

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 495

**FISCAL
NOTE**

By Senator Woodrum

[Introduced January 19, 2026; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
2 designated §22-37-1, §22-37-2, §22-37-3, §22-37-4, §22-37-5, §22-37-6, §22-37-7, §22-
3 37-8, §22-37-9, §22-37-10, §22-37-11, §22-37-12, and §22-37-13, relating to establishing
4 the Outdoor Solid-Fuel Heating Appliance Act; defining terms; setting state-wide minimum
5 standards for installation, operation, and enforcement of outdoor wood- and coal-burning
6 appliances; providing rule-making authority to the Department of Environmental
7 Protection; establishing enforcement mechanisms, penalties, and reporting requirements;
8 and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 37. OUTDOOR SOLID-FUEL HEATING APPLIANCE ACT.

§22-37-1. Short title.

1 This article shall be known and may be cited as the "Outdoor Solid-Fuel Heating Appliance
2 Act."

§22-37-2. Legislative findings and purpose.

1 (a) The Legislature finds that the use of outdoor solid-fuel heating appliances provides an
2 economical and renewable means of heating homes, outbuildings, and agricultural operations
3 within the State of West Virginia; however, improper siting, operation, and the burning of treated or
4 contaminated fuels may create excessive smoke, odor, or particulate emissions that constitute a
5 public nuisance and a threat to air quality and public health.

6 (b) This article intends to establish uniform minimum statewide standards governing
7 installation, operation, and enforcement to eliminate nuisances, protect the health and welfare of
8 residents, and preserve the right of responsible citizens, particularly those in rural areas, to heat
9 with wood, coal, or other solid fuels.

§22-37-3. Definitions.

1 As used in this article:

2 (1) "Appliance" means any equipment, device, or structure located outside the living space

3 of a building, designed to burn wood, coal, biomass, or other solid fuel to produce heat or hot water
4 for distribution through liquid or air ducts, including outdoor hydronic heaters or boilers.

5 (2) "Clean wood" means wood that has not been painted, stained, glued, pressure-treated,
6 laminated, or coated and contains no preservatives, plastics, or other chemicals.

7 (3) "Department" or "DEP" means the West Virginia Department of Environmental
8 Protection.

9 (4) "Occupied dwelling" means any building designed for human habitation that is
10 occupied for residential purposes for more than 60 days in a calendar year.

11 (5) "Owner" means any person having possession, control, or title to the appliance.

12 (6) "Person" means any individual, partnership, firm, association, public or private
13 corporation, governmental entity, or any other legal entity.

§22-37-4. Applicability: statewide uniformity: local enhancements.

1 (a) This article applies to the installation and operation of all outdoor solid-fuel heating
2 appliances within the State of West Virginia.

3 (b) The standards established by this article constitute minimum and uniform statewide
4 requirements. No county, municipality, or home-rule city may adopt or enforce regulations less
5 stringent than those established under this article.

6 (c) A county, municipality, or home-rule city may propose stricter standards for setbacks,
7 stack height, or emission performance only upon written approval of the Department of
8 Environmental Protection, which shall approve the proposal only if it determines that:

9 (1) The enhanced rule is consistent with the purpose and intent of this article;

10 (2) The enhancement is technically justified by local population density, topography, or air-
11 dispersion conditions; and

12 (3) The proposal will not create conflicting or duplicative enforcement obligations.

13 (d) Any local standard adopted without written approval of the Department is null and void.

§22-37-5. installations and siting standards.

1 (a) Setbacks — All new installations shall be located not less than 150 feet from any
2 adjoining property line and not less than 300 feet from any occupied dwelling not served by the
3 appliance.

4 (b) Rural exemption — An appliance located on a parcel containing 10 acres or more
5 may operate year-round and is exempt from seasonal limits, provided it meets the minimum
6 setback distances in subsection (a). Where no occupied dwelling exists within 1,000 feet and
7 prevailing winds indicate no likely smoke impact, the enforcing officer may waive setback
8 requirements by written finding that the installation poses no nuisance risk.

