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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



## ENROLLED

Committee Substitute for Committee Substitute for

SENATE BILL NO. 427

(By Senators Tomblin, Mr. President, and Sprouse, by Request of the Executive) R



PASSED March 11, 2000

In Effect ninety days from Passage

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COMMITTEE SUBSTITUTE

FOR

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FOR

## **Senate Bill No. 427**

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and three, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact article twenty-four of said chapter; to amend article ten, chapter seventeen-a of said code by adding thereto a new section, designated section sixteen; to amend and reenact section eight, article eleven, chapter twenty of said code; to amend article fifteen, chapter twenty-two of said code by adding thereto a new section, designated section twenty-one; and to amend and reenact section one-b, article two, chapter twenty-four of said code, all relating generally to waste tires; prohibiting collection, accumulation or storage of waste tires in salvage yards; providing for excep-

tions; defining terms; establishing legislative findings and policy regarding urgent need for remediation of waste tire piles; creating definitions; prohibiting placing, depositing or abandoning waste tires on public or private property; creating exceptions for waste tire monofills, solid waste facilities and other business authorized to accept or process waste tires; providing for enforcement as illegal open dump; authorizing the division of highways to administer funds for waste tire remediation; authorizing the commissioner of the division of highways to contract with public and private entities to carry out the requirements of the act; authorizing the commissioner of the division of highways to establish a waste tire collection program; authorizing promulgation of rules; providing for the disposal of waste tires; creating tire remediation/environmental cleanup fund; authorizing proceeds of waste tire sales to be deposited into fund; establishing a fee on the issuance of a certificate of title for purpose of tire remediation and environmental cleanup; providing for a performance review; authorizing remedies; making property owner responsible for waste tires on property; assessing costs of remediation; creating lien to recover cost of remediation; authorizing injunctive relief; establishing authority of commissioner of bureau for public health; authorizing disposal of waste tires collected in a remediation effort in solid waste facilities; providing that waste tires from remediation not subject to tipping fees or tonnage limits; requiring solid waste facilities to accept waste tires; authorizing reasonable fees; providing that waste tires from remediation or cleanup projects may only be deposited in a solid waste facility when there is no other alternative available; requiring tire retailers to accept a waste tire for each new tire sold; authorizing disposal fee; requiring purchaser to leave waste tires with retailer or sign waiver; posting of signs; prohibiting accumulation of waste tires without a permit; prohibiting disposal of waste tires except at facility with valid permit; prohibiting transportation of waste tires to facility without permit; prohibiting

open burning of tires; and requiring public service commission establish rule for collection of waste tires by commercial haulers.

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

That sections two and three, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article twenty-four of said chapter be amended and reenacted; that article ten, chapter seventeen-a of said code be amended by adding thereto a new section, designated section sixteen; that section eight, article eleven, chapter twenty of said code be amended and reenacted; that article fifteen, chapter twenty-two of said code be amended by adding thereto a new section, designated section twenty-one; and that section one-b, article two, chapter twenty-four of said code be amended and reenacted, all to read as follows:

## **CHAPTER 17. ROADS AND HIGHWAYS.**

### **ARTICLE 23. SALVAGE YARDS.**

#### **§17-23-2. Definitions.**

1 As used in this article:

2 (a) "Abandoned salvage yard" means any unlicensed  
3 salvage yard or any salvage yard that was previously  
4 licensed but upon which the license has not been renewed  
5 for more than one year.

6 (b) "Commissioner" means the commissioner of the West  
7 Virginia division of highways.

8 (c) "Fence" means an enclosure, barrier or screen  
9 constructed of materials or consisting of plantings, natural  
10 objects or other appropriate means approved by the  
11 commissioner and located, placed or maintained so as  
12 effectively to screen at all times salvage yards and the

13 salvage therein contained from the view of persons passing  
14 upon the public roads of this state.

15 (d) "Occupied private residence" means a private  
16 residence which is occupied for at least six months each  
17 year.

18 (e) "Owner or operator" includes an individual, firm,  
19 partnership, association or corporation or the plural  
20 thereof.

21 (f) "Residential community" means an area wherein five  
22 or more occupied private residences are located within any  
23 one thousand foot radius.

24 (g) "Salvage" means old or scrap brass, copper, iron,  
25 steel, other ferrous or nonferrous materials, batteries or  
26 rubber and any junked, dismantled or wrecked machinery,  
27 machines or motor vehicles or any parts of any junked,  
28 dismantled or wrecked machinery, machines or motor  
29 vehicles.

