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H. B. 4014

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

[Introduced January 8, 2014; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §22-15A-4 of the Code of West Virginia,
1931, as amended, relating to increasing criminal penalties
for littering.

Be it enacted by the Legislature of West Virginia:

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

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

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

(a) (1) No person ~~shall~~ may place, deposit, dump, throw or
cause to be placed, deposited, dumped or thrown any litter as
defined in section two of this article, in or upon any public or

1 private highway, road, street or alley; any private property; any
2 public property; or the waters of the state or within one hundred
3 feet of the waters of this state, except in a proper litter or
4 other solid waste receptacle.

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

11 (3) If any litter is placed, deposited, dumped, discharged,
12 thrown or caused to be placed, deposited, dumped or thrown from a
13 motor vehicle, boat, airplane or other conveyance, it is prima
14 facie evidence that the owner or the