9 (c) Stack height — All appliances shall include a chimney or stack extending not less
10 than 18 feet above ground level, or at least two feet above the roof peak of any structure within
11 150 feet, whichever is greater. The minimum stack height required under this subsection shall
12 apply unless the manufacturer's installation specifications or UL certification listing specify a
13 different maximum or design height. In such cases, the owner or installer shall submit the
14 manufacturer's documentation to the enforcing officer or the Department for approval of an
15 alternate configuration that achieves equivalent dispersion without compromising safe operation.

16 (d) Prevailing winds; topography — Where practicable, appliances shall be located
17 downwind of neighboring dwellings and shielded by terrain or vegetation to minimize smoke
18 drift.

19 (e) Plot plan — Prior to installation, the owner shall submit a scaled plot plan showing
20 proposed location, setbacks, and nearby dwellings. The enforcing officer may require relocation
21 of a proposed site to prevent unreasonable nuisance conditions.

<u>§22-37-6.</u>	<u>Operation</u>	<u>standards.</u>
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1 (a) Approved fuels — Only the following fuels may be used:
2 (1) Clean, seasoned firewood with a moisture content of 20 percent or less;
3 (2) Untreated wood pellets or wood chips;
4 (3) Natural lump charcoal or coal specifically rated for use in the appliance; or

5 (4) Other fuels expressly authorized by the manufacturer and listed on the permit.

6 (b) Prohibited materials. — No person may burn or cause to be burned railroad ties,

7 utility poles, or other wood treated with creosote or chemical preservatives; pressure-treated,

8 painted, stained, glued, or laminated wood products, including plywood and particle board;

9 construction or demolition debris; plastics, rubber, tar paper, or petroleum-based materials;

10 household garbage, yard waste, or leaves; or any material not listed as an approved fuel.

11 (c) Startup smoke allowance — Transient visible emissions during the first 20 minutes of

12 startup or refueling shall not constitute a violation if normal operation thereafter produces

13 minimal visible smoke.

14 (d) Seasonal use — Appliances shall operate primarily during the heating season

15 (October 1 – April 30). Units may operate outside that period for domestic hot water, pool,

16 greenhouse, or similar uses if operated without creating visible smoke or nuisance conditions.

17 (e) Nuisance and opacity threshold — No appliance shall emit smoke, odor, or

18 particulates that cause discomfort or interfere with neighboring property enjoyment. Emissions

19 exceeding 20% opacity for more than 20 consecutive minutes, excluding startup, constitute

20 prima facie evidence of a nuisance.

21 (f) Ash disposal — Ash and residues shall be disposed of in a manner preventing runoff

22 to surface waters and may not be used for fill or landscaping unless free of prohibited materials.

§22-37-7. Existing and grandfathered units.

1 (a) Continuation — Appliances lawfully installed before the effective date of this article

2 may continue operation if maintained in good working order and not creating a nuisance.

3 (b) Retrofit timeline — Within 12 months of the effective date, all existing appliances shall

4 install a stack not less than 15 feet high or two feet above the nearest roof peak within 150feet,

5 whichever is greater.

6 (c) Complaint-driven retrofit — Appliances generating substantiated nuisance complaints

7 shall retrofit to a compliant stack or cease operation until corrective measures are implemented.

(d) Voluntary self-disclosure — Owners who voluntarily report and correct non-compliant installations before receiving a violation notice shall not be penalized.

(e) Legacy phase-out — Beginning July 1, 2030, no appliance lacking EPA Step 2 certification or equivalent emission performance may be sold, resold, or transferred for use within this state.

(f) Replacement and change-out — When an existing appliance is replaced, upgraded, or changed out after the effective date of this article, the new or replacement unit shall be considered a new installation and shall comply with all current requirements for setbacks, stack height, permitting, and approved fuels. Reuse of an existing pad or location does not exempt it from compliance.

(g) Compliance retrofits not deemed replacement — Adding a taller chimney, smokestack, or emission-control device solely to bring an existing appliance into compliance shall not constitute a new installation. Such retrofits satisfy this section until the appliance itself is replaced, upgraded, or transferred. If a retrofit or stack extension would exceed the manufacturer's listed design height, the owner shall consult the manufacturer or a qualified installer, and the Department may approve an alternate configuration providing comparable emission control.

§22-37-8. Permitting and registration.

(a) Permit required — No person may install or operate an appliance without first obtaining an installation permit from the county code-enforcement office or other authority designated by the county commission.

