

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2227**

BY DELEGATE FLEISCHAUER

[Introduced February 10, 2021; Referred to the  
Committee on Energy and Manufacturing then the  
Judiciary]

1 A BILL to amend and reenact §22-3-22a of the Code of West Virginia, 1931, as amended, relating  
2 to prohibiting blasting within 625 feet of an occupied dwelling and certain other structures.

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

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

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

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

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

7 (c) For purposes of this section, the term “protected structure” means any of the following  
8 structures that are situated outside the permit area: An occupied dwelling; a temporarily  
9 unoccupied dwelling which has been occupied within the past 90 days; a public building; a  
10 structure for commercial purposes; a school; a church; a community or institutional building; and  
11 a public park or a water well.

12 (d) Production blasting is prohibited within ~~three hundred~~ 625 feet of a protected structure  
13 or within 100 feet of a cemetery.

14 (e) Blasting within 1000 feet of a protected structure shall have a site-specific blast design  
15 approved by the Division of Mining and Reclamation. The site-specific blast design shall limit the  
16 type of explosives and detonating equipment, the size, the timing and frequency of blasts to do  
17 the following:

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

22           In the development of a site-specific blasting plan, consideration shall be given, but is not  
23 limited to, the physical condition, type and quality of construction of the protected structure, the  
24 current use of the protected structure and the concerns of the owner or occupant living in the  
25 protected structures identified in the blasting schedule notification area.

26           (f) An owner or occupant of a protected structure may waive the blasting prohibition within  
27 ~~three hundred~~ 625 feet. If a protected structure is occupied by a person other than the owner,  
28 both the owner and the occupant of the protected structure shall waive the blasting prohibition  
29 within ~~three hundred~~ 625 feet in writing. The operator shall send copies of all written waivers  
30 executed pursuant to this subsection to the Division of Mining and Reclamation. Written waivers  
31 executed and filed with the Division of Mining and Reclamation are valid during the life of the  
32 permit or any renewals of the permit and are enforceable against any subsequent owners or  
33 occupants of the protected structure.

34           (g) The provisions of this section do not apply to the following: (1) Underground coal mining  
35 operations; (2) the surface operations and surface impacts incident to an underground coal mine;  
36 and (3) the extraction of minerals by underground mining methods or the surface impacts of the  
37 underground mining methods: *Provided*, That nothing contained in this section may be construed  
38 to exempt any coal mining operation from the general performance standards as contained in  
39 §22-3-13 of this code and any rules promulgated pursuant to said section.

NOTE: The purpose of this bill is to extend the distance from occupied dwellings or certain other structures in which surface mine production blasting may not occur, from 300 feet to 625 feet, to be consistent with the distance a gas well drilling pad must be from an occupied dwelling.

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