

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4394**

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[Referred to the Committee on Agriculture and Natural

Resources then 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; 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; and creating  
8 a prescribed fire 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 during forest fire season as set forth in subsection (a) without a burning permit unless  
7 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) that are otherwise

15 prohibited by this section. The permits shall state the requisite conditions and time frame to  
16 prevent danger from the fire to life or property: *Provided*, That the director or his or her designee  
17 shall take final action upon all completed permit applications within 30 days of receipt if the  
18 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 shall become effective after  
36 24 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) Burning is not permitted by this section until all inflammable material has been removed~~  
41 ~~from around the material to be burned and a safety strip of at least ten feet is established to ensure~~  
42 ~~that the fire will not escape.~~ All flammable material must be removed from the area immediately  
43 surrounding the material to be burned for a distance which ensures the fire will at all times be  
44 contained; this safety strip shall in no event be less than ten feet wide. Any person or their agent  
45 or employee who sets or causes to be set any fire which escapes the safety strip and causes  
46 damage to the lands of another shall be guilty of a misdemeanor.

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

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

1 (a) As used in this section:

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

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

10 (3) "Prescription" means a written statement defining the objectives to be attained by a  
11 prescribed burning 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 training course for any individual who desires to become a certified  
16 prescribed fire manager. The training program shall include the following subjects: the legal  
17 aspects of prescribed burning, fire behavior, prescribed burn tactics, smoke management,  
18 environmental effects, plan preparation, and safety. A final examination on these subjects shall  
19 be given to all attendees. The director may charge a reasonable fee to cover the costs of the  
20 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 burn course developed by the  
23 director and pass the examination developed for the course;

24 (2) Successfully complete a training course comparable to that developed by the director  
25 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 course.

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

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

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

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

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, his or her certification may be revoked by the director.

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.

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.