

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4300

FISCAL
NOTE

BY DELEGATE HOLESTEIN

[Introduced January 20, 2022; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §22-5-6 of the Code of West Virginia, 1931, as amended, relating
2 to increasing the daily civil penalty for refuse burning and clarifying that the civil penalty is
3 recoverable for a first minor violation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.

4 (a) Any person who violates any provision of this article, any permit or any rule or order
5 issued pursuant to this article or article one, chapter twenty-two-b of this code is subject to a civil
6 penalty not to exceed ~~\$10,000~~ \$15,000 for each day of such violation, which penalty shall be
7 recovered in a civil action brought by the director in the name of the State of West Virginia in the
8 circuit court of any county wherein the person resides or is engaged in the activity complained of
9 or in the circuit court of Kanawha County. The amount of the penalty shall be fixed by the court
10 without a jury: *Provided*, That any person is not subject to civil penalties unless the person has
11 been given written notice thereof by the director: ~~*Provided, however*, That for the first such minor~~
12 ~~violation, if the person corrects the violation within the time as was specified in the notice of~~
13 ~~violation issued by the director, no civil penalty may be recovered~~ *Provided, further* *however*, That
14 if the person fails to correct a minor violation within the time as was specified in the notice of
15 violation issued by the director or for any serious or subsequent serious or minor violation, the
16 person is subject to civil penalties imposed pursuant to this section from the first day of the
17 violation notwithstanding the date of the issuance or receipt of the notice of violation. The director
18 shall, by rule subject to the provisions of chapter twenty-nine-a of this code, determine the
19 definitions of serious and minor violations. The amount of any penalty collected by the director
20 shall be deposited in the general revenue of the state Treasury according to law.

21 (b)(1) Any person who knowingly misrepresents any material fact in an application, record,
22 report, plan or other document filed or required to be maintained under the provisions of this article
23 or any rules promulgated under this article is guilty of a misdemeanor and, upon conviction

24 thereof, shall be fined not more than \$25,000 or imprisoned in the county jail not more than six
25 months or both fined and imprisoned: *Provided*, That if the violation occurs on separate days or
26 is continuing in nature, the fine shall be no more than \$25,000 for each day of such violation.

27 (2) Any person who knowingly violates any provision of this article, any permit or any rule
28 or order issued pursuant to this article or article one, chapter twenty-two-b of this code is guilty of
29 a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 for each day
30 of such violation or imprisoned in the county jail not more than one year or both fined and
31 imprisoned.

32 (c) Upon a request in writing from the director it is the duty of the Attorney General and
33 the prosecuting attorney of the county in which any such action for penalties accruing under this
34 section or section seven of this article may be brought to institute and prosecute all such actions
35 on behalf of the director.

36 (d) For the purpose of this section, violations on separate days are separate offenses.

NOTE: The purpose of this bill is to increase the daily civil penalty for refuse burning and clarify that the civil penalty is recoverable for a first minor violation.

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