30 (h) "Salvage yard" means any place which is maintained,  
31 operated or used for the storing, keeping, buying, selling or  
32 processing of salvage, or for the operation and mainte-  
33 nance of a motor vehicle graveyard: *Provided*, That no  
34 salvage yard shall accept, store or process more than one  
35 hundred waste tires unless it has all permits necessary to  
36 operate a monofill, waste tire processing facility or solid  
37 waste facility. Any salvage yard which currently has on its  
38 premises more than one hundred waste tires not on a  
39 vehicle must establish a plan in conjunction with the  
40 division of environmental protection for the proper  
41 disposal of the waste tires.

42 (i) "Waste tire" means any continuous solid or pneu-  
43 matic rubber covering designed to encircle the wheel of a  
44 vehicle but which has been discarded, abandoned or is no  
45 longer suitable for its original, intended purpose nor  
46 suitable for recapping, or other beneficial use, as defined

47 in section two, article twenty-four, chapter seventeen of  
48 this code, because of wear, damage or defect. A tire is no  
49 longer considered to be suitable for its original intended  
50 purpose when it fails to meet the minimum requirements  
51 to pass a West Virginia motor vehicle safety inspection.  
52 Used tires located at a commercial recapping facility or  
53 tire dealer for the purpose of being reused or recapped are  
54 not waste tires.

55 (j) "Waste tire monofill or monofill" means an approved  
56 solid waste facility where waste tires not mixed with any  
57 other waste are placed for the purpose of long term storage  
58 for eventual retrieval for marketing purposes.

59 (k) "Waste tire processing facility" means a solid waste  
60 facility or manufacturer that accepts waste tires generated  
61 by sources other than the owner or operator of the facility  
62 for processing by such means as cryogenics, pyrolysis,  
63 pyroprocessing cutting, splitting, shredding, quartering,  
64 grinding or otherwise breaking down waste tires for the  
65 purposes of disposal, reuse, recycling or marketing.

**§17-23-3. License required; issuance; fee; renewal; disposition  
of fees.**

1 No salvage yard or any part thereof shall be established,  
2 operated or maintained without a state license. The  
3 commissioner shall have the sole authority to issue such a  
4 state license, and he or she shall charge therefore a fee of  
5 two hundred dollars payable annually in advance. No  
6 license shall be issued to any salvage yard that contains  
7 more than one hundred waste tires which are not mounted  
8 on wheels on vehicles or machines unless the salvage yard  
9 has received a license, permit or approval from the divi-  
10 sion of environmental protection for storage, use or  
11 processing of waste tires or has entered into an agreement  
12 with the division of environmental protection for the  
13 proper disposal of the waste tires. All licenses issued

14 under this section shall expire on the first day of January  
15 following the date of issuance. A license may be renewed  
16 from year to year upon paying the commissioner the sum  
17 of two hundred dollars for each renewal. All renewal  
18 license fees collected under the provisions of this article  
19 shall be deposited in the special fund provided for in  
20 section ten of this article.

**ARTICLE 24. WASTE TIRE REMEDIATION.**

**§17-24-1. Legislative findings; statement of policy.**

1 The Legislature finds that innovative approaches are  
2 needed to addressing proper management of the wastes  
3 continually generated by the state and national highway  
4 transportation system. The Legislature further finds that  
5 waste tire piles are a direct product of state citizens use  
6 and enjoyment of state roads and highways and proper tire  
7 waste disposal is a necessary component of maintenance of  
8 the transportation system. The accumulation of waste  
9 tires has also become a significant environmental and  
10 public health hazard to the state and the location and  
11 number of waste tires are directly related to the efficiency  
12 of travel, by citizens, visitors and of commerce, along  
13 public highways in West Virginia. In particular, the  
14 legislature recognizes that waste tires are widespread in  
15 location and in number throughout the state; waste tires  
16 physically touch and concern public highways, including,  
17 but not limited to state roads, county roads, park roads,  
18 secondary routes and orphan roads, all of which interferes  
19 with the efficiency of public highways; and further that  
20 the existence of waste tires along and near public high-  
21 ways is sometimes accompanied by other hazards and, in  
22 turn, adversely impacts the proper maintenance and  
23 efficiency of public highways for citizens.

24 The Legislature also recognizes and declares that waste  
25 tires are a public nuisance and hazard; that waste tires

26 serve as harborage and breeding places for rodents,  
27 mosquitoes, fleas, ticks and other insects and pests injuri-  
28 ous to the public health, safety and general welfare; that  
29 waste tires collected in large piles pose an excessive risk to  
30 public health, safety and welfare from disease or fire; that  
31 the environmental, economic and societal damage result-  
32 ing from fires in waste tire piles can be avoided by remov-  
33 ing the piles; and that tire pile fires cause extensive  
34 pollution of the air and surface and ground water for miles  
35 downwind and downstream from the fire.

