

Bill Number – A10693

Introduced by M. of A. LUPARDO -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to regulating outdoor wood-burning devices in New York State

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. **Legislative findings and declarations.** An outdoor wood-burning device is a wood-fired device located outside the primary residential or commercial dwelling it serves, designed to transfer heat, via liquid, through the burning of wood to heat indoor spaces, swimming pools, hot tubs or other hot water uses. Unlike woodstoves, outdoor wood-burning devices are currently unregulated by New York state or the United States Environmental Protection Agency. Due to their design, outdoor wood-burning devices produce excessive smoke, which may have serious environmental and health impacts for surrounding neighbors. Smoke from outdoor wood-burning devices contains unhealthy amounts of particulate matter, dioxins, carbon monoxide, nitrogen dioxide, sulfur dioxide, hydrochloric acid, formaldehyde and other toxic air pollutants. Exposure to smoke from outdoor wood-burning devices can cause adverse respiratory and cardiovascular symptoms, asthmatic sensitivity, lung illnesses and cancer. Studies show that children, the elderly and individuals with pre-existing cardio-respiratory disease or diabetes are at greater risk than the general population of developing these symptoms.

While outdoor wood-burning devices are intended to burn only natural wood, homeowners sometimes add inappropriate materials such as yard waste, packing materials, construction debris and even household garbage. Burning these waste materials in an outdoor wood-burning device can produce additional toxic air pollutants. Even when used in accordance with manufacturer's recommendations, these devices frequently cause nuisance conditions. Therefore, the purpose of this act is to ensure the proper siting, operation and performance of outdoor wood-burning devices in order to protect public health and the environment.

S 2. Article 19 of the environmental conservation law is amended by adding a new title 11 to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
{ } is old law to be omitted.
A. 10693

TITLE 11
OUTDOOR WOOD-BURNING DEVICES

SECTION 19-1101. DEFINITIONS.

19-1103. OUTDOOR WOOD-BURNING DEVICES REQUIREMENTS.

19-1105. REGULATIONS.

S 19-1101. **DEFINITIONS.** AS USED IN THIS TITLE: 1. "OUTDOOR WOOD-BURNING DEVICE" SHALL MEAN A DEVICE LOCATED OUTSIDE A RESIDENTIAL OR COMMERCIAL BUILDING IT SERVES, DESIGNED TO TRANSFER HEAT, VIA LIQUID, THROUGH THE BURNING OF WOOD TO HEAT INDOOR SPACES, SWIMMING POOLS, HOT TUBS OR OTHER HOT WATER USES. OUTDOOR WOOD-BURNING DEVICES DO NOT INCLUDE FIRE PITS OR WOOD-FIRED BARBECUES.

2. "NATURAL WOOD" SHALL MEAN TREES INCLUDING LOGS, BOLES, TRUNKS, BRANCHES, LIMBS, AND STUMPS.

3. "RESIDENCE" SHALL MEAN A BUILDING OR STRUCTURE WHICH IS A PRIMARY OR SECONDARY HOME OF ONE OR MORE PERSONS.

4. "MUNICIPALITY" SHALL MEAN A VILLAGE, TOWN, CITY OR COUNTY OR ANY DESIGNATED AGENCY THEREOF.

S 19-1103. **OUTDOOR WOOD-BURNING DEVICES REQUIREMENTS.** NO PERSON SHALL CONSTRUCT, INSTALL, MODIFY, OPERATE OR USE AN OUTDOOR WOOD-BURNING DEVICE, UNLESS SUCH DEVICE COMPLIES WITH THE FOLLOWING:

