to com-  
37 pensate for future property damages. The monetary  
38 assurances required shall be in an amount at least equal to  
39 the amount of compensation required in paragraph (B),  
40 subdivision (3) of this subsection.

41 (4) In addition to the penalties described in subdivisions  
42 (1), (2) and (3) of this subsection for the second and  
43 subsequent offenses on any one permitted area regardless  
44 of the time period, the owner of the protected structure is

45 entitled to a rebuttable presumption that the property  
46 damage is a result of the blast if: (A) A preblast survey  
47 was performed; and (B) the blasting site to which the  
48 second or subsequent offense relates is within seven tenths  
49 of a mile of the protected structure.

50 (5) No more than one offense may arise out of any one  
51 shot. For purposes of this section, "shot" means a single  
52 blasting event composed of one or multiple detonations of  
53 explosive material or the assembly of explosive materials  
54 for this purpose. One "shot" may be composed of numer-  
55 ous explosive charges detonated at intervals measured in  
56 milliseconds.

57 (c) Notwithstanding the provisions of subsections (a) and  
58 (b) of this section, the division of environmental protection  
59 may not impose penalties, as provided for in subsection (b)  
60 of this section, on an operator for the violation of any rule  
61 identified in subsection (b) of this section that is merely  
62 administrative in nature.

63 (d) The remedies provided in this section are not exclu-  
64 sive and may not bar an owner or occupant from any other  
65 remedy accorded by law.

66 (e) Where inspection by the division of environmental  
67 protection establishes that production blasting, in viola-  
68 tion of section twenty-two-a of this article, was done  
69 within three hundred feet of a protected structure, without  
70 an approved site-specific blast design or not in accordance  
71 with an approved site-specific blast design for production  
72 blasting within one thousand feet of any protected struc-  
73 ture as defined in section twenty-two-a of this article or  
74 within one hundred feet of a cemetery, the monetary  
75 penalties and revocation, as set out in subsection (b) of this  
76 section, apply.

77 (f) All penalties and liabilities as set forth in subsection  
78 (b) of this section shall be assessed by the director, col-

79 lected by the director and deposited with the treasurer of  
80 the state of West Virginia in the "general school fund".

81 (g) The director shall propose rules for legislative  
82 approval pursuant to article three, chapter twenty-nine-a  
83 of this code for the implementation of this section.

84 (h) The provisions of this section do not apply to the  
85 extraction of minerals by underground mining methods:  
86 *Provided*, That nothing contained in this section may be  
87 construed to exempt any coal mining operation from the  
88 general performance standards as contained in section  
89 thirteen of this article and any rules promulgated pursuant  
90 thereto.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within is approved this the 2nd  
Day of May Bob Wise 2001.  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 5/01/01

Time 2:25 pm