

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4014**

4 (By Delegates R. Phillips, Tomblin, Marcum, Ferro, White
5 Eldridge, Diserio, Iaquina, Barker and Skaff)
6

7 (Originating in the House Committee on Judiciary)

8 [January 15, 2014]
9

10 A BILL to amend and reenact §22-15A-2 and §22-15A-4 of the Code of
11 West Virginia, 1931, as amended, relating to the offense of
12 littering; amending definition of litter; and increasing
13 criminal penalties for littering.

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

15 That §22-15A-2 and §22-15A-4 of the Code of West Virginia,
16 1931, as amended, be amended and reenacted to read as follows:

17 **ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL**
18 **ACTION PLAN.**

19 **§22-15A-2. Definitions.**

20 Unless the context clearly indicates a different meaning or
21 defined elsewhere in this chapter, as used in this article:

22 (1) "Beneficial use" means the use or reuse of whole waste
23 tires or tire derived material which are reused in constructing
24 retaining walls, rebuilding highway shoulders and subbase, building
25 highway crash attenuation barriers and other civil engineering
26 applications, feed hopper or watering troughs for livestock, other
27 agricultural uses approved by the Department of Environmental
28 Protection, playground equipment, boat or truck dock construction,

1 house or building construction, go-cart, motorbike or race track
2 barriers, recapping, alternative daily cover or similar types of
3 beneficial applications: *Provided*, That waste tires may not be
4 reused as fencing, as erosion control structures, along stream
5 banks or river banks or reused in any manner where human health or
6 the environment, as determined by the Secretary of the Department
7 of Environmental Protection, is put at risk.

8 (2) "Brand" means the name, symbol, logo, trademark, or other
9 information that identifies a product rather than the components of
10 the product.

11 (3) "Collected for commercial purposes" means taking solid
12 waste for disposal from any person for remuneration regardless of
13 whether or not the person taking the solid waste is a common
14 carrier by motor vehicle governed by article two, chapter
15 twenty-four-a of this code.

16 (4) "Computer" means a desktop, personal computer or laptop
17 computer, including the computer monitor. Computer does not
18 include a personal digital assistant device, computer peripheral
19 devices such as a mouse or other similar pointing device, a printer
20 or a detachable keyboard.

21 (5) "Court" means any circuit, magistrate or municipal court.

22 (6) "Covered electronic device" means a television, computer
23 or video display device with a screen that is greater than four
24 inches measured diagonally. "Covered electronic device" does not
25 include a video display device that is part of a motor vehicle or
26 that is contained within a household appliance or commercial,
27 industrial or medical equipment.

1 (7) "Department" means the Department of Environmental
2 Protection.

3 (8) "Litter" means all waste material, including, but not
4 limited to, any garbage, refuse, trash, disposable package,
5 container, can, bottle, paper, covered electronic devices, ashes,
6 cigarette or cigar butt, carcass of any dead animal or any part
7 thereof or any other offensive or unsightly matter, but not
8 including the wastes of primary processes of mining, logging,
9 sawmilling, farming or manufacturing: Provided, That, litter does
10 not include naturally occurring biodegradable materials, under three
11 pounds, including but not limited to vegetable, fruit and other
12 plants.

13 (9) "Litter receptacle" means those containers suitable for
14 the depositing of litter at each respective public area designated
15 by the secretary's rules promulgated pursuant to subsection (e),
16 section three of this article.

17 (10) "Manufacturer" means a person that is the brand owner of
18 a covered electronic device or television sold or offered for sale
19 in this state by any means, including transactions conducted
20 through retail sales outlets, catalogs or the Internet.

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

24 (12) "Public area" means an area outside of a municipality,
25 including public road and highway rights-of-way, parks and
26 recreation areas owned or controlled by this state or any county of
27 this state or an area held open for unrestricted access by the

1 general public.

2 (13) "Recyclable materials" means those materials that would
3 otherwise become solid waste for disposal in a refuse disposal
4 system and which may be collected, separated or processed and
5 returned to the marketplace in the form of raw materials or
6 products.

