

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4394**

BY DELEGATES A. EVANS, HARTMAN, HAMILTON,

AND R. ROMINE

[Passed March 10, 2018; in effect ninety days from passage.]



1 AN ACT to amend and reenact §20-3-5 of the Code of West Virginia, 1931, as amended, and to  
2 amend said code by adding thereto a new section, designated §20-3-5a, all relating to  
3 forest fires; requiring all flammable material must be removed from the area immediately  
4 surrounding material to be burned for a distance which ensures the fire will at all times be  
5 contained; requiring that a safety strip shall in no event be less than ten feet wide;  
6 establishing a crime for any person or employee who sets or causes to be set any fire  
7 which escapes the safety strip and causes damage to the lands of another; setting forth  
8 criminal penalties; creating a prescribed fire program; defining terms; requiring Director of  
9 the Division of Natural Resources to develop a certification process and prescribed burn  
10 course; setting forth requirements for certification as a certified prescribed fire manager;  
11 prescribing manner in which prescribed burn must be performed; setting forth violations  
12 which may result in revocation of certification; and authorizing rule-making.

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

**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.* — March 1 through May 31, and October 1 through December 31  
2 are designated as forest fire seasons. During any fire season, a person may set on fire or cause  
3 to be set on fire any forest land, or any grass, grain, stubble, slash, debris, or other inflammable  
4 materials only between 5 p.m. and 7 a.m., at which time the fire must be extinguished.

5 (b) *Permissible fires during forest fire seasons.* — The following attended fires are  
6 permitted during forest fire season as set forth in subsection (a) of this section without a burning  
7 permit unless there is a burning ban in effect:

8 (1) Small fires set for the purpose of food preparation, or providing light or warmth around  
9 which all grass, brush, stubble, or other debris has been removed for a distance of 10 feet from  
10 the fire; and

11 (2) Burning conducted at any time when the ground surrounding the burning site is  
12 covered by one inch or more of snow.

13 (c) *Burning permits.* — The director or his or her designee may issue burning permits  
14 authorizing fires during forest fire seasons as set forth in subsection (a) of this section that are  
15 otherwise prohibited by this section. The permits shall state the requisite conditions and time  
16 frame to prevent danger from the fire to life or property: *Provided*, That the director or his or her  
17 designee shall take final action upon all completed permit applications within 30 days of receipt if  
18 the application is uncontested, or within 90 days if the application is contested.

19 (1) *Permit fees.* — Entities required to pay a permit fee are those engaged in commercial,  
20 manufacturing, public utility, mining, and like activities. Agricultural activities are exempt from  
21 paying the permit fee. The permit fee is \$125 per site and shall be deposited into the Division of  
22 Forestry Fund (3081) to be used to administer the provisions of this section. The permit fee covers  
23 the fire season during which it is issued.

24 (2) Noncompliance with any condition of the permit is a violation of this section. Any permit  
25 which was obtained through willful misrepresentation is invalid and violates this section.

26 (3) Permit holders shall take all necessary and adequate precautions to confine and  
27 control fires authorized by the permit. Failure to take action is a violation of this section and is  
28 justification for the director to revoke the permit.

29 (d) *Fire control.* —

30 (1) With approval of the Governor, the director may prohibit the starting of and require the  
31 extinguishment of fire in any designated area, including fires permitted by this section.

32 (2) With approval of the Governor, the director may designate any forest area as a danger  
33 area, prohibit entry, and declare conditional uses and prohibited areas of the forest by  
34 proclamation at any time of the year. The proclamation shall be furnished to newspapers, radio  
35 stations, and television stations that serve the designated area and becomes effective after 24  
36 hours. The proclamation remains in effect until the director, with the approval of the Governor,

37 terminates it. The order shall designate the time of termination, and notice of the order shall be  
38 furnished to each newspaper, radio station, and television station that received a copy of the  
39 proclamation.

40 (3) A person shall remove all flammable material from the area immediately surrounding  
41 the material to be burned for a distance which ensures the fire will at all times be contained; this  
42 safety strip shall in no event be less than 10 feet wide. Any person or his or her agent or employee  
43 who sets or causes to be set any fire which escapes the safety strip and causes damage to the  
44 lands of another is guilty of a misdemeanor.