36 Therefore, in view of these findings the Legislature  
37 declares it to be the public policy of the state of West  
38 Virginia to eliminate the present danger resulting from  
39 discarded or abandoned waste tires and to eliminate the  
40 visual pollution resulting from waste tire piles, and that in  
41 order to provide for the public health, safety and welfare,  
42 quality of life, and to reverse the adverse impacts to the  
43 proper maintenance and efficiency of public highways, it  
44 is necessary to enact legislation to those ends by providing  
45 expeditious means and methods for effecting the disposal  
46 of waste tires.

#### §17-24-2. Definitions.

1 Unless the context clearly indicates a different meaning,  
2 as used in this article:

3 (1) "Beneficial use" means the use or reuse of whole  
4 waste tires or tire derived material which are reused in  
5 constructing retaining walls, rebuilding highway shoulders  
6 and subbase, building highway crash attenuation barriers,  
7 feed hopper or watering troughs for livestock, other  
8 agricultural uses approved by the division of environmen-  
9 tal protection, playground equipment, boat or truck dock  
10 construction, house or building construction, go-cart,  
11 motorbike or race track barriers, or similar types of  
12 beneficial applications: *Provided*, That waste tires may not  
13 be reused as fencing, as erosion control structures, along



14 stream banks or river banks or reused in any manner  
15 where human health or the environment, as determined by  
16 the director of the division of environmental protection, is  
17 put at risk.

18 (2) "Commissioner" means the commissioner of the  
19 division of highways or his or her designee.

20 (3) "Division" means the division of highways.

21 (4) "Person" includes a natural person, corporation, firm,  
22 partnership, association or society, and the plural as well  
23 as the singular.

24 (5) "Remediate or Remediation" means to remove all  
25 tires located above grade at a site and may also include, at  
26 the discretion of the division, the removal of the solid  
27 waste incidental to the removal of waste tires at a site:  
28 *Provided*, That remediation does not include clean up of  
29 hazardous waste.

30 (6) "Waste tire" means any continuous solid or pneu-  
31 matic rubber covering designed to encircle the wheel of a  
32 vehicle but which has been discarded, abandoned or is no  
33 longer suitable for its original, intended purpose nor  
34 suitable for recapping, or other beneficial use because of  
35 wear, damage or defect. A tire is no longer considered to  
36 be suitable for its original intended purpose when it fails  
37 to meet the minimum requirements to pass a West Virginia  
38 motor vehicle safety inspection. Used tires located at a  
39 commercial recapping facility or tire dealer for the  
40 purpose of being reused or recapped are not waste tires.

41 (7) "Waste tire monofill or monofill" means an approved  
42 solid waste facility where no solid waste except waste tires  
43 are placed for the purpose of long term storage for even-  
44 tual retrieval for marketing purposes.

45 (8) "Waste tire processing facility" means a solid waste  
46 facility or manufacturer that accepts waste tires generated

47 by sources other than the owner or operator of the facility  
48 for processing by such means as cryogenics, pyrolysis,  
49 pyroprocessing cutting, splitting, shredding, quartering,  
50 grinding or otherwise breaking down waste tires for the  
51 purposes of disposal, reuse, recycling and or marketing.

**§17-24-3. Waste tires prohibited in certain places; penalty.**

1 (a) No person shall, within this state, place, deposit or  
2 abandon any waste tire or part thereof upon the right-of-  
3 way of any public highway or upon any other public  
4 property nor deposit or abandon any waste tire or part  
5 thereof upon any private property unless it is at a licensed  
6 monofill, solid waste facility or at any other business  
7 authorized by the division of environmental protection to  
8 accept, process, manufacture or re-manufacture waste  
9 tires: *Provided*, That the commissioner may temporarily  
10 accumulate as many waste tires as he or she deems neces-  
11 sary at any location or locations necessary to effectuate  
12 the purposes of this article.

13 (b) No person, except those persons who have received  
14 and maintain a valid permit or license from the state for  
15 the operation of a solid waste facility, waste tire monofill,  
16 waste tire processing facility, or other such permitted  
17 activities, shall accumulate more than one hundred waste  
18 tires for beneficial use without obtaining a license or  
19 permit from the division of environmental protection.

20 (c) Any person who violates any provision of this section  
21 shall be guilty of creating an open dump and subject to  
22 enforcement actions or prosecution under the provisions of  
23 article fifteen, chapter twenty-two of this code.