7 (14) "Remediate or remediation" means to remove all litter,
8 solid waste and tires located above grade at a site: *Provided,*
9 That remediation does not include clean up of hazardous waste.

10 (15) "Television" means any telecommunication system device
11 that can receive moving pictures and sound broadcast over a
12 distance and includes a television tuner or a video display device
13 peripheral to a computer in which the display contains a television
14 tuner.

15 (16) "Secretary" means the Secretary of the Department of
16 Environmental Protection.

17 (17) "Video display device" means an electronic device with an
18 output surface that displays or is capable of displaying moving
19 graphical images or visual representations of image sequences or
20 pictures that show a number of quickly changing images on a screen
21 to create the illusion of motion. Video display device includes a
22 device that is an integral part of the display and cannot easily be
23 removed from the display by the consumer and that produces the
24 moving image on the screen. A "video display device" may use a
25 cathode-ray tube (CRT), liquid crystal display (LCD), gas plasma,
26 digital light processing, other image-projection technology or
27 imaging display technologies.

1 (18) "Waste tire" means any continuous solid or pneumatic
2 rubber covering designed to encircle the wheel of a vehicle but
3 which has been discarded, abandoned or is no longer suitable for
4 its original, intended purpose nor suitable for recapping, or other
5 beneficial use because of wear, damage or defect. A tire is no
6 longer considered to be suitable for its original intended purpose
7 when it fails to meet the minimum requirements to pass a West
8 Virginia motor vehicle safety inspection. Used tires located at a
9 commercial recapping facility or tire dealer for the purpose of
10 being reused or recapped are not waste tires.

11 (19) "Waste tire monofill or monofill" means an approved solid
12 waste facility where no solid waste except waste tires are placed
13 for the purpose of long term storage for eventual retrieval for
14 marketing purposes.

15 (20) "Waste tire processing facility" means a solid waste
16 facility or manufacturer that accepts waste tires generated by
17 sources other than the owner or operator of the facility for
18 processing by such means as cryogenics, pyrolysis, pyroprocessing
19 cutting, splitting, shredding, quartering, grinding or otherwise
20 breaking down waste tires for the purposes of disposal, reuse,
21 recycling and/or marketing.

22 (21) "Waters of the state" means generally, without
23 limitation, natural or artificial lakes, rivers, streams, creeks,
24 branches, brooks, ponds, impounding reservoirs, springs, wells,
25 watercourses and wetlands.

26 (22) "Yard waste" means grass clippings, weeds, leaves, brush,
27 garden waste, shrub or tree prunings and other living or dead plant

1 tissues, except that materials, which due to inadvertent
2 contamination or mixture with other substances which render the
3 waste unsuitable for composting, are not yard waste: *Provided,*
4 That the same or similar waste generated by commercial agricultural
5 enterprises is excluded.

**§22-15A-4. Unlawful disposal of litter; civil and criminal penalty;
7 litter control fund; evidence; notice violations; litter receptacle
8 placement; penalty; duty to enforce violations.**

9 (a) (1) No person ~~shall~~ may place, deposit, dump, throw or
10 cause to be placed, deposited, dumped or thrown any litter as
11 defined in section two of this article, in or upon any public or
12 private highway, road, street or alley; any private property; any
13 public property; or the waters of the state or within one hundred
14 feet of the waters of this state, except in a proper litter or
15 other solid waste receptacle.

16 (2) It is unlawful for any person to place, deposit, dump,
17 throw or cause to be placed, deposited, dumped or thrown any litter
18 from a motor vehicle or other conveyance or to perform any act
19 which constitutes a violation of the motor vehicle laws contained
20 in section fourteen, article fourteen, chapter seventeen-c of this
21 code.

