WEST VIRGINIA CODE CHAPTER 29 ARTICLE 3A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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§29-3A-2. Person in command at fire scene may take and preserve certain property; restitution.

The chief of any fire department or company or any other elected or appointed fire line officer, the fire chief or any member serving in the capacity of appointed fire line officer in charge of fire fighters at the scene of any fire is authorized and empowered to take and preserve any property which indicates that the fire was intentionally set. Any person whose property is so held may petition the circuit court of the county within which the property was taken for return of the property, and the court may order restitution upon such conditions as are appropriate for the preservation of evidence, including requiring the posting of bond.

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§29-3A-3. Conducting investigation to determine cause of fire.

To determine the cause of any fire, the chief of any fire department or company or other authorized fire fighter may enter the scene of such fire within a forty-eight hour period after such fire has been extinguished.

If there is evidence that a fire was of incendiary origin, the fire chief or other authorized fire fighter may control who may enter the scene of such fire by posting no trespassing signs at such scene for a period of forty-eight hours after such fire has been extinguished.

During the period that the scene of a fire is posted against trespassing, no person shall enter such scene, except that an owner, lessee or any other person having personal property at such scene may enter at any time after such scene has been declared safe by authorized fire department or company officials to recover or salvage personal property if said owner, lessee or person is accompanied by or is granted permission to enter such scene by an authorized fire department or company official.

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§29-3A-4. Person attacking or hindering or obstructing firefighter or emergency equipment; penalties.

(a) It is unlawful, while any fire department or company or firefighter is lawfully exercising or discharging the department's, company's or firefighter's official duty during an emergency, for any person to:

(1) Attack any firefighter or any of his or her equipment with any deadly weapon as defined in section two, article seven, chapter sixty-one of this code; or

(2) Intentionally hinder, obstruct, oppose, or attempt to hinder, obstruct or oppose, or counsel, advise or invite others to hinder, obstruct or oppose, any fire department, fire company or firefighter.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than ten years, or, in the discretion of the court, be confined in the regional or county jail not more than one year or fined not more than $500, or both.

(c) Any person willfully violating any of the provisions of section one or three of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500.

(d) Nothing in this article shall be construed to prevent law-enforcement officials from controlling traffic and otherwise maintaining order at the scene of a fire.

(e) No person may willfully fail or refuse to comply with a lawful order or direction of any fire department or company or firefighter who is lawfully exercising or discharging the department's, company's or firefighter's official duty during an emergency, relating to directing, controlling or regulating traffic, so long as such order or direction is conveyed by a retro-reflective hand signing device. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof: (1) For a first offense shall be fined not more than $100; (2) for a second offense occurring within one year of a previous conviction shall be fined not more than $200; and (3) for a third and subsequent offense shall be fined not more than $500.

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