**§17-24-4. Division of highways to administer funds for waste  
tire remediation; rules authorized; duties of com-  
missioner.**

1 (a) The division of highways shall administer all funds  
2 made available to the division for remediation of waste

3 tire piles and for the proper disposal of waste tires re-  
4 moved from waste tire piles. The commissioner of the  
5 division of highways is hereby authorized and empowered:  
6 (i) To propose for legislative promulgation in accordance  
7 with article three, chapter twenty-nine-a of this code,  
8 emergency and legislative rules necessary to implement the  
9 provisions of this article; and (ii) to administer all funds  
10 appropriated by the Legislature to carry out the require-  
11 ments of this article, and any other funds from whatever  
12 source including but not limited to federal, state or private  
13 grants.

14 (b) The commissioner shall also have the following  
15 powers:

16 (1) To apply and carry out the provisions of this article  
17 and the rules promulgated hereunder.

18 (2) To investigate from time to time the operation and  
19 effect of this article and of the rules promulgated hereun-  
20 der and to report his or her findings and recommendations  
21 to the Legislature and the governor.

22 (c) The provisions of articles two-a and four, chapter  
23 seventeen of this code and the policy, rules, practices and  
24 procedures thereunder shall be followed by the commis-  
25 sioner in carrying out the purposes of this article.

26 (d) On or before the first day of June, two thousand-one,  
27 the commissioner shall determine the location, approxi-  
28 mate size and potential risk to the public of all waste tire  
29 piles in the State and establish, in descending order, a  
30 waste tire remediation list.

31 (e) The commissioner may contract with the department  
32 of health and human resources and/or the division of  
33 corrections to remediate or assist in remediation of waste  
34 tire piles throughout the state. Utilization of available  
35 department of health and human resources and the  
36 department of corrections work programs shall be given

37 priority status in the contract process so long as such  
38 programs prove a cost effective method of remediating  
39 waste tire piles.

40 (f) Waste tire remediation shall be stopped and the  
41 division of environmental protection notified upon the  
42 discovery of any potentially hazardous material at a  
43 remediation site. The division of environmental protection  
44 shall respond to the notification in accordance with the  
45 provisions of article eighteen, chapter twenty-two of this  
46 code.

47 (g) The commissioner is authorized to establish a tire  
48 disposal program within the division to provide for a cost  
49 effective and efficient method to accept passenger car and  
50 light truck waste tires at such division of highways county  
51 headquarters as have sufficient space for temporary  
52 storage of waste tires and personnel to accept and handle  
53 waste tires. The commissioner may pay a fee for each tire  
54 an individual West Virginia resident or West Virginia  
55 business brings to the division. The commissioner may  
56 establish a limit on the number of tires an individual or  
57 business may be paid for during any calendar month. The  
58 commissioner may in his discretion authorize commercial  
59 businesses to participate in the collection program:  
60 *Provided*, That no person or business who has a waste tire  
61 pile subject to remediation under this article may partici-  
62 pate in this program.

**§17-24-5. Disposal of waste tires.**

1 (a) The division may sell waste tires collected during  
2 remediation of waste tire piles at public auction or to a  
3 waste tire monofill, waste tire processing facility or  
4 business authorized by the division of environmental  
5 protection to accept, store, use or process waste tires.

6 (b) If there is no market in West Virginia for the sale of  
7 wastetires the division may sell them at any available market.

8 (c) If there is no market for the sale of waste tires the  
9 division may dispose of them in any lawful manner.

**§17-24-6. Creation of tire remediation environmental cleanup  
fund; proceeds from sale of waste tires; fee on  
issuance of certificate of title; performance review.**

1 (a) There is hereby created in the state treasury a special  
2 revenue fund known as the "Tire Remediation/Environ-  
3 mental Cleanup Fund". All moneys appropriated, depos-  
4 ited or accrued in this fund shall be used exclusively for  
5 remediation of waste tire piles as required by article  
6 twenty-four, chapter seventeen of this code. The fund  
7 shall consist of the proceeds from the sale of waste tires;  
8 fees collected by the division of motor vehicles as provided  
9 for in section sixteen, article ten, chapter seventeen-a of  
10 this code; any federal, state or private grants; legislative  
11 appropriations; loans and any other funding source  
12 available for waste tire remediation. Any balance remain-  
13 ing in the fund at the end of any state fiscal year shall not  
14 revert to the state treasury but shall remain in this fund  
15 and be used only in a manner consistent with the require-  
16 ments of article twenty-four, chapter seventeen of this  
17 code.

18 (b) No further collections or deposits shall be made after  
19 the commissioner certifies to the governor and the Legisla-  
20 ture that the remediation of all waste tire piles that were  
21 determined by the commissioner to exist on the first day of  
22 June, two thousand and one has been completed.