22 (3) If any litter is placed, deposited, dumped, discharged,
23 thrown or caused to be placed, deposited, dumped or thrown from a
24 motor vehicle, boat, airplane or other conveyance, it is prima
25 facie evidence that the owner or the operator of the motor vehicle,
26 boat, airplane or other conveyance intended to violate the
27 provisions of this section.

1 (4) Any person who violates the provisions of this section by
2 placing, depositing, dumping or throwing or causing to be placed,
3 deposited, dumped or thrown any litter, not collected for
4 commercial purposes, in an amount not exceeding one hundred pounds
5 in weight or twenty-seven cubic feet in size, is guilty of a
6 misdemeanor. Upon conviction, he or she is subject to a fine of
7 not less than ~~\$100~~ \$250 nor more than \$1,000, or in the discretion
8 of the court, sentenced to perform community service by cleaning up
9 litter from any public highway, road, street, alley or any other
10 public park or public property, or waters of the state, as
11 designated by the court, for not less than ~~eight~~ twenty-four nor
12 more than ~~sixteen hours~~ one hundred hours, or both.

13 (5) Any person who violates the provisions of this section by
14 placing, depositing, dumping or throwing or causing to be placed,
15 deposited, dumped or thrown any litter, not collected for
16 commercial purposes, in an amount greater than one hundred pounds
17 in weight or twenty-seven cubic feet in size, but less than five
18 hundred pounds in weight or two hundred sixteen cubic feet in size
19 is guilty of a misdemeanor. Upon conviction he or she ~~is subject~~
20 ~~to a fine f o not less than \$1,000 nor more than~~ shall be fined
21 \$2,000, or in the discretion of the court, may be sentenced to
22 perform community service by cleaning up litter from any public
23 highway, road, street, alley or any other public park or public
24 property, or waters of the state, as designated by the court, for
25 ~~not less than sixteen nor more than thirty-two hours, or both~~ two
26 hundred hours.

27 (6) Any person who violates the provisions of this section by

1 placing, depositing, dumping or throwing or causing to be placed,
2 deposited, dumped or thrown any litter in an amount greater than
3 five hundred pounds in weight or two hundred sixteen cubic feet in
4 size or any amount which had been collected for commercial purposes
5 is guilty of a misdemeanor. Upon conviction, the person ~~is subject~~
6 ~~to a fine~~ shall be fined not less than \$2,500 or not more than
7 \$25,000 or confinement in jail for not more than one year or both.
8 In addition, the violator may be guilty of creating or contributing
9 to an open dump as defined in section two, article fifteen, chapter
10 twenty-two of this code and subject to the enforcement provisions
11 of section fifteen of ~~said~~ that article.

12 (7) Any person convicted of a second or subsequent violation
13 of this section is subject to double the authorized range of fines
14 and community service for the subsection violated.

15 (8) The sentence of litter clean up shall be verified by
16 environmental inspectors from the Department of Environmental
17 Protection. Any defendant receiving the sentence of litter clean
18 up shall provide, within a time to be set by the court, written
19 acknowledgment from an environmental inspector that the sentence
20 has been completed and the litter has been disposed of lawfully.

21 (9) Any person who has been found by the court to have
22 willfully failed to comply with the terms of a litter clean up
23 sentence imposed by the court pursuant to this section is subject
24 to, at the discretion of the court, double the amount of the
25 original fines and community service penalties originally ordered
26 by the court.

27 (10) All law-enforcement agencies, officers and environmental

1 inspectors shall enforce compliance with this section within the
2 limits of each agency's statutory authority.

