

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2358**

BY DELEGATE HOWELL, HANNA, HOTT, STEELE, LINVILLE,

PACK, PHILLIPS, CADLE, WORRELL, HILL AND WILSON

[Introduced January 14, 2019; referred to the  
committee on Energy then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §22-32-1, §22-32-2, §22-32-3, and §22-32-4, all relating to creating the  
 3 Intrastate Coal and Use Act; establishing that the environmental regulation of coal and  
 4 certain coal products mined and used within the state are exclusively regulated by the  
 5 West Virginia Department of Environmental Protection; stating the legislative authority;  
 6 and defining terms.

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

**ARTICLE 32. ENVIRONMENTAL REGULATION OF COAL MINED AND USED**  
**WITHIN THE STATE.**

**§22-32-1. Short title.**

1 This article may be cited as the “Intrastate Coal and Use Act.”

**§22-32-2. Authority.**

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

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

9 (2) The Ninth Amendment to the United States Constitution guarantees to the people  
 10 rights not granted in the Constitution and reserves to the people of West Virginia certain rights as  
 11 they were understood at the time that West Virginia was admitted to statehood in 1863. The  
 12 guaranty of those rights is a matter of contract between the state and people of West Virginia and  
 13 the United States as of the time that the compact with the United States was agreed upon and

14 adopted by West Virginia and the United States in 1863.

15 (3) Section 2, Article I of the West Virginia Constitution, states: “The government of the  
16 United States is a government of enumerated powers, and all powers not delegated to it, nor  
17 inhibited to the states, are reserved to the states or to the people thereof.” Specifically  
18 enumerated among those “powers so reserved to the states is the exclusive regulation of their  
19 own internal government and police; and it is the high and solemn duty of the several departments  
20 of government, created by this Constitution, to guard and protect the people of this state from all  
21 encroachments upon the rights so reserved.”

22 (4) The regulation of intrastate commerce, including the natural environment as affected  
23 by intrastate business, is vested in the states under the Ninth and Tenth Amendments to the  
24 United States Constitution and is specifically retained by the State of West Virginia according to  
25 Section 2, Article I of the West Virginia Constitution.

**§22-32-3. Definitions.**

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

2 (1) “Borders of West Virginia” means the boundaries of the State of West Virginia  
3 described in Section 1, Article II of the West Virginia Constitution.

4 (2) The term “coal mine” means those operations removing coal from a coal seam or  
5 seams, whether aboveground or underground.

6 (3) “Chemically altered coal product” means any product derived principally from coal,  
7 including, but not limited to, coke or liquid fuels derived from coal by any process.

**§22-32-4. Requirements.**

1 (a) In light of the above findings, environmental regulations in West Virginia for all  
2 purposes of regulating business activity performed in West Virginia, when the products of such  
3 business activities are held, maintained, or retained within the borders of West Virginia, is the  
4 principal responsibility of the West Virginia Department of Environmental Protection.

5 (b) Any West Virginia coal mine producing coal which is used commercially or privately in  
6 West Virginia and which is consumed or otherwise remains within the borders of West Virginia

7 and any West Virginia facility producing chemically altered coal products used commercially or  
8 privately in West Virginia which remain within the borders of West Virginia shall be issued a permit  
9 to operate by the West Virginia Department of Environmental Protection once the West Virginia  
10 Department of Environmental Protection has certified that the mine or facility is compliant with all  
11 applicable state and federal laws or state and federal regulations.

12 (c) A sample from each vein of coal in a mine and a sample of coal from each West Virginia  
13 source used at a facility producing a chemically altered coal product shall be placed on record  
14 with the West Virginia Department of Environmental Protection to verify the West Virginia origin  
15 of the coal produced and used.

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

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

23 (f) This article applies only to the issuance of a permit of operation to a coal mine or facility  
24 producing chemically altered coal products, the issuance of which permit is required by the Clean  
25 Water Act or by another equivalent state or federal statute or regulation. Nothing in this section  
26 may be construed to limit the effect of any 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.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.