23 (c) The joint committee on government operations shall,  
24 pursuant to authority granted in article ten of chapter four  
25 of this code, conduct a preliminary performance review of  
26 the division's compliance with the waste tire remediation  
27 mandated in this article; whether the purposes of this

28 article have been met and whether it is appropriate to  
29 terminate this program. In conducting such preliminary  
30 performance review, the committee shall follow the  
31 guidelines established in article ten, section ten, chapter  
32 four of this code. A preliminary review shall be completed  
33 on or before the first day of January, two thousand three.

**§17-24-7. Remediation; liability for remediation and court costs.**

1 (a) Any person who has prior or subsequent to the  
2 effective date of this act illegally disposed of waste tires or  
3 has waste tires illegally disposed on his or her property  
4 shall be liable for:

5 (1) All costs of removal or remedial action incurred by  
6 the division;

7 (2) Any other necessary costs of remediation including  
8 properly disposing of waste tires and damage to adjacent  
9 property owners; and

10 (3) All costs incurred in bringing civil actions under this  
11 article.

12 (b) The division shall notify any person who owns real  
13 property or rights to property where a waste tire pile is  
14 located that remediation of the waste tire pile is necessary.  
15 The division shall make and enter an order directing such  
16 person or persons to remove and properly dispose of the  
17 waste tires. The division shall set a time limit for comple-  
18 tion of the remediation. The order shall be served by  
19 registered or certified mail, return receipt requested, or by  
20 a county sheriff or deputy sheriff.

21 (c) If the remediation is not completed within the time  
22 limit, or the person cannot be located, or the person  
23 notifies the division that he or she is unable to comply  
24 with the order, the division may expend funds, as provided  
25 herein, to complete the remediation. Any amounts so  
26 expended shall be promptly repaid by the person or

27 persons responsible for the waste tire pile. Any person  
28 owing remediation costs and or damages shall be liable at  
29 law until such time as all costs and or damages are fully  
30 paid.

31 (d) Authorized representatives of the division have the  
32 right, upon presentation of proper identification, to enter  
33 upon any property for the purpose of conducting studies or  
34 exploratory work to determine the existence of adverse  
35 effects of a waste tire pile, to determine the feasibility of  
36 the remediation or prevention of such adverse effects and  
37 to conduct remediation activities provided for herein.  
38 Such entry is an exercise of the police power of the state  
39 and for the protection of public health, safety and general  
40 welfare and is not an act of condemnation of property or  
41 trespass thereon. Nothing contained in this section  
42 eliminates any obligation to follow any process that may  
43 be required by law.

44 (e) There is hereby created a statutory lien upon all real  
45 property and rights to the property from which a waste  
46 tire pile was remediated for all reclamation costs and  
47 damages incurred by the division. The lien created by this  
48 section shall arise at the later of the following:

49 (1) The time costs are first incurred by the division; or

50 (2) The time the person is provided, by certified or  
51 registered mail, or personal service, written notice as  
52 required by this section.

53 The lien shall continue until the liability for the costs or  
54 judgment against the property is satisfied.

55 (f) Liens created by this section shall be duly recorded in  
56 the office of the clerk of the county commission in the  
57 county where the real property is located, be liens of equal  
58 dignity, rank and priority with the lien on such premises  
59 of state, county, school and municipal taxes for the  
: 60 amount thereof, upon the real property served. The

61 division shall have the power and authority to enforce  
62 such liens in a civil action to recover the money due for  
63 remediation costs and damages plus court fees and costs  
64 and reasonable attorney's fees.

65 (g) The division may foreclose upon the premises by  
66 bringing a civil action, in the circuit court of the county  
67 where the property is located, for foreclosure and an order  
68 to sell the property to satisfy the lien.

69 (h) Any proceeds from any sale of property obtained as  
70 a result of execution of a lien or judgment under this  
71 section for remediation costs, excluding costs of obtaining  
72 judgement and perfecting the lien, shall be deposited into  
73 the waste tire remediation fund of the state treasury.

74 (i) The provisions of this section do not apply and no lien  
75 may attach to the right-of-way, easement or other prop-  
76 erty interest of a utility, whether electric, gas, water,  
77 sewer, telephone, television cable or other public service  
78 unless the utility contributed to the illegal tire pile.