3 (11) No portion of this section restricts an owner, renter or
4 lessee in the lawful use of his or her own private property or
5 rented or leased property or to prohibit the disposal of any
6 industrial and other wastes into waters of this state in a manner
7 consistent with the provisions of article eleven, chapter
8 twenty-two of this code. But if any owner, renter or lessee,
9 private or otherwise, knowingly permits any ~~such~~ of these materials
10 or substances to be placed, deposited, dumped or thrown in ~~such~~ a
11 location that high water or normal drainage conditions will cause
12 ~~any such~~ these materials or substances to wash into any waters of
13 the state, it is prima facie evidence that the owner, renter or
14 lessee intended to violate the provisions of this section:
15 *Provided*, That if a landowner, renter or lessee, private or
16 otherwise, reports any placing, depositing, dumping or throwing of
17 these substances or materials upon his or her property to the
18 prosecuting attorney, county commission, the Division of Natural
19 Resources or the Department of Environmental Protection, the
20 landowner, renter or lessee will be presumed to not have knowingly
21 permitted the placing, depositing, dumping or throwing of the
22 materials or substances.

23 (b) Any indication of ownership found in litter ~~shall be~~ is
24 prima facie evidence that the person identified violated the
25 provisions of this section: *Provided*, That no inference may be
26 drawn solely from the presence of any logo, trademark, trade name
27 or other similar mass reproduced things of identifying character

1 appearing on the found litter.

2 (c) Every person who is convicted of or pleads guilty to
3 disposing of litter in violation of subsection (a) of this section
4 shall pay a civil penalty in the sum of not less than ~~\$200~~ \$250 nor
5 more than ~~\$1,000~~ \$2,000 as costs for clean up, investigation and
6 prosecution of the case, in addition to any other court costs that
7 the court is otherwise required by law to impose upon a convicted
8 person.

9 The clerk of the circuit court, magistrate court or municipal
10 court in which these additional costs are imposed shall, on or
11 before the last day of each month, transmit fifty percent of a
12 civil penalty received pursuant to this section to the State
13 Treasurer for deposit in the State Treasury to the credit of a
14 special revenue fund ~~to be~~ known as the Litter Control Fund which
15 ~~is hereby continued and~~ was transferred to the Department of
16 Environmental Protection. Expenditures for purposes set forth in
17 this section are not authorized from collections but are to be made
18 only in accordance with appropriation and in accordance with the
19 provisions of article three, chapter twelve of this code and upon
20 fulfillment of the provisions set forth in article two, chapter
21 five-a of this code. Amounts collected which are found from time
22 to time to exceed the funds needed for the purposes set forth in
23 this article may be transferred to other accounts or funds and
24 designated for other purposes by appropriation of the Legislature.

25 (d) The remaining fifty percent of each civil penalty
26 collected pursuant to this section shall be transmitted to the
27 county or regional solid waste authority in the county where the

1 litter violation occurred. Moneys shall be expended by the county
2 or regional solid waste authority for the purpose of litter
3 prevention, clean up and enforcement. The county commission shall
4 cooperate with the county or regional solid waste authority serving
5 the respective county to develop a coordinated litter control
6 program pursuant to section eight, article four, chapter
7 twenty-two-c of this code.

8 (e) The Commissioner of the Division of Motor Vehicles, upon
9 registering a motor vehicle or issuing an operator's or chauffeur's
10 license, shall issue to the owner or licensee, as the case may be,
11 a summary of this section and section fourteen, article fourteen,
12 chapter seventeen-c of the code.

13 (f) The Commissioner of the Division of Highways shall cause
14 appropriate signs to be placed at the state boundary on each
15 primary and secondary road, and at other locations throughout the
16 state, informing those entering the state of the maximum penalty
17 provided for disposing of litter in violation of subsection (a) of
18 this section.

19 (g) Any state agency or political subdivision that owns,
20 operates or otherwise controls any public area ~~as may be~~ designated
21 by the secretary by rule promulgated pursuant to subdivision (8),
22 subsection (a), section three of this article shall procure and
23 place litter receptacles at its own expense upon its premises and
24 shall remove and dispose of litter collected in the litter
25 receptacles. After receiving two written warnings from any
26 law-enforcement officer or officers to comply with this subsection
27 or the rules of the secretary, any state agency or political

1 subdivision that fails to place and maintain the litter receptacles
2 upon its premises in violation of this subsection or the rules of
3 the secretary shall be fined \$30 per day of the violation.