

COMMITTEE SUBSTITUTE

FOR

H. B. 2986

(By Delegates Hartman, Michael, Williams,
Crosier, Shaver, D. Campbell and Romine)

(By Request of the Division of the Forestry)
(Originating in the Committee on the Judiciary)

[February 23, 2011]

A BILL to amend and reenact §20-3-5 of the Code of West Virginia, 1931, as amended, relating to regulation of outdoor burning; modifying prohibited and permissible fire times and seasons; revising the procedure for obtaining a burning permit; increasing permit fees; exempting agriculture from permit fees; setting forth fire control requirements; and establishing criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

That §20-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-5. Forest fire seasons; prohibited and permissible fires; burning permits and fees; fire control measures; criminal and civil penalties.

1 (a) Forest fire seasons. -- ~~The periods of each year between~~
2 March 1 ~~and through~~ May 31, ~~inclusive~~ and October 1 ~~and through~~
3 December 31, ~~inclusive~~ are hereby designated as forest fire
4 seasons. ~~No person shall during any such~~ During any fire season,
5 no person may ~~except between the hours of four o'clock p.m. and~~
6 ~~seven o'clock a.m. prevailing time,~~ set on fire or cause to be set
7 on fire any forest land, or any grass, grain, stubble, slash,
8 debris, or other inflammable materials, except between the hours of
9 seven o'clock p.m. and seven o'clock a.m., at which time the fire
10 must be extinguished. ~~Any fire set during this time shall be~~
11 ~~extinguished prior to seven o'clock a.m. prevailing time.~~

12 (b) Permissible fires. -- ~~Such prohibition of fires~~

13 (1) The following attended fires are permitted without a
14 burning permit between seven o'clock a.m. and ~~four~~ seven o'clock
15 p.m. at any time of the year unless there is a burning ban in
16 effect: ~~prevailing time shall not be construed to include~~

17 ~~(1)~~ (A) Small fires set for the purpose of food preparation,
18 or providing light or warmth around which all grass, brush,
19 stubble, or other debris has been removed for a distance of ten
20 feet from the fire; and

21 ~~(2)~~ (B) Burning ~~which may be~~ conducted at any time when the
22 ground surrounding the burning site is covered by one inch or more
23 of snow.

24 ~~Any person who sets or causes to be set any fire permitted by~~
25 ~~this section shall not leave such fire unattended for any period of~~

1 ~~time.~~

2 (2) Burning permits.

3 (A) The director or his ~~or her~~ designated appointees or
4 employees designee may issue burning permits authorizing fires
5 otherwise prohibited by the preceding paragraph. Such permits may
6 be granted on such conditions and for such periods of time as the
7 director deems necessary this section. The permits shall state the
8 requisite conditions and time frame to prevent danger from the fire
9 to life or property. and noncompliance Entities requiring a permit
10 are those engaged in commercial, manufacturing, public utility,
11 mining or like activities that use fires to clear land.

12 (B) Permit fees. The fee for obtaining a burning permit is
13 \$125 per site and shall be deposited into the Division of Forestry
14 Fund (3081) to be used to administer the provisions of this
15 section. The permit fee covers the fire season during which it is
16 issued. Agriculture activities are exempt from paying the permit
17 fee, but still must obtain a permit.

18 (B) Noncompliance with any ~~term~~ condition of the permit
19 requirements shall be is a violation of this section. Any permit
20 which was obtained through willful misrepresentation shall be is
21 invalid and violates this section.

22 (C) ~~All~~ Permit holders shall take all necessary and adequate
23 precautions to confine and control any fire permitted by the
24 authorization; failure fires authorized by the permit. Failure to
25 take such action shall be is a violation of this section and shall

1 ~~be~~ is justification for the director ~~or his duly authorized~~
2 ~~representative to cancel~~ to revoke the permit.

3 (c) Fire control. -- ~~When the director considers it necessary~~
4 ~~to prevent danger from fire to life or property, he may, with the~~
5 ~~prior~~ (1) With approval of the Governor, the director may prohibit
6 the starting of and require the extinguishment of any fire in any
7 ~~area~~ designated area, including fires permitted by this section.
8 ~~by the director, and such action may include any fire for which a~~
9 ~~permit has been issued under the preceding paragraph. In addition,~~
10 ~~if so deemed necessary, the director may, with the prior~~

11 (2) With approval of the Governor, the director may designate
12 any forest area as a danger area, ~~and prohibit entry, thereon or~~
13 ~~use thereof except for the purposes and on the conditions he~~
14 ~~designates~~ and declare conditional uses and prohibited areas of the
15 forest by proclamation at any time of the year. ~~The director by~~
16 ~~proclamation shall establish such areas and designate which fires~~
17 ~~are prohibited therein; and if a danger area is established, he~~
18 ~~shall announce the purposes for which and conditions under which~~
19 ~~entry thereon or use thereof may be made. Action hereunder may be~~
20 ~~taken by the director at any time during the year. Notice of any~~
21 ~~proclamation hereunder~~ The proclamation shall be furnished to
22 newspapers, radio stations and television stations ~~which~~ that serve
23 the designated area ~~designated.~~ ~~The proclamation shall not be~~ and
24 shall become effective after twenty-four hours. ~~effective until~~
25 ~~twenty-four hours after it is proclaimed.~~ Any The proclamation

1 ~~hereunder shall remain in force~~ remains in effect until the
2 director, with the approval of the Governor, ~~by order~~ terminates
3 it. The order shall designate the time of termination, and notice
4 of ~~any such~~ the order shall be furnished to each newspaper, radio
5 station and television station ~~which~~ that received a copy of the
6 proclamation. ~~Any person who starts or fails to extinguish a fire~~
7 ~~so prohibited or enters or uses a danger area otherwise than~~
8 ~~permitted shall be guilty of a violation of this section.~~

9 (3) No burning allowed by this section may be done unless
10 Burning is not permitted by this section until all inflammable
11 material has been removed from around the material to be burned ~~as~~
12 and a safety strip established of at least ~~for a distance which~~
13 ~~insures that the fire will not escape and which is no less than ten~~
14 feet to ensure that the fire will not escape. ~~Any person or his~~
15 ~~agent or employee who sets or causes to be set any fire at any time~~
16 ~~in the use and occupation of any land on which the burning was~~
17 ~~being done is in violation of this section if fire escapes beyond~~
18 ~~the safety strip and shall be guilty of a misdemeanor.~~

19 (d) Criminal and civil penalties. -- A person or entity that
20 violates this section is guilty of a misdemeanor and, upon
21 conviction, shall be fined not less than \$100 and not more than
22 \$1,000 for each violation. In addition to fines and costs, a
23 person or entity convicted of a violation of this section shall pay
24 a \$200 civil penalty to the division within sixty days. The civil
25 penalty shall be collected by the court in which the person is

1 convicted and forwarded to the division and deposited in the
2 Division of Forestry Fund (3081) to be used to administer the
3 provisions of this section.