

Senate Bill No. 445

(By Senators Laird, Fanning, D. Facemire, Helmick and Miller)

[Introduced February 7, 2011; referred to the Committee on Natural Resources; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §20-3-5 of the Code of West Virginia, 1931, as amended, relating to forest fire seasons; clarifying allowed and prohibited fire times and seasons; establishing an industrial permit and fee; 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; industrial permit and fee; permitted and prohibited fires; fire control measures; criminal and civil penalties.

(a) Forest fire seasons. -- ~~The periods of each year between March 1 and through May 31, inclusive and October 1 and through December 31, inclusive are hereby~~ designated as forest fire

1 seasons. ~~No person shall during any such~~ During any fire season,
 2 no person may ~~except between the hours of four o'clock p.m. and~~
 3 ~~seven o'clock a.m. prevailing time,~~ set on fire or cause to be set
 4 on fire any forest land, or any grass, grain, stubble, slash,
 5 debris, or other inflammable materials, except between the hours of
 6 seven o'clock p.m. and seven o'clock a.m., at which time the fire
 7 must be extinguished. ~~Any fire set during this time shall be~~
 8 ~~extinguished prior to seven o'clock a.m. prevailing time.~~

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

10 (1) The following fires are permitted while attended between
 11 seven o'clock a.m. and ~~four~~ seven o'clock p.m.: ~~prevailing time~~
 12 ~~shall not be construed to include~~

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

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

20 ~~Any person who sets or causes to be set any fire permitted by~~
 21 ~~this section shall not leave such fire unattended for any period of~~
 22 ~~time.~~

23 (2) Industrial permits.

24 (A) The director or his ~~designated appointees or employees~~
 25 designee may issue industrial permits authorizing fires otherwise

1 prohibited by the preceding paragraph. Such permits may be granted
 2 on such conditions and for such periods of time as the director
 3 deems necessary this section. The permits shall state the
 4 requisite conditions and time frame to prevent danger from the fire
 5 to life or property. ~~and noncompliance~~ The permit fee covers the
 6 fire season during which it is issued. The fee is \$125 per site
 7 and shall be deposited into the Division of Forestry Fund (3081) to
 8 be used to administer the provisions of this section. For the
 9 purposes of this section, industrial 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) Noncompliance with any term condition of the permit ~~shall~~
 13 ~~be~~ is a violation of this section. Any permit which was obtained
 14 through willful misrepresentation ~~shall be~~ is invalid and violates
 15 this section.

16 (C) All Permit holders shall take all necessary and adequate
 17 precautions to confine and control ~~any fire permitted by the~~
 18 ~~authorization; failure~~ fires authorized by the permit. Failure to
 19 take ~~such~~ action ~~shall be~~ is a violation of this section and
 20 ~~shall be~~ is justification for the director ~~or his duly authorized~~
 21 ~~representative to cancel~~ to revoke the permit.

22 (c) Fire control. -- ~~When the director considers it necessary~~
 23 ~~to prevent danger from fire to life or property, he may, with the~~
 24 ~~prior~~ (1) With approval of the Governor, the director may prohibit
 25 the starting of and require the extinguishment of any fire in any

1 ~~area designated area, including fires permitted by this section. by~~
2 ~~the director, and such action may include any fire for which a~~
3 ~~permit has been issued under the preceding paragraph. In addition,~~
4 ~~if so deemed necessary, the director may, with the prior~~

5 (2) With approval of the Governor, the director may designate
6 any forest area as a danger area, and prohibit entry, thereon or
7 use thereof except for the purposes and on the conditions he
8 designates and declare conditional uses and prohibited areas of the
9 forest by proclamation at any time of the year. The director by
10 proclamation shall establish such areas and designate which fires
11 are prohibited therein; and if a danger area is established, he
12 shall announce the purposes for which and conditions under which
13 entry thereon or use thereof may be made. Action hereunder may be
14 taken by the director at any time during the year. Notice of any
15 proclamation hereunder The proclamation shall be furnished to
16 newspapers, radio stations and television stations which that serve
17 the designated area designated. The proclamation shall not be and
18 shall become effective after twenty-four hours. effective until
19 twenty-four hours after it is proclaimed. Any The proclamation
20 hereunder shall remain in force remains in effect until the
21 director, with the approval of the Governor, by order terminates
22 it. The order shall designate the time of termination, and notice
23 of any such the order shall be furnished to each newspaper, radio
24 station and television station which that received a copy of the
25 proclamation. Any person who starts or fails to extinguish a fire

1 ~~so prohibited or enters or uses a danger area otherwise than~~
2 ~~permitted shall be guilty of a violation of this section.~~

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

13 (d) Criminal and civil penalties. -- A person or entity that
14 violates this section is guilty of a misdemeanor and, upon
15 conviction, shall be fined not less than \$100 and not more than
16 \$1,000 for each violation. In addition to fines and costs, a person
17 or entity convicted of a violation of this section shall pay a \$200
18 civil penalty to the division within sixty days. The civil penalty
19 shall be collected by the court in which the person is convicted
20 and forwarded to the division and deposited in the Division of
21 Forestry Fund (3081) to be used to administer the provisions of
22 this section.

NOTE: The purpose of this bill clarifies allowed and prohibited fires times and seasons;. The bill establishes an

industrial permit and its fee. The bill also sets forth fire control requirements. The bill further establishing criminal and civil penalties. The bill also makes technical corrections.

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