

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 429

BY SENATORS MAYNARD, BOSO, CLINE, PLYMALE,

SYPOLT, AND FACEMIRE

[Introduced January 30, 2018; Referred
to the Committee on Natural Resources; and then to the
Committee on the Judiciary]

1 A BILL 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; clarifying civil and criminal penalties for failure to remove flammable material,
4 failure to create a safety strip, or permitting fire to escape; and creating a prescribed burn
5 program.

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 without a burning permit unless there is a burning ban in effect:

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

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

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

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

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

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

28 (d) *Fire control.* —

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

31 (2) With approval of the Governor, the director may designate any forest area as a danger
32 area, prohibit entry, and declare conditional uses and prohibited areas of the forest by
33 proclamation at any time of the year. The proclamation shall be furnished to newspapers, radio
34 stations and television stations that serve the designated area and shall become effective after
35 24 hours. The proclamation remains in effect until the director, with the approval of the Governor,
36 terminates it. The order shall designate the time of termination, and notice of the order shall be
37 furnished to each newspaper, radio station and television station that received a copy of the
38 proclamation.

39 ~~(3) Burning is not permitted by this section until all inflammable material has been removed~~
40 ~~from around the material to be burned and a safety strip of at least ten feet is established to ensure~~
41 ~~that the fire will not escape. It is a violation of this section to burn any material prior to the removal~~
42 ~~of all flammable material and the creation of at least a 10-foot safety strip. If the fire escapes the~~
43 ~~safety strip, the person or entity has committed a second violation of this section.~~

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

§20-3-5a. Prescribed Burn Program.

1 (a) As used in this section:

2 (1) “Certified prescribed burn manager” means any person who has successfully
3 completed a certification process established by the director.

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

9 (3) “Prescription” means a written statement defining the objectives to be attained by a
10 prescribed burning and the conditions of temperature, humidity, wind direction and speed, fuel
11 moisture, and soil moisture under which a fire will be allowed to burn. A prescription is generally
12 expressed as an acceptable range of the prescription elements.

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

20 (c) To be certified as a prescribed burn manager, a person shall:

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

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

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

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

28 (1) A prescription for the prescribed burn shall be prepared by a certified prescribed burn
29 manager prior to the burn. The prescription shall include: (i) The landowner's name, address, and
30 telephone number, and the telephone number of the certified prescribed burn manager who
31 prepared the plan, (ii) a description of the area to be burned, a map of the area to be burned, the
32 objectives of the prescribed burn, and the desired weather conditions or parameters, (iii) a
33 summary of the methods to be used to start, control, and extinguish the prescribed burn, and (iv)
34 a smoke management plan. The smoke management plan shall conform to the Department of
35 Environmental Protection's rules for the open burning of vegetation and land clearing debris, 45
36 CSR 6. A copy of the prescription shall be retained at the site throughout the period of the burning;

37 (2) Prescribed burning shall be conducted under the direct supervision of a certified
38 prescribed burn manager, who shall ensure that the prescribed burning is in accordance with the
39 prescription; and

40 (3) The nearest regional office of the division shall be notified 24 hours prior to the burn.

41 (e) A prescribed burn manager who conducts a prescribed burn in compliance with the
42 requirements of this article, state air pollution control laws, any rules adopted by the Division of
43 Forestry and the Department of Environmental Protection shall not be liable for damage or injury
44 caused by smoke or fire. This shall not apply whenever a nuisance or damage results from the
45 negligent or improper implementation of the prescribed burn or when the prescribed burn

46 requirements of this section have not been met.

47 (f) If the actions of any certified prescribed burn manager or the prescriptions prepared
48 by him or her violate any provision of this article, state air pollution control laws, the Division of
49 Forestry rules, the Department of Environmental Protection rules or laws, or threaten public health
50 and safety, his or her certification may be revoked by the director.

51 (g) The director shall propose emergency or legislative rules for legislative approval in
52 accordance with §29A-3-1 et seq. of this code to implement the provisions of this section.

NOTE: The purpose of this bill is to clarify that there are civil and criminal penalties for failure to remove flammable material, failure to create a safety strip and fire escape. Further, the bill establishes a prescribed burn program.

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