

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2138

BY DELEGATE FLEISCHAUER

[Introduced January 9, 2019; Referred
to the Committee on Energy 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.

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 one thousand feet of a protected structure shall have a site-specific
15 blast design approved by the Division of Mining and Reclamation. The site-specific blast design
16 shall limit the type of explosives and detonating equipment, the size, the timing and frequency of
17 blasts to do 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 section thirteen of this article 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, 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.