

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2812

BY DELEGATES CAPUTO, BOGGS, PAYNTER, EVANS,

PHILLIPS, DEAN, STORCH, BATES AND CAMPBELL

[Introduced February 1, 2019; Referred
to the Committee on Industry and Labor then Energy
then the Judiciary.]

1 A BILL to amend and reenact §22A-2-63 of the Code of West Virginia, 1931, as amended, relating
 2 to allowing the Office of Miners' Health, Safety and Training to inspect the records of
 3 employers of certified persons for compliance purposes, including, but not limited to,
 4 compliance with requirements relating to training and drug screenings.

Be it enacted by the Legislature of West Virginia:

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; right to inspect records.**

1 (a) No mine may be opened or reopened unless prior approval has been obtained from
 2 the Director of the Office of Miners' Health, Safety and Training. The director may not
 3 unreasonably withhold approval. The operator shall pay a fee of \$100 for the approval, which
 4 shall be tendered with the application for approval: *Provided*, That mines producing coal solely
 5 for the operator's use shall be issued a permit without charge if coal production will be less than
 6 50 tons a year.

7 Within 30 days after January 1, of each year, the holder of a permit to open a mine shall
 8 apply for the extension of the permit for an additional year. The permit, evidenced by a document
 9 issued by the director, shall be granted as a matter of right for a fee of \$100 if, at the time
 10 application is made, the permit holder is in compliance with the provisions of §22A-2-77 of this
 11 code and has paid or otherwise appealed all coal mine assessments issued to the mine if operated
 12 by the permit holder and imposed under §22A-1-1 *et seq.* of this code. Applications for extension
 13 of permits not submitted within the time required shall be processed as an application to open or
 14 reopen a mine and shall be accompanied by a fee of \$100.

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

16 (c) If the operator of a mine is not the permit holder as defined in subsection (a) of this

17 section, then the operator shall apply for and obtain a certificate of approval to operate the mine
18 on which the permit is held prior to commencing operations. The operator shall pay a fee of \$100,
19 which payment shall be tendered with the application for approval. The approval, evidenced by a
20 certificate issued by the director, shall be granted if, at the time application is made, the applicant
21 is in compliance with the provisions of §22A-2-77 of this code and has paid or otherwise appealed
22 all coal mine assessments imposed on the applicant for the certificate of approval under §22A-1-
23 1 *et seq.* of this code.

24 (d) In addition to the director's authority to file a petition for enforcement under §22A-1-
25 21(a)(4) of this code, if an operator holding a certificate of approval issued pursuant to subsection
26 (c) of this section, has been assessed a civil penalty in accordance with §22A-1-21 of this code,
27 and its implementing rules, and the penalty has become final, fails to pay the penalty within the
28 time prescribed in the order, the director or the authorized representative of the director, by
29 certified mail, return receipt requested, shall send a notice to the operator advising the operator
30 of the unpaid penalty. If the penalty is not paid in full within 60 days from the issuance of the notice
31 of delinquency by the director, then the director may revoke the operator's certificate of approval:
32 *Provided*, That the operator to whom the delinquency notice is issued has 30 days from receipt
33 of the delinquency notice to request, by certified mail, return receipt requested, a public hearing
34 held in accordance with the procedures of §22A-1-17 of this code, and its implementing rules,
35 including application for temporary relief. Once the operator's certificate of approval is revoked
36 pursuant to this subsection, the operator may not obtain any certificate of approval under the
37 provisions of this section to operate any other mine until that operator pays the delinquent
38 penalties that have become final.

39 (e) Every firm, corporation, partnership or individual that contracts to perform services or
40 construction at a coal mine is considered to be an operator and shall apply for and obtain a
41 certificate of approval prior to commencing operations: *Provided*, That these persons shall only
42 be required to obtain one certificate annually: *Provided, however*, That persons such as, but not

43 limited to, consultants, mine vendors, office equipment suppliers and maintenance and delivery
44 personnel are excluded from this requirement to obtain a certificate of approval. Operators who
45 are required to obtain a certificate of approval pursuant to the provisions of this subsection shall
46 pay a fee of \$100 which shall be tendered with the application for approval. Approval evidenced
47 by a certificate issued by the director, shall be granted if, at the time the application is made, the
48 applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant
49 under §22A-1-1 *et seq.* of this code.

50 Within 30 days after January 1, of each year, the holder of a certificate of approval shall
51 apply for the extension of that approval for an additional year. Applications for extension shall be
52 accompanied by a fee of \$100. An extension shall be granted if, at the time application is made,
53 the applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant
54 under §22A-1-1 *et seq.* of this code. All delinquent assessments which have been imposed upon
55 a certificate of approval holder or applicants under this section may not be imposed upon any
56 permit holder or certificate of approval holder or any applicant pursuant to subsection (a) or (c) of
57 this section.

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

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

63 (h) All moneys collected by the office of miners' health, safety and training for the approval
64 fees set forth in subsections (a), (c) and (e) of this section shall be deposited with the Treasurer
65 of the State of West Virginia to the credit of the General Administration--Operating Permit Fees
66 Fund. The Operating Permit Fees Fund shall be used by the director who is authorized to expend
67 the moneys in the fund for the administration of this chapter.

68 (i) The director and employees he or she authorizes may enter, during normal business

69 hours an office or other location where an employer of a certified person as defined §22A-1-2 of
70 this code keeps records, and inspect the employer's records to ensure compliance with this
71 chapter, which include but are not limited to, records relating to training and drug screening.

NOTE: The purpose of this bill is to allow the Office of Miners' Health, Safety and Training to inspect records of employers of certified persons for compliance purposes, including, but not limited to, compliance with requirements relating to training and drug screenings.

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