**§17-24-8. Injunctive relief; additional remedy.**

1 (a) In addition to all other remedies provided for in this  
2 article, the attorney general of this state, the prosecuting  
3 attorney of any county where any violation of any provi-  
4 sion of this article occurs, or any citizen, resident or  
5 taxpayer of the county where any violation of any provi-  
6 sion of this article occurs, may apply to the circuit court,  
7 or the judge thereof in vacation, of the county where the  
8 alleged violation occurred, for an injunction to restrain,  
9 prevent or abate the maintenance and storage of waste  
10 tires in violation of any provision of this article, or the  
11 violation of any other provision of this article. In seeking  
12 an injunction, it is not necessary for the director or any  
13 state agency seeking an injunction under section to post  
14 bond.

**§17-24-9. Authority of commissioner of bureau of public health.**



1 Although the director is primarily responsible for  
2 remediation of waste tire piles under the provisions of this  
3 article, the commissioner of the bureau of public health  
4 may enforce the public health laws in any instance where  
5 the commissioner of the bureau of public health deter-  
6 mines there is an imminent and substantial endangerment  
7 to the public health.

**CHAPTER 17a. MOTOR VEHICLE  
ADMINISTRATION, REGISTRATION, CERTIFICATE  
OF TITLE, AND ANTITHEFT PROVISIONS.**

**ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.**

**§17A-10-16. Fee for tire remediation environmental cleanup  
fund.**

1 In addition to each fee provided for in this article, an  
2 additional five dollar fee shall be imposed on the issuance  
3 of each certificate of title issued pursuant to article three  
4 of this chapter. All money collected under this section  
5 shall be deposited in the state treasury and credited to a  
6 tire remediation/environmental cleanup fund to be  
7 established within the department of highways, for waste  
8 tire remediation in accordance to the provisions of article  
9 twenty-four, chapter seventeen of this code. The addi-  
10 tional fee provided herein shall be imposed for each  
11 application for certificate and renewal thereof made on or  
12 after the first day of July, two thousand: *Provided*, That no  
13 further collections or deposits shall be made after the  
14 commissioner certifies to the governor and the legislature  
15 that the remediation of all waste tire piles that were  
16 determined by the commissioner to exist on the first day of  
17 June, two thousand and one has been completed.

**CHAPTER 20. NATURAL RESOURCES.**

**ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.**

**§20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required.**

1 (a) Effective the first day of June, one thousand nine  
2 hundred ninety-four, it shall be unlawful to dispose of  
3 lead-acid batteries in a solid waste landfill in West  
4 Virginia; effective the first day of June, one thousand nine  
5 hundred ninety-six, it shall be unlawful to dispose of tires  
6 in a solid waste landfill in West Virginia except for waste  
7 tires collected as part of the division of highways waste  
8 tire remediation projects or other collection efforts in  
9 accordance with the provisions of article twenty-four,  
10 chapter seventeen of this code or the division of environ-  
11 mental protection's pollution prevention program and  
12 open dump program or other state authorized remediation  
13 or cleanup programs: *Provided*, That waste tires may be  
14 disposed of in solid waste landfills only when the state  
15 agency authorizing the remediation or cleanup program  
16 has determined there is no reasonable alternative avail-  
17 able.

18 (b) Effective the first day of January, one thousand nine  
19 hundred ninety-seven, it shall be unlawful to dispose of  
20 yard waste, including grass clippings and leaves, in a solid  
21 waste facility in West Virginia: *Provided*, That such  
22 prohibitions do not apply to a facility designed specifically  
23 to compost such yard waste or otherwise recycle or reuse  
24 such items: *Provided, however*, That reasonable and  
25 necessary exceptions to such prohibitions may be included  
26 as part of the rules promulgated pursuant to subsection (d)  
27 of this section.

28 (c) No later than the first day of May, one thousand nine  
29 hundred ninety-five, the solid waste management board  
30 shall design a comprehensive program to provide for the  
31 proper handling of yard waste and lead-acid batteries. No  
32 later than the first day of May one thousand nine hundred  
33 ninety-four, a comprehensive plan shall be designed in the  
34 same manner to provide for the proper handling of tires.

35 (d) No later than the first day of August, one thousand  
36 nine hundred ninety-five, the division of environmental  
37 protection shall promulgate rules, in accordance with  
38 chapter twenty-nine-a of this code, as amended, to imple-  
39 ment and enforce the program for yard waste and lead-  
40 acid batteries designed pursuant to subsection (c) of this  
41 section. No later than the first day of August, two thou-  
42 sand, the division of environmental protection shall  
43 promulgate rules, in accordance with chapter twenty-  
44 nine-a of said code, as amended, to implement and enforce  
45 the program for tires designed pursuant to subsection (c)  
46 of this section.

