

1 **Senate Bill No. 72**

2 (By Senators Sypolt, D. Hall, Jenkins and Carmichael)

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4 [Introduced January 8, 2014; referred to the Committee on Energy,
5 Industry and Mining; and then to the Committee on the Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §22-30-1, §22-30-2,
12 §22-30-3 and §22-30-4, all relating to creating the Intrastate
13 Coal and Use Act; establishing that the environmental
14 regulation of coal and certain coal products mined and used
15 within the state are exclusively regulated by the West
16 Virginia Department of Environmental Protection; stating
17 legislative authority; and defining terms.

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

19 That the Code of West Virginia, 1931, as amended, be amended
20 by adding thereto a new article, designated §22-30-1, §22-30-2,
21 §22-30-3 and §22-30-4, all to read as follows:

22 **ARTICLE 30. ENVIRONMENTAL REGULATION OF COAL MINED AND USED WITHIN**
23 **THE STATE.**

1 **§22-30-1. Short title.**

2 This article may be cited as the "Intrastate Coal and Use Act"

3 **§22-30-2. Authority.**

4 The Legislature declares that the authority for this article
5 is as follows:

6 (1) The Tenth Amendment to the United States Constitution
7 guarantees to the states and their people all powers not granted to
8 the federal government elsewhere in the Constitution and reserves
9 to the state and people of West Virginia certain powers as they
10 were understood at the time that West Virginia was admitted to
11 statehood in 1863. The guaranty of those powers is a matter of
12 contract between the state and people of West Virginia and the
13 United States as of the time that the compact with the United
14 States was agreed upon and adopted by West Virginia and the United
15 States in 1863.

16 (2) The Ninth Amendment to the United States Constitution
17 guarantees to the people rights not granted in the Constitution and
18 reserves to the people of West Virginia certain rights as they were
19 understood at the time that West Virginia was admitted to statehood
20 in 1863. The guaranty of those rights is a matter of contract
21 between the state and people of West Virginia and the United States
22 as of the time that the compact with the United States was agreed
23 upon and adopted by West Virginia and the United States in 1863.

1 (3) Section two, article I of the West Virginia Constitution,
2 states: "The government of the United States is a government of
3 enumerated powers, and all powers not delegated to it, nor
4 inhibited to the states, are reserved to the states or to the
5 people thereof." Specifically enumerated among those "powers so
6 reserved to the states is the exclusive regulation of their own
7 internal government and police; and it is the high and solemn duty
8 of the several departments of government, created by this
9 Constitution, to guard and protect the people of this state from
10 all encroachments upon the rights so reserved."

11 (4) The regulation of intrastate commerce, including the
12 natural environment as affected by intrastate business, is vested
13 in the states under the Ninth and Tenth Amendments to the United
14 States Constitution and is specifically retained by the State of
15 West Virginia according to section two, article I of the West
16 Virginia Constitution.

17 **§22-30-3. Definitions.**

18 As used in this article, the following definitions apply:

19 (1) "Borders of West Virginia" means the boundaries of the
20 State of West Virginia described in section 1, article II of the
21 West Virginia Constitution.

22 (2) The term "coal mine" means those operations removing coal
23 from a coal seam or seams, whether aboveground or underground.

1 (3) "Chemically altered coal product" means any product
2 derived principally from coal, including, but not limited to, coke
3 or liquid fuels derived from coal by any process.

4 **§22-30-4. Requirements.**

5 (a) In light of the above findings, environmental regulation
6 in West Virginia for all purposes of regulating business activity
7 performed in West Virginia, when the products of such business
8 activities are held, maintained, or retained within the borders of
9 West Virginia, is the principal responsibility of the West Virginia
10 Department of Environmental Protection.

11 (b) Any West Virginia coal mine producing coal which is used
12 commercially or privately in West Virginia and which is consumed or
13 otherwise remains within the borders of West Virginia and any West
14 Virginia facility producing chemically altered coal products used
15 commercially or privately in West Virginia which remain within the
16 borders of West Virginia shall be issued a permit to operate by the
17 West Virginia Department of Environmental Protection once the West
18 Virginia Department of Environmental Protection has certified that
19 the mine or facility is compliant with all applicable state and
20 federal laws or state and federal regulation.

21 (c) A sample from each vein of coal in a mine and a sample of
22 coal from each West Virginia source used at a facility producing a
23 chemically altered coal product shall be placed on record with the

1 West Virginia Department of Environmental Protection to verify the
2 West Virginia origin of the coal produced and used.

3 (d) The Legislature declares that the United States
4 Environmental Protection Agency, acting under the color of
5 authority of Congress to regulate interstate commerce, lacks the
6 authority to deny permits of operation to such coal mines and
7 facilities as the products of these mines and facilities have not
8 traveled in interstate commerce.

9 (e) This article applies to coal and to any chemically altered
10 coal product mined or produced in West Virginia from basic
11 materials which can be manufactured without the inclusion of any
12 significant components imported from another state.

13 (f) This article applies only to the issuance of a permit of
14 operation to a coal mine or facility producing chemically altered
15 coal products, the issuance of which permit is required by the
16 Clean Water Act or by another equivalent state or federal statute
17 or regulation. Nothing in this section limits the effect of any
18 other state or federal statute or regulation.

NOTE: The purpose of this bill is to create the Intrastate Coal and Use Act. The bill establishes that the environmental regulation of coal and certain coal products mined and used within the state are exclusively regulated by the West Virginia Department of Environmental Protection. The bill states the legislative authority and defines terms.

This article is new; therefore, strike-throughs and underscoring have been omitted.