(b) Registry — A copy of each permit shall be transmitted to the Department within 30 days for inclusion in a statewide registry.

(c) Annual certification — The Department may require annual self-certification of compliance by the owner.

(d) Dealer and installer restrictions.— No dealer or installer may sell or install any

9 appliance not listed by the United States Environmental Protection Agency as meeting current
10 hydronic-heater emission standards.

§22-37-9. Enforcement and jurisdiction.

1 (a) Primary enforcement — This article shall be enforced jointly by the Department of
2 Environmental Protection, local health departments, and state and local law-enforcement
3 agencies.

4 (b) Citation authority — DEP inspectors, local health officers, county code-enforcement
5 officers, sheriffs, municipal police, and members of the West Virginia State Police may issue
6 citations for violations of this article.

7 (c) Court jurisdiction — All citations are returnable to the magistrate court of the county
8 in which the violation occurred. The Department or the Attorney General may seek injunctions in
9 circuit court for chronic or willful violations.

10 (d) Inspections — Upon complaint or reasonable evidence of a violation, an enforcing
11 officer may enter property at reasonable times for inspection with consent or pursuant to
12 administrative warrant as provided by law.

13 (e) Complaint verification — No citation shall issue solely on the basis of a single
14 unverified complaint absent direct observation or physical evidence by the enforcing officer.

15 (f) Official interference — No elected or appointed official of any political subdivision shall
16 delay, obstruct, or interfere with enforcement actions under this article. Any such interference
17 constitutes official misconduct.

§22-37-10. Penalties and remedies.

1 (a) First violation — Written warning and corrective order.

2 (b) Second violation — Civil penalty up to \$500 per day of violation, recoverable in
3 magistrate court.

4 (c) Third or willful violation — Misdemeanor; fine between \$1,000 and \$2,500, and
5 possible order of cessation or removal at owner's expense.

6 (d) Cost recovery — Enforcing agencies may recover all reasonable inspection, testing,
7 abatement, and legal costs upon conviction or judicial finding of violation.

8 (e) Evidence — Presence of prohibited materials, ash, or residues consistent with
9 banned fuels is prima facie evidence of violation.

§22-37-11. Rulemaking; programs; reporting to the Legislature.

1 (a) Rulemaking — The Department of Environmental Protection is authorized to
2 promulgate legislative rules pursuant to §29A-3-1 *et seq.* of this code to implement and carry out
3 the purposes of this article.

4 (b) Scope of rules — Rules may address: (1) Technical standards for design, emissions,
5 and stack configuration; (2) permitting and registration procedures; (3) inspection and complaint-
6 investigation methods; (4) training and certification for installers or inspectors; (5) administrative
7 penalties and corrective-action schedules; (6) coordination with local health departments and
8 law enforcement; and (7) guidelines for approval of stricter local standards under §22-37-4(c) of
9 this code.

10 (c) Emergency rules — The Department may promulgate emergency rules to ensure
11 timely implementation, which shall remain in effect until replaced by legislative rule.

12 (d) Consistency with legislative intent — All rules shall be consistent with the legislative
13 intent of maintaining uniform statewide minimum standards and may not diminish or weaken the
14 protections established herein.

15 (e) Reporting to the Legislature — The Department shall submit an annual report to the
16 Joint Committee on Government and Finance for the first five years following the effective date
17 of this article, summarizing permits, enforcement actions, compliance trends, complaints, and
18 recommended statutory or rule changes. After the initial five-year period, the Department shall
19 submit a biennial report every two years, or more frequently if requested by the Joint Committee,
20 to ensure ongoing oversight.

21 (f) Voluntary program — The Department may establish a voluntary Good Neighbor

22 Certification Program recognizing owners who demonstrate compliance through certified
23 appliances, proper fuel storage, and nuisance-free operation.

§22-37-12. Severability.

1 If any provision of this article or its application is held invalid, the remainder and its valid
2 applications shall remain in effect.

§22-37-13. Effective date.

1 This article takes effect July 1, 2026.

NOTE: The purpose of this bill is to set statewide minimum standards for installation, operation, and enforcement of outdoor wood-burning and coal-burning appliances; provide rulemaking authority to the Department of Environmental Protection; establish enforcement mechanisms, penalties, and reporting requirements; and provide an effective date.

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