

COMMITTEE SUBSTITUTE

FOR

**H. B. 2986**

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(BY DELEGATES HARTMAN, MICHAEL, WILLIAMS,  
CROSIER, SHAVER, D. CAMPBELL AND ROMINE)  
[BY REQUEST OF THE DIVISION OF THE FORESTRY]

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

13       (b) Permissible fires. -- Such prohibition of fires

14       (1) The following attended fires are permitted without a  
15       burning permit between seven o'clock a.m. and ~~four~~ seven

16 o'clock p.m. at any time of the year unless there is a burning  
17 ban in effect: ~~prevailing time shall not be construed to~~  
18 ~~include~~

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

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

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

29 (2) Burning permits.

30 (A) The director or his or her ~~designated appointees or~~  
31 ~~employees~~ designee may issue burning permits authorizing  
32 fires otherwise prohibited by the preceding paragraph. Such  
33 ~~permits may be granted on such conditions and for such~~  
34 ~~periods of time as the director deems necessary~~ this section.

35 The permits shall state the requisite conditions and time  
36 frame to prevent danger from the fire to life or property. and  
37 ~~noncompliance~~ Entities requiring a permit are those engaged  
38 in commercial, manufacturing, public utility, mining or like  
39 activities that use fires to clear land.

40 (B) Permit fees. The fee for obtaining a burning permit is  
41 \$125 per site and shall be deposited into the Division of  
42 Forestry Fund (3081) to be used to administer the provisions  
43 of this section. The permit fee covers the fire season during  
44 which it is issued. Agriculture activities are exempt from  
45 paying the permit fee, but still must obtain a permit.

46 (C) Noncompliance with any term condition of the permit  
47 requirements shall be is a violation of this section. Any  
48 permit which was obtained through willful misrepresentation  
49 shall be is invalid and violates this section.

50 (D) All Permit holders shall take all necessary and  
51 adequate precautions to confine and control any fire  
52 permitted by the authorization; failure fires authorized by the  
53 permit. Failure to take such action shall be is a violation of

54 this section and ~~shall be~~ is justification for the director ~~or his~~  
55 ~~duly authorized representative to cancel~~ to revoke the permit.

56 (c) Fire control. -- ~~When the director considers it~~  
57 ~~necessary to prevent danger from fire to life or property, he~~  
58 ~~may, with the prior~~ (1) With approval of the Governor, the  
59 director may prohibit the starting of and require the  
60 extinguishment of any fire in any ~~area~~ designated area,  
61 including fires permitted by this section. ~~by the director, and~~  
62 ~~such action may include any fire for which a permit has been~~  
63 ~~issued under the preceding paragraph. In addition, if so~~  
64 ~~deemed necessary, the director may, with the prior~~

65 (2) With approval of the Governor, the director may  
66 designate any forest area as a danger area, ~~and~~ prohibit entry,  
67 ~~thereon or use thereof except for the purposes and on the~~  
68 ~~conditions he designates~~ and declare conditional uses and  
69 prohibited areas of the forest by proclamation at any time of  
70 the year. ~~The director by proclamation shall establish such~~  
71 ~~areas and designate which fires are prohibited therein; and if~~  
72 ~~a danger area is established, he shall announce the purposes~~

73 ~~for which and conditions under which entry thereon or use~~  
74 ~~thereof may be made. Action hereunder may be taken by the~~  
75 ~~director at any time during the year. Notice of any~~  
76 ~~proclamation hereunder~~ The proclamation shall be furnished  
77 to newspapers, radio stations and television stations which  
78 that serve the designated area ~~designated~~. The proclamation  
79 ~~shall not be~~ and shall become effective after twenty-four  
80 hours. ~~effective until twenty-four hours after it is proclaimed.~~  
81 ~~Any~~ The proclamation hereunder shall remain in force  
82 remains in effect until the director, with the approval of the  
83 Governor, ~~by order~~ terminates it. The order shall designate  
84 the time of termination, and notice of ~~any such~~ the order shall  
85 be furnished to each newspaper, radio station and television  
86 station ~~which~~ that received a copy of the proclamation. ~~Any~~  
87 ~~person who starts or fails to extinguish a fire so prohibited or~~  
88 ~~enters or uses a danger area otherwise than permitted shall be~~  
89 ~~guilty of a violation of this section.~~

90 (3) ~~No burning allowed by this section may be done~~  
91 ~~unless~~ Burning is not permitted by this section until all

92 inflammable material has been removed from around the  
93 material to be burned ~~as~~ and a safety strip established of at  
94 least ~~for a distance which insures that the fire will not escape~~  
95 ~~and which is no less than ten feet~~ to ensure that the fire will  
96 not escape. ~~Any person or his agent or employee who sets or~~  
97 ~~causes to be set any fire at any time in the use and occupation~~  
98 ~~of any land on which the burning was being done is in~~  
99 ~~violation of this section if fire escapes beyond the safety strip~~  
100 ~~and shall be guilty of a misdemeanor.~~

101 (d) Criminal and civil penalties. -- A person or entity  
102 that violates this section is guilty of a misdemeanor and, upon  
103 conviction, shall be fined not less than \$100 and not more  
104 than \$1,000 for each violation. In addition to fines and costs,  
105 a person or entity convicted of a violation of this section shall  
106 pay a \$200 civil penalty to the division within sixty days.  
107 The civil penalty shall be collected by the court in which the  
108 person is convicted and forwarded to the division and  
109 deposited in the Division of Forestry Fund (3081) to be used  
110 to administer the provisions of this section.