45 (e) *Criminal and civil penalties.* — A person or entity that violates this section is guilty of a  
46 misdemeanor and, upon conviction, shall be fined not less than \$100 and not more than \$1,000  
47 for each violation. In addition to fines and costs, a person or entity convicted of a violation of this  
48 section shall pay a \$200 civil penalty to the division within 60 days. The civil penalty shall be  
49 collected by the court in which the person is convicted and forwarded to the division and deposited  
50 in the Division of Forestry Fund (3081) to be used to administer the provisions of this section.

**§20-3-5a. Prescribed Fire Program.**

1 (a) As used in this section:

2 (1) “Certified prescribed fire manager” means an employee of the Division of Forestry, the  
3 Division of Natural Resources, or any federal employee who has successfully completed a  
4 certification process established by the director.

5 (2) “Prescribed fire” means the controlled application of fire or wildland fuels in wildlife  
6 management areas, state forests or federal lands in either the natural or modified state, under  
7 specified environmental conditions, which allows the fire to be confined to a predetermined area  
8 and produces the fire behavior and fire characteristics necessary to attain planned fire treatment  
9 and ecological, silvicultural, and wildlife management objectives.

10 (3) “Prescription” means a written statement defining the objectives to be attained by a  
11 prescribed fire and the conditions of temperature, humidity, wind direction and speed, fuel

12 moisture, and soil moisture under which a fire will be allowed to burn. A prescription is generally  
13 expressed as an acceptable range of the prescription elements.

14 (b) *Director certification process.* — The director shall develop and administer a  
15 certification process and prescribed burn course for any individual who desires to become a  
16 certified prescribed fire manager. The prescribed fire course shall include the following subjects:  
17 the legal aspects of prescribed fire, fire behavior, prescribed fire tactics, smoke management,  
18 environmental effects, plan preparation, and safety. The director shall give a final examination on  
19 these subjects to all attendees. The director may charge a reasonable fee to cover the costs of  
20 the prescribed fire course and the examination.

21 (c) To be certified as a certified prescribed fire manager, a person shall:

22 (1) Successfully complete all components of the prescribed fire course developed by the  
23 director and pass the examination developed for the course;

24 (2) Successfully complete a prescribed fire course comparable to that developed by the  
25 director and pass the examination developed for the course; or

26 (3) Demonstrate relevant past experience, complete a review course and pass the  
27 examination developed for the prescribed fire course.

28 (d) Prescribed burning shall be performed in the following manner:

29 (1) A certified prescribed fire manager shall prepare a prescription for the prescribed fire  
30 prior to the burn. The prescription shall include: (A) The landowner's name, address, and  
31 telephone number, and the telephone number of the certified prescribed fire manager who  
32 prepared the plan; (B) a description of the area to be burned, a map of the area to be burned, the  
33 objectives of the prescribed fire, and the desired weather conditions or parameters; (C) a  
34 summary of the methods to be used to start, control, and extinguish the prescribed fire; and (D)  
35 a smoke management plan. The smoke management plan shall conform to the Department of  
36 Environmental Protection's rule, Control of Air Pollution from Combustion of Refuse, 45 CSR 6.  
37 A copy of the prescription shall be retained at the site throughout the period of the burning;

38           (2) A certified prescribed fire manager shall directly supervise a prescribed fire and ensure  
39 that the prescribed fire is in accordance with the prescription; and

40           (3) The certified prescribed fire manager shall notify the nearest regional office of the  
41 division 24 hours prior to the prescribed fire.

42           (e) If the actions of any certified prescribed fire manager or the prescriptions prepared by  
43 him or her violate any provision of this article, state air pollution control laws, the Division of  
44 Forestry rules, the Department of Environmental Protection rules or laws, or threaten public health  
45 and safety, the director may revoke his or her certification.

46           (f) The director shall propose rules for promulgation in accordance with the  
47 provisions of §29A-3-1 *et seq.* of this code for establishing the procedures for the  
48 development of a certification program for prescribed fire managers.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2018.

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*Governor*