47 (e) For the purposes of this section, "yard waste" means  
48 grass clippings, weeds, leaves, brush, garden waste, shrub  
49 or tree prunings and other living or dead plant tissues,  
50 except that, such materials which, due to inadvertent  
51 contamination or mixture with other substances which  
52 render the waste unsuitable for composting, shall not be  
53 considered to be yard waste: *Provided*, That the same or  
54 similar waste generated by commercial agricultural  
55 enterprises is excluded.

56 (f) In promulgating the rules required by subsections(c)  
57 and (d) of this section, yard waste, as described in subsec-  
58 tion (d) of this section, the division shall provide for the  
59 disposal of yard waste in a manner consistent with one or  
60 any combination of the following:

61 (1) Disposal in a publicly or privately operated commer-  
62 cial or noncommercial composting facility.

63 (2) Disposal by composting on the property from which  
64 domestic yard waste is generated or on adjoining property  
65 or neighborhood property if consent is obtained from the  
66 owner of the adjoining or neighborhood property.

67 (3) Disposal by open burning where such activity is not  
68 prohibited by this code, rules promulgated hereunder or  
69 municipal or county codes or ordinances.

70 (4) Disposal in a publicly or privately operated landfill,  
71 only where none of the foregoing options are available.  
72 Such manner of disposal will involve only small quantities  
73 of domestic yard waste generated only from the property  
74 of the participating resident or tenant.

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

### **ARTICLE 15. SOLID WASTE MANAGEMENT ACT.**

#### **§22-15-21. Waste Tire Management.**

1 (a) No person, except those persons who have received  
2 and maintained a valid permit or license from the state for  
3 the operation of a solid waste facility, waste tire monofill,  
4 waste tire processing facility, or other such permitted  
5 activities, shall accumulate waste tires without obtaining  
6 a license or permit from the division: *Provided*, That  
7 persons who use waste tires for beneficial uses may in the  
8 discretion of the director of the division of environmental  
9 protection accumulate waste tires without a permit.

10 (b) No person shall dispose of waste tires in or upon any  
11 public or private land, any site or facility other than a site  
12 or facility which holds a valid permit issued by the divi-  
13 sion for such disposal or usage.

14 (c) No person shall knowingly transport or knowingly  
15 allow waste tires under his or her control to be transported  
16 to a site or facility that does not have a valid permit or  
17 license to accept waste tires.

18 (d) No person shall engage in the open burning of waste  
19 tires.

20 (e) Persons who violate this article are subject to all  
21 enforcement actions available to the director under the

22 provisions of section fifteen, article fifteen, chapter  
23 twenty-two of this code.

24 (f) Except as otherwise provided in subsection (g) of this  
25 section, each retailer is required to accept one tire of  
26 comparable size for each new tire sold at retail. The  
27 retailer may charge a disposal fee to cover the actual costs  
28 of lawful waste tire disposal. No retail tire dealer may  
29 deliver any waste tire, or part thereof, to a person not  
30 authorized by the state of West Virginia to transport or  
31 accept waste tires.

32 (g) Any person purchasing a new tire from a retailer  
33 must provide a used or waste tire for each tire purchased  
34 or sign a waiver, provided to the tire retailer by the  
35 division, acknowledging that he or she is retaining the  
36 waste tire and that he or she is legally responsible for  
37 proper disposal of each tire retained. These forms are to be  
38 kept by the retailer for three years. If the tire purchaser  
39 returns to the tire retailer with a signed form given to the  
40 purchaser by that retailer, the retailer must accept up to  
41 the total number of comparable size tires as previously  
42 retained by the purchaser: *Provided*, That persons having  
43 winter tires changed or buying new winter tires and  
44 keeping usable summer tires for later installation are not  
45 required to provide a used or waste tire, or sign a waiver.

46 (h) Each tire retailer shall post in a conspicuous place a  
47 written notice, provided by the division, that bears the  
48 following statements:

49 (1) "State law requires us to accept your (old) waste tires  
50 for recycling or proper disposal if you purchase new tires  
51 from us."

52 (2) "State law authorizes us to charge you no more than  
53 the actual cost of disposal of your waste tires even if you  
54 do not leave your tires with us".

55 (3) "It is a crime to burn, bury, abandon or throw away  
56 waste tires without authorization and or permits from the  
57 Division of Environmental Protection".

58 This notice must be at least eight and one-half inches  
59 wide and eleven inches high.

60 (i) Solid waste facilities shall accept whole waste tires  
61 and may charge a reasonable fee for acceptance of waste  
62 tires. All waste tires except those disposed of in a landfill  
63 shall be excluded from the calculation of monthly tonnage  
64 limits and from any solid waste disposal assessment fees  
65 imposed by section five-a, article eleven, chapter twenty;  
66 section eleven, article fifteen, chapter twenty-two, section  
67 four, article sixteen, chapter twenty-two and section  
68 thirty, article four, chapter twenty-two-c of this code.