1. OUTDOOR WOOD-BURNING DEVICES SHALL ONLY BE OPERATED BETWEEN SEPTEMBER FIRST THROUGH MAY THIRTY-FIRST;
2. AN OUTDOOR WOOD-BURNING DEVICE SHALL NOT BE OPERATED WITHIN SEVEN HUNDRED FEET FROM THE OCCUPIED BUILDING OF A HOSPITAL, SCHOOL, DAYCARE CENTER OR NURSING HOME OR FROM THE BOUNDARY OF A MUNICIPAL PARK OR RECREATIONAL FACILITY;
3. AN OUTDOOR WOOD-BURNING DEVICE SHALL NOT BE INSTALLED OR OPERATED WITHIN TWO HUNDRED FEET FROM THE NEAREST RESIDENCE NOT SERVED BY AN OUTDOOR WOOD-BURNING DEVICE;
4. ONLY NATURAL WOOD INCLUDING, BUT NOT LIMITED TO, WOOD THAT HAS NOT BEEN PAINTED, STAINED, CHEMICALLY TREATED, LAMINATED OR GLUED MAY BE BURNED IN AN OUTDOOR WOOD-BURNING DEVICE;
5. THE INSTALLATION OF A CHIMNEY OF AN OUTDOOR WOOD-BURNING DEVICE MUST BE IN ACCORDANCE WITH APPLICABLE BUILDING ORDINANCES;
6. THE INSTALLATION AND OPERATION OF AN OUTDOOR WOOD-BURNING DEVICE MUST BE IN ACCORDANCE WITH THE MANUFACTURER'S WRITTEN INSTRUCTIONS AND IN COMPLIANCE WITH LOCAL ORDINANCES;
7. DEALERS AND SELLERS OF OUTDOOR WOOD-BURNING DEVICES ARE REQUIRED TO PROVIDE BUYERS A WRITTEN NOTICE STATING THAT ONLY NATURAL WOOD THAT HAS NOT BEEN PAINTED, STAINED, CHEMICALLY TREATED, LAMINATED OR GLUED MAY BE BURNED AND HOUSEHOLD OR OTHER WASTE MUST NOT BE BURNED IN THE DEVICE; AND

8. DEVICES THAT COMPLY WITH THE REGULATIONS PROMULGATED PURSUANT TO SECTION 19-1105 OF THIS TITLE SHALL BE EXEMPT FROM THE SITING REQUIREMENTS SET FORTH IN SUBDIVISIONS TWO AND THREE OF THIS SECTION.

9. THE PROVISIONS SET FORTH IN SUBDIVISIONS ONE THROUGH EIGHT OF THIS SECTION SHALL NOT PREVENT ANY MUNICIPALITY FROM BANNING OR REGULATING OUTDOOR WOOD-BURNING DEVICES FOR RESIDENTIAL, COMMERCIAL OR INDUSTRIAL USE.

S 19-1105. **REGULATIONS.** 1. ON OR BEFORE JANUARY FIRST, TWO THOUSAND SEVEN, THE DEPARTMENT SHALL PROMULGATE TEST METHODS FOR THE MEASUREMENT OF PARTICULATE MATTER IN ORDER TO DETERMINE COMPLIANCE WITH EMISSIONS STANDARDS. BY APRIL FIRST, TWO THOUSAND SEVEN, THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, SHALL ALSO PROMULGATE STANDARDS FOR PARTICULATE MATTER EMISSIONS NECESSARY TO ENSURE PROTECTION OF PUBLIC HEALTH AND THE ENVIRONMENT. THESE STANDARDS SHALL BE NO LESS STRINGENT THAN THE FEDERAL PARTICULATE MATTER STANDARD APPLICABLE TO INDOOR WOOD STOVES, FOUND AT 40 C.F.R. S60.530 THROUGH 40 C.F.R. S60.539B. UNLESS THE DEPARTMENT PROMULGATES SUCH STANDARDS BY APRIL FIRST, TWO THOUSAND SEVEN, THE FEDERAL WOODSTOVE STANDARD IS HEREBY INCORPORATED INTO THIS TITLE AND SHALL BE APPLICABLE TO ALL OUTDOOR WOOD BURNING DEVICES SOLD OR OPERATED IN THE STATE.

2. NO PERSON SHALL SELL, INSTALL OR OPERATE AN OUTDOOR WOOD-BURNING DEVICE ON OR AFTER JUNE FIRST, TWO THOUSAND EIGHT UNLESS SUCH DEVICE MEETS THE REQUIREMENTS OF THIS SECTION. PROVIDED, HOWEVER, THAT OUTDOOR WOOD-BURNING DEVICES THAT ARE INSTALLED AND IN USE ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF THIS SECTION UNTIL JUNE FIRST, TWO THOUSAND NINE.

S 3. The environmental conservation law is amended by adding a new section 71-2114 to read as follows: S 71-2114. VIOLATIONS OF TITLE 11 OF ARTICLE 19 OF THIS CHAPTER. ANY PERSON WHO SELLS OR OPERATES AN OUTDOOR WOOD-BURNING DEVICE WITHIN THE STATE IN VIOLATION OF TITLE 11 OF ARTICLE 19 OF THIS CHAPTER IS SUBJECT TO A PENALTY OF NOT MORE THAN ONE HUNDRED DOLLARS PER DAY AND, IN THE CASE OF A CONTINUING VIOLATION, EVERY DAY THEREAFTER SHALL BE DEEMED A SEPARATE AND DISTINCT OFFENSE. SUBSEQUENT OFFENSES ARE SUBJECT TO A PENALTY OF UP TO TWO HUNDRED FIFTY DOLLARS PER DAY.

S 4. This act shall take effect immediately.