

No. 58

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED
Committee Substitute for
SENATE BILL NO. 58

(By Senator PARKER, ET AL)



PASSED APRIL 8, 1989

In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 58

(SENATORS PARKER, CHERNENKO, BRACKENRICH AND HAWSE,
original sponsors)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact sections five, six, seven, ten and eleven, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing permitted times and procedures for open burning; use of a safety strip; misdemeanor offense created; increasing fines and penalties; regulating underground coal fires; and providing that landowners exercise all means to extinguish forest fires.

Be it enacted by the Legislature of West Virginia:

That sections five, six, seven, ten and eleven, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.

- 1 The periods of each year between March first and
- 2 May thirty-first, inclusive, and October first and
- 3 December thirty-first, inclusive, are hereby designated

4 as forest fire seasons. No person shall during any such
5 fire season, except between the hours of four o'clock
6 p.m. and seven o'clock a.m. prevailing time, set on fire
7 or cause to be set on fire any forest land, or any grass,
8 grain, stubble, slash, debris, or other inflammable
9 materials. Any fire set during this time shall be
10 extinguished prior to seven o'clock a.m. prevailing
11 time. Such prohibition of fires between seven o'clock
12 a.m. and four o'clock p.m. prevailing time shall not be
13 construed to include (1) small fires set for the purpose
14 of food preparation, or providing light or warmth
15 around which all grass, brush, stubble, or other debris
16 has been removed for a distance of ten feet from the
17 fire, and (2) burning which may be conducted at any
18 time when the ground surrounding the burning site is
19 covered by one inch or more of snow. Any person who
20 sets or causes to be set any fire permitted by this
21 section shall not leave such fire unattended for any
22 period of time.

23 The director or his designated appointees or
24 employees may issue permits authorizing fires
25 prohibited by the preceding paragraph. Such permits
26 may be granted on such conditions and for such
27 periods of time as the director deems necessary to
28 prevent danger from fire to life or property, and
29 noncompliance with any term of the permit shall be a
30 violation of this section. Any permit which was
31 obtained through willful misrepresentation shall be
32 invalid. All permit holders shall take all necessary and
33 adequate precautions to confine and control any fire
34 permitted by the authorization; failure to take such
35 action shall be a violation of this section and shall be
36 justification for the director or his duly authorized
37 representative to cancel the permit.

38 When the director considers it necessary to prevent
39 danger from fire to life or property, he may, with the
40 prior approval of the governor, prohibit the starting of
41 and require the extinguishment of any fire in any area
42 designated by the director, and such action may
43 include any fire for which a permit has been issued
44 under the preceding paragraph. In addition, if so

45 deemed necessary, the director may, with the prior
46 approval of the governor, designate any forest area as
47 a danger area and prohibit entry thereon or use
48 thereof except for the purposes and on the conditions
49 he designates. The director by proclamation shall
50 establish such areas and designate which fires are
51 prohibited therein; and if a danger area is established,
52 he shall announce the purposes for which and
53 conditions under which entry thereon or use thereof
54 may be made. Action hereunder may be taken by the
55 director at any time during the year. Notice of any
56 proclamation hereunder shall be furnished to
57 newspapers, radio stations and television stations
58 which serve the area designated. The proclamation
59 shall not be effective until twenty-four hours after it
60 is proclaimed. Any proclamation hereunder shall
61 remain in force until the director, with the approval of
62 the governor, by order terminates it. The order shall
63 designate the time of termination, and notice of any
64 such order shall be furnished to each newspaper, radio
65 station and television station which received a copy of
66 the proclamation. Any person who starts or fails to
67 extinguish a fire so prohibited or enters or uses a
68 danger area otherwise than permitted shall be guilty
69 of a violation of this section.

70 No burning allowed by this section may be done
71 unless all inflammable material has been removed
72 from around the material to be burned as a safety
73 strip for a distance which insures that the fire will not
74 escape and which is no less than ten feet. Any person
75 or his agent or employee who sets or causes to be set
76 any fire at any time in the use and occupation of any
77 land on which the burning was being done is in
78 violation of this section if fire escapes beyond the
79 safety strip and shall be guilty of a misdemeanor.

**§20-3-6. Failure of person to extinguish fire started or used
by him; throwing lighted material on forest
land.**

1 Any person who, by himself, or by his employees,
2 agents or guides, or as an employee, agent or guide of
3 any other person, shall at any time build or use any

4 fire in any field, in any public or private road, or in
5 any area adjacent to or in any forest land in this state,
6 shall, before leaving such fire for any period of time,
7 totally extinguish the same.

8 A person shall not at any time throw or place any
9 lighted match, cigar, cigarette, firecracker or lighted
10 material on any forest land, private road, public
11 highway or railroad right-of-way within this state.

12 Any person who violates any provision of this
13 section shall be guilty of a misdemeanor.

§20-3-7. Starting fire on lands of another; penalties.

1 Any person who willfully sets or causes to be set on
2 fire any forest land, grass, grain, stubble, brush, slash,
3 debris, or any other inflammable substance upon the
4 property of another without his consent, or in a place
5 from which it is reasonable to expect that the fire may
6 spread to the property of another without his consent,
7 and as a result of either causes damage or destruction
8 to any natural resources in or on the other person's
9 property, shall be guilty of a felony, and, upon convic-
10 tion thereof, shall be fined not less than five hundred
11 dollars nor more than five thousand dollars, or be
12 imprisoned for not less than one year nor more than
13 five years, or both, in the discretion of the court.

**§20-3-10. Spark arresters for sawmills, etc.; risk and hazard
reduction to protect against fires; under-
ground coal fires.**

1 No person, firm or corporation shall use or operate
2 on land subject to fire by any cause, a sawmill, a
3 power shovel, or an engine or machine capable of
4 throwing sparks, unless the equipment is provided
5 with an approved spark arrester. Escape of fire from
6 such equipment shall be prima facie evidence that
7 such appliance was not maintained properly in
8 compliance with this section.

9 Any person, firm or corporation owning any land
10 and knowing of inflammable waste disposal on said
11 land, and any person, firm or corporation using any
12 land for the purpose of inflammable waste disposal,

13 shall remove annually all grass, brush, debris and
14 other inflammable material adjacent to such disposal
15 areas to provide adequate protection to prevent the
16 escape of fire to adjacent lands. Escape of fire from
17 any such disposal area shall be prima facie evidence
18 that this section had not been complied with.

19 Any person, firm or corporation owning or leasing
20 any mineral interests and knowing of underground
21 coal being on fire under that land shall between the
22 first of November and the thirty-first of December of
23 each year clear away all inflammable material within
24 forty feet of any mine break or other opening through
25 which the fire could escape to the surface. Any person,
26 firm or corporation owning any underground mineral
27 interests shall use all practical means to confine,
28 extinguish or suppress any such fire in such under-
29 ground minerals.

30 Any person, firm or corporation violating any
31 provision of this section shall be guilty of a
32 misdemeanor.

**§20-3-11. Recovery of costs incurred in fighting fires;
landowners responsibility to extinguish fires.**

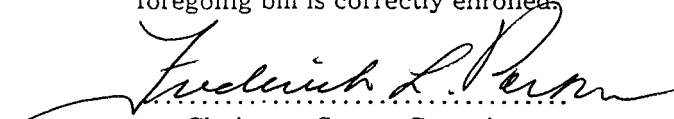
1 The director shall, in the name of the state, recover
2 from the person or persons, firms or corporations
3 whose negligence or whose violation of any provision
4 of this article caused any fire at any time on grass or
5 forest land, the amount expended by the state for the
6 personal services of persons especially employed under
7 the provisions of section four of this article to control,
8 confine, extinguish or suppress such fire, and the costs
9 associated therewith, including payment for the
10 personal services rendered by full-time state depart-
11 ment of natural resources employees, operating costs
12 of state equipment used and costs related thereto in
13 controlling, confining, extinguishing or suppressing
14 such fire. Such recovery shall not bar an action for
15 damages by any other person.

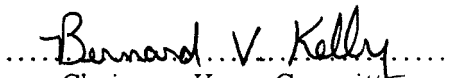
16 Any such fire which was caused by a trespasser or
17 by a person who was upon the property without the
18 consent of the owner shall not be deemed caused by

19 the negligence of the owner; but the owner shall use
20 all practical means to confine, extinguish or suppress
21 any such fire on his land even though it was caused by
22 any such person. If he fails to do so, after becoming
23 aware of such fire, the director shall, in the name of
24 the state, recover from him amounts expended by the
25 state for the personal services of persons especially
26 employed under the provisions of section four of this
27 article to control, confine, extinguish or suppress such
28 fire and the costs associated therewith, including
29 payment for the personal services rendered by full-
30 time state department of natural resources employees,
31 operating costs of state equipment used and costs
32 related thereto in controlling, confining, extinguishing
33 or suppressing such fire.

34 Any time that a landowner, his or her agent or
35 employee is aware of a fire on the landowner's
36 property, the landowner shall use all practical means
37 to confine, extinguish or suppress the fire.


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

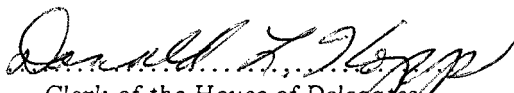

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Chairman Senate Committee

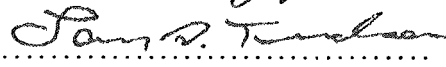

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Chairman House Committee

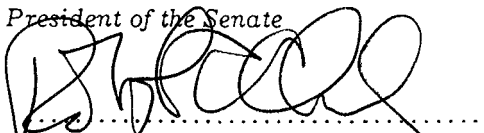
Originated in the Senate.

In effect ninety days from passage.

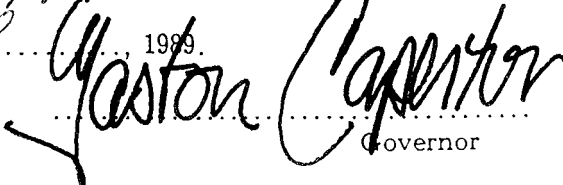

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *24th*
day of *April* 1999.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date

4/20/89

Time

10:35