69 (j) Solid waste facilities shall accept and dispose of  
70 whole tires from state authorized tire remediation projects.  
71 All waste tires from state authorized tire remediation  
72 projects except those disposed of in a landfill shall be  
73 excluded from the calculation of monthly tonnage limits  
74 and from any solid waste disposal assessment fees imposed  
75 by section five-a, article eleven, chapter twenty; section  
76 eleven, article fifteen, chapter twenty-two, section four,  
77 article sixteen, chapter twenty-two and section thirty,  
78 article four, chapter twenty-two-c of this code. For state  
79 sponsored tire remediation projects, the state may negoti-  
80 ate with the solid waste facility for rates and charges for  
81 the disposal of waste tires regardless of the rates and  
82 charges established by the public service commission  
83 pursuant to article one, chapter twenty-four of this code:  
84 *Provided*, That the disposal of whole tires in a solid waste  
85 facility is allowed only when the division of highways or  
86 the division of environmental protection has determined  
87 there is no other reasonable alternative available.

88 (k) The division shall propose for legislative promulga-  
89 tion emergency and legislative rules to effectuate the  
90 purposes of this section.

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

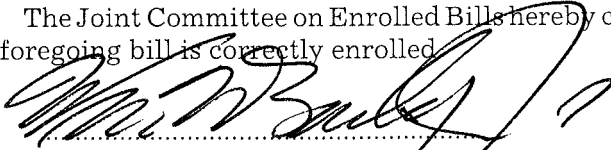
### **ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

#### **§24-2-1b. Additional jurisdiction of commission.**

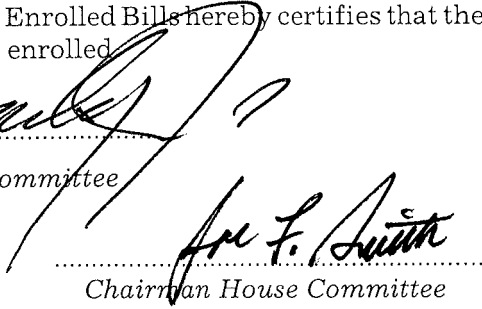
1 (a) Effective the first day of July, one thousand nine  
2 hundred eighty-eight, in addition to all other powers and  
3 duties of the commission as defined in this article, the  
4 commission shall establish, prescribe and enforce rates  
5 and fees charged by commercial solid waste facilities, as  
6 defined in section two, article fifteen, chapter twenty-two  
7 of this code, that are owned or under the direct control of  
8 persons or entities who are regulated under section five,  
9 article two, chapter twenty-four-a of this code. The  
10 commission shall establish, prescribe and enforce rules  
11 providing for the safe transportation of solid waste in the  
12 state. The commission shall establish rules for the collec-  
13 tion of waste tires by private commercial carriers of solid  
14 waste.

15 (b) The public service commission shall study the  
16 feasibility of incorporating and adopting guidelines for  
17 solid waste collection fees that are based upon the volume  
18 of solid waste generated by any person. This report shall  
19 be submitted to the governor and the members of the  
20 Legislature on or before the first day of January, one  
21 thousand nine hundred ninety-three.

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



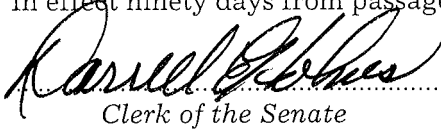
Chairman Senate Committee



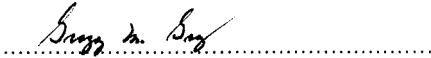
Chairman House Committee

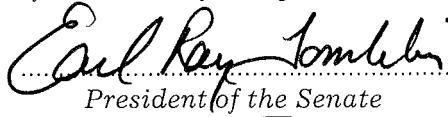
Originating in the Senate.

In effect ninety days from passage.

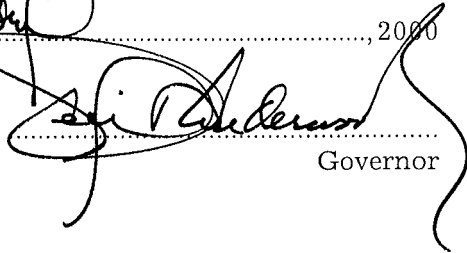


Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate  
Speaker House of Delegates

The within..... *approved* ..... this the *7th* ..  
Day of ..... *June* ....., 2000



Governor



PRESENTED TO THE

GOVERNOR

Date 3/28/00

Time 3:15 pm