

SB 384

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2009 APR 21 PM 4:50

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WEST VIRGINIA  
SENATE

**WEST VIRGINIA LEGISLATURE**

**SEVENTY-NINTH LEGISLATURE**

**REGULAR SESSION, 2009**

—●—  
**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 384**

(SENATORS UNGER, SNYDER, STOLLINGS,  
GREEN AND BARNES, *original sponsors*)

[Passed April 7, 2009; in effect ninety days from passage.]

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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**Senate Bill No. 384**

(SENATORS UNGER, SNYDER, STOLLINGS, GREEN  
AND BARNES, ORIGINAL SPONSORS)

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AN ACT to amend and reenact §29-3A-1 of the Code of West Virginia, 1931, as amended, relating to the control of an emergency scene; providing for transfer of authority to permit safe traffic flow; and providing for the use of property to prevent the spread of a fire.

*Be it enacted by the Legislature of West Virginia:*

That §29-3A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3A. AUTHORITY OF LOCAL FIRE DEPARTMENTS.**

**§29-3A-1. Authority of fire officers in charge of fire, service call or other emergency; definition.**

1 (a) While any fire department recognized or approved  
2 by the West Virginia State Fire Commission is responding  
3 to, operating at or returning from a fire, fire hazard,  
4 service call or other emergency, the fire chief, any other  
5 elected or appointed fire line officer or any member  
6 serving in the capacity of appointed fire line officer in  
7 charge, except on industrial property where trained  
8 industrial fire-fighting personnel are present, shall have  
9 the authority:

10 (1) To control and direct firefighting and fire control  
11 activities at such scene;

12 (2) To order any person or persons to leave any building  
13 or place in the vicinity of such scene for the purpose of  
14 protecting such persons from injury;

15 (3) To blockade any public highway, street or private  
16 right-of-way temporarily while at such scene in accor-  
17 dance with the following provisions:

18 (A) If the emergency incident occurs on a public high-  
19 way and it is reasonably expected that the highway may  
20 be closed for a period of at least two hours or upon the  
21 request of the incident commander acting in accordance  
22 with the provisions of the National Incident Management  
23 System in effect as of December 31, 2008, the Secretary of  
24 Transportation or his or her designee(s) shall be notified of  
25 the incident as soon as possible;

26 (B) The Secretary of Transportation or his or her  
27 designee(s) shall respond to the notification of the incident  
28 in order to assist with the restoration of traffic flow or  
29 with the development and implementation of a traffic  
30 diversion plan;

31 (C) All authorized persons who respond to the scene of  
32 the emergency incident and all of their available resources  
33 will become part of the incident command system;

34 (D) All of those persons are to collaborate and cooper-  
35 ate with the incident commander and appropriate law-  
36 enforcement personnel at the emergency incident scene in  
37 order to restore traffic flow as soon as possible after the  
38 scene is deemed safe by the incident commander; and

39 (E) Once the incident commander has declared the  
40 emergency incident scene to be safe, the control of the  
41 traffic at the emergency incident scene will be transferred  
42 to the Department of Transportation or the appropriate  
43 law-enforcement agency;

44 (4) To enter the building, structure, enclosure or other  
45 property of any person or persons at any time of the day or  
46 night, without liability, while operating at such scene;

47 (5) To enter any building, including private dwellings,  
48 or upon any premises where an emergency exists, or where  
49 there is reasonable cause to believe an emergency exists,  
50 for the purpose of eliminating the emergency;

51 (6) To enter any building, including private dwellings,  
52 or premises near the scene of the emergency for the  
53 purpose of protecting the building or premises or for the  
54 purpose of eliminating the emergency which is in progress  
55 in another building or premises;

56 (7) To inspect for preplanning all buildings, structures  
57 or other places in their fire district, excepting, however,  
58 the interior of a private dwelling, with the consent of the  
59 owner or occupant, where any combustible materials,  
60 including waste paper, rags, shavings, waste, leather,  
61 rubber, crates, boxes, barrels, rubbish or other combusti-  
62 ble material that is or may become dangerous as a fire  
63 menace to such building or buildings, structure or other  
64 places has been allowed to accumulate or where such chief  
65 or his or her designated representative has reason to  
66 believe that such material of a combustible nature has  
67 accumulated or is liable to be accumulated;

68 (8) To direct the removal, use or destruction of any  
69 fence, house, motor vehicle or other thing which may  
70 reasonably be determined to be necessary to be pulled  
71 down, destroyed or removed to prevent the further spread  
72 of the fire or hazardous condition;

73 (9) To request and be supplied with additional materials  
74 such as sand, treatments, chemicals, etc., and special  
75 equipment when dealing with an accident on a public  
76 highway or railroad right-of-way when it is deemed a  
77 necessity to prevent the further spread of the fire or  
78 hazardous condition, the cost of which to be borne by the  
79 owner of the instrumentality which caused the fire or  
80 hazardous condition; and

81 (10) To order disengagement or discouplement of any  
82 convoy, caravan or train of vehicles, craft or railway cars  
83 if deemed a necessity in the interest of safety of persons or  
84 property.

85 (b) As used in this article, the term "emergency" means  
86 a situation in which the fire officer in charge knows or in  
87 which a reasonable person would believe that there exists  
88 an imminent threat of serious bodily harm or death to a  
89 person or significant damage to property.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *was approved* ..... this the *21<sup>st</sup>* .....  
Day of *April* ....., 2009.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 20 2009

Time 9:45am