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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4005

(By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]



Passed March 14, 1998

In Effect Ninety Days from Passage

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OFFICE OF THE CLERK
LEGISLATIVE DEPARTMENT

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4005

(BY MR. SPEAKER, MR. KISS, AND DELEGATE ASHLEY)

[By Request of the Executive]

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority and duties of the director of the division of forestry with regard to forest fires, and limiting the liability of certain persons for activities performed in connection with fighting forest fires under the supervision of the director.

Be it enacted by the Legislature of West Virginia:

That section four, 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.


§20-3-4. Authority and duties of director of the division of forestry and others as to forest fires; expenditures for forest fire control; limited liability of certain persons fighting forest fires.

- 1 Upon receiving notice of any fire which is injuring or
- 2 endangering forest land within the state, the director of the

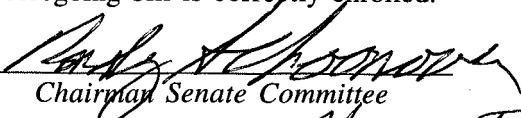
3 division of forestry or his or her duly authorized
4 representatives shall employ all necessary means to
5 confine, extinguish or suppress the fire. For these
6 purposes, any temporary or permanent employee of the
7 division of forestry or any other agency of the state and
8 any volunteer shall, under the general supervision of the
9 director of the division of forestry, have the right and
10 authority to enter upon public or private lands, to destroy
11 fences thereon, to plow such lands, and in case of extreme
12 emergency, to set backfires thereon. No person
13 performing or reasonably attempting to perform any of
14 the activities authorized by the preceding sentence under
15 the general supervision of the director of the division of
16 forestry, whether as a temporary or permanent employee
17 of the division of forestry or any other agency of the state
18 or as a volunteer, shall be liable in damages for the death
19 of or injury to any person or for damage to any property
20 as a result of his or her performance of such activities to
21 an extent greater than the applicable limits of any liability
22 insurance coverage available to such person under any
23 liability insurance policy or policies issued to the division
24 of forestry, any other agency of the state involved in
25 suppressing the forest fire, any volunteer fire department
26 of which such person was a member and which volunteer
27 fire department was responding to the forest fire at the
28 time of the incident alleged to have caused such death,
29 personal injury or property damage, or any combination
30 thereof. The limitation of liability established by the
31 preceding sentence shall not apply if the death, personal
32 injury or property damage alleged was caused by such
33 person's willful or criminal misconduct, gross negligence
34 or reckless misconduct, or by a conscious, flagrant
35 indifference to the rights or safety of any person harmed
36 by such conduct. The director of the division of forestry
37 and any duly authorized representative may employ
38 persons to detect fires which may injure or endanger
39 forest land and may likewise summon or employ persons
40 to assist in extinguishing such fires, who shall be paid for
41 the actual time so employed, at a rate per hour to be
42 determined by the director of the division of forestry:
43 *Provided*, That the rate per hour shall not exceed the rate
44 per hour paid for any comparable labor or skills by the

45 the division of forestry. Any person so summoned who
46 shall fail or refuse to assist in extinguishing any such fire
47 shall, unless such failure or refusal to assist is due to
48 physical inability, be guilty of a misdemeanor.

49 Expenditures for detecting, confining, extinguishing
50 or suppressing fires described in this section shall be
51 charged against the state. The director of the division of
52 forestry or his or her representative shall prepare, as soon
53 as practicable, a sworn statement with the names of all
54 persons who were summoned or employed to assist in
55 fighting such fires, the time so spent by each, as well as the
56 names of persons who furnished equipment, subsistence or
57 supplies, or transportation therefor, and the amount of
58 money due each for such services, subsistence, supplies or
59 transportation. Requisitions shall be issued and payment
60 of the sums due shall be made in the same manner as is
61 provided for the making of other expenditures by the
62 director of the division of forestry.



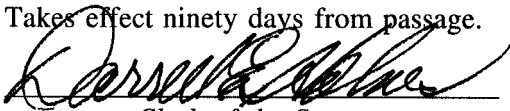
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

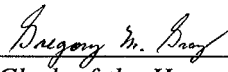

Chairman Senate Committee

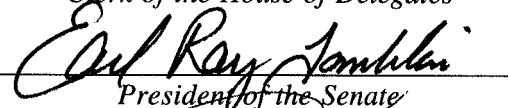

Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 27th
day of March, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date

3/26/98

Time

10:15 am