

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### Senate Bill 290

FISCAL  
NOTE

BY SENATOR WELD

[Introduced January 10, 2020; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, and §22-3A-5, all relating to  
 3 creating the Underground Mining Subsidence Damage Act.

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

**ARTICLE 3A. UNDERGROUND MINING SUBSIDENCE DAMAGE ACT.**

**§22-3A-1. Short title.**

1 This article shall be known and may be cited as the “Underground Mining Subsidence  
 2 Damage Act”.

**§22-3A-2. Restoration or compensation for structures damaged by underground mining.**

1 (a) Whenever underground mining operations conducted under the provisions of §33-3-1  
 2 et seq. of this code cause damage to any of the following surface buildings overlying or in the  
 3 proximity of the mine:

4 (1) Any noncommercial buildings customarily used by the public, including, but not limited  
 5 to, schools, churches, and hospitals;

6 (2) Dwellings used for human habitation and permanently affixed appurtenant structures  
 7 or improvements; or

8 (3) The following agricultural structures: all barns and silos and all permanently affixed  
 9 structures of 500 or more square feet in areas that are used for raising livestock, poultry or  
 10 agricultural products, for storage of animal waste, or for the processing or retail marketing of  
 11 agricultural products produced on the farm on which the structures are located;

12 The operator of the coal mine shall repair the damage or compensate the owner of the  
 13 building for the reasonable cost of its repair or the reasonable cost of its replacement where the  
 14 damage is irreparable.

15 (b) For any irreparably damaged agricultural structure identified in subsection (a) of this  
 16 section which, at the time of damage, the operator can affirmatively prove was being used for a

17 different purpose than the purpose for which the structure was originally constructed, the operator  
18 may provide for the reasonable cost to replace the damaged structure with a structure satisfying  
19 the functions and purposes served by the damaged structure before the damage occurred.

20 (c) A mine operator shall not be liable to repair or compensate for subsidence damage if  
21 the mine operator, upon request, is denied access to the property upon which the building is  
22 located to conduct premining and postmining surveys of the building and surrounding property  
23 and thereafter serves notice upon the landowner by certified mail or personal service, which notice  
24 identifies the rights established by this act, and the landowner failed to provide or authorize access  
25 within 20 days after receipt thereof.

26 (d) The property owner has a right to receive the results of any premining and postmining  
27 surveys taken by the mine operator within 30 days of the completion of the surveys.

**§22-3A-3. Procedure for securing repair and/or compensation for damage to structures  
caused by underground mining; duties of Department of Environmental Protection.**

1 (a) The owner of any building enumerated in §22-3A-2(a) of this code who believes that  
2 the removal of coal has caused mine subsidence resulting in damage to the building and who  
3 wishes to secure repair of or compensation for the damage shall notify the mine operator. If the  
4 mine operator agrees that mine subsidence damaged the building, it shall cause the damage to  
5 be fully repaired or compensate the owner for the damage in accordance with §22-3A-2 of this  
6 code or with an agreement reached between the parties either prior to mining or after the damage  
7 has occurred.

8 (b) If the parties are unable to agree within six months of the date of notice as to the cause  
9 of the damage or the reasonable cost of repair or compensation, the owner of the building may  
10 file a claim in writing with the Department of Environmental Protection, a copy of which shall be  
11 sent to the operator. All claims under this subsection shall be filed within two years of the date  
12 damage to the building occurred.

13 (c) The department shall make an investigation of a claim within 60 days of receipt of the

14 claim. The department shall, within 60 days following the investigation, make a determination in  
15 writing as to whether the damage was caused by subsidence due to underground coal mining,  
16 and if so, the reasonable cost of repairing or replacing the damaged structure. If the department  
17 finds the damage to be caused by the mining, it shall issue a written order directing the operator  
18 to compensate or to cause repairs to be made within six months or a longer period if the  
19 department finds that occurrence of subsidence or subsequent damage may occur to the same  
20 building as a result of mining.

21 (d) In no event shall the mine operator be liable for repairs or compensation for the  
22 damaged structure in an amount exceeding the cost of replacement of the damaged structure.  
23 The occupants of a damaged structure shall also be entitled to additional payment for reasonable,  
24 actual expenses incurred for temporary relocation and for other actual reasonable, incidental  
25 costs agreed to by the parties or approved by the department.

26 (e) If either the landowner or the mine operator is aggrieved by an order issued by the  
27 department, such party shall have the right to appeal the order to the department within 30 days  
28 of receipt of the order. The appeal of a mine operator shall not be considered to be perfected  
29 unless, within 60 days of the date on which the mine operator received the department's order,  
30 the operator has deposited an amount equal to the cost of repair or the compensation amount  
31 ordered by the department in an interest-bearing escrow account administered for such purposes  
32 by the department.

33 (f) If the mine operator fails to repair or compensate for subsidence damage within six  
34 months, or such longer period as the department has established, or fails to perfect an appeal of  
35 the department's order directing the repair or compensation, the department shall issue such  
36 orders and take such actions as are necessary to compel compliance with the requirements  
37 hereof, including, but not limited to, cessation orders and permit revocation. If the mine operator  
38 fails to repair or compensate for damage after exhausting the operator's right of appeal, the  
39 department shall pay the escrow deposit made with respect to the particular claim involved and

40 accrued interest to the owner of the damaged building.

41 (g) Except as provided in subsection (f) of this section, the existence of unresolved claims  
42 of subsidence damage may not be used by the department as a basis for withholding permits  
43 from or suspending review of permit applications submitted by the mine operator against whom  
44 such claims have been made.

**§22-3A-4. Voluntary agreements for repair or compensation for damages to structures  
caused by underground mining; deed recital.**

1 (a) Nothing contained within this article prohibits a mine operator and a landowner at any  
2 time after the effective date of this act from voluntarily entering into an agreement establishing  
3 the manner and means by which repair or compensation for subsidence damage is to be provided.

4 (b) Any release contained in the agreement shall be valid in releasing the operator from  
5 liability for damage caused by subsidence only if all of the following are contained within the  
6 agreement:

7 (1) It clearly states what rights are established by this article;

8 (2) That the landowner expressly acknowledges the release is being given as  
9 consideration for the alternate remedies provided under the agreement, except that the remedies  
10 shall be no less than those necessary to compensate the owner of a building for the reasonable  
11 cost of its repair or the reasonable cost of its replacement where the damage is irreparable;

12 (3) That the release shall be valid only with respect to damage resulting from the mining  
13 activity contemplated by the agreement; and

14 (4) That the release shall be null and void if no mining occurs for a period of 35 years  
15 within the coal field of which the coal underlying the affected surface property forms a part.

16 (c) In every deed for the conveyance of property for which an agreement executed  
17 pursuant to this section is effective, the grantor, at the time of transfer, shall include in the deed a  
18 recital of the agreement and any release contained therein.

19 (d) The duty created by §22-3A-3 of this code to repair or compensate for subsidence

20 damage to the buildings enumerated in §22-3A-2 of this code is the sole and exclusive remedy  
21 for the damage and may not be diminished by the existence of contrary provisions in deed or  
22 agreements which relieved mine operators from such duty. The provisions of this article shall not  
23 impair agreements entered into prior to its effective date, which for valid consideration, provide  
24 for a waiver or release of any duty to repair or compensate for subsidence damage.

**§22-3A-5. Rulemaking authority.**

1 The secretary shall propose rules for legislative approval in accordance with the provisions  
2 of §29A-3-1 et seq. of this code, to implement provisions of this article, and to amend any existing  
3 rules as required.

NOTE: The purpose of this bill is to establish the "Underground Mining Subsidence Damage Act."

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