

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4212

BY DELEGATE J. NELSON

[Introduced January 21, 2016; Referred
to the Committee on Energy then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §22-5-21, relating to air pollution control; providing that regulation of wood
 3 burning appliances is subject to the approval of the Legislature under the authority of the
 4 Tenth Amendment to the Constitution of the United States; and providing that rules relating
 5 to enforcement of performance standards for residential wood burning heaters or
 6 appliances may not become effective unless first approved by the Legislature.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §22-5-21, to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-21. Regulating wood burning appliances subject to approval of Legislature.

1 (a) Notwithstanding any other provision of this code to the contrary and under the authority
 2 of the Tenth Amendment to the Constitution of the United States which provides that "The powers
 3 not delegated to the United States by the Constitution, nor prohibited by it to the states, are
 4 reserved to the states respectively, or to the people", the Director of the Department of
 5 Environmental Protection, may promulgate rules for legislative approval in accordance with article
 6 three, chapter twenty-nine-a of this code, to establish standards and guidelines to ensure that the
 7 State of West Virginia is in compliance with the provisions of the federal Clean Air Act, as
 8 amended (42 U.S.C. Section 7401, et seq.). The standards and guidelines so established may
 9 not be any stricter than those required under the provisions of the federal Clean Air Act, as
 10 amended; nor may those standards and guidelines be enforced in any area of the state prior to
 11 the time required by the federal Clean Air Act, as amended. The restrictions of this section may
 12 not apply to the parts of a state implementation plan developed by the director to bring a
 13 nonattainment area into compliance and to maintain compliance when needed to have a United
 14 States Environmental Protection Agency approved state implementation plan. The determination
 15 of which parts of a state implementation plan are not subject to the restrictions of this section shall

16 be based upon specific findings of fact by the Department of Environmental Protection as to the
17 rules and criteria that are needed to have a United States Environmental Protection Agency
18 approved plan.

19 (b) Under the authority of the Tenth Amendment to the Constitution of the United States,
20 the West Virginia Department of Environmental Protection may also grant exceptions and
21 variances from the rules when the person applying for the exception or variance can show that
22 compliance with such rules:

23 (1) Would cause economic hardship; or

24 (2) Is physically impossible; or

25 (3) Is more detrimental to the environment than the variance would be; or

26 (4) Is impractical or of insignificant value under the existing conditions.

27 (c) Also under the authority of the Tenth Amendment to the Constitution of the United
28 States, the department may not regulate the manufacture, performance, or use of residential
29 wood burning heaters or appliances through a state implementation plan or otherwise, unless first
30 specifically authorized to do so by the Legislature. No rule respecting the establishment or the
31 enforcement of performance standards for residential wood burning heaters or appliances may
32 become effective unless first approved by the Legislature.

33 (d) New rules may not be applied to existing wood burning furnaces, stoves, fireplaces or
34 heaters that individuals are currently using as their source of heat for their homes or businesses.
35 All wood burning furnaces, stoves, fireplaces, and heaters existing on July 1, 2015, may not be
36 subject to any rules enacted after that date. No employee of the state or state agency may enforce
37 any new rules against such existing wood burning furnaces, stoves, fireplaces and heaters.

NOTE: The purpose of this bill is to provide that air pollution control regulation of wood burning appliances is subject to the approval of the Legislature under the authority of the

Tenth Amendment to the Constitution of the United States. The bill also provides that rules relating to enforcement of performance standards for residential wood burning heaters or appliances may not become effective unless first approved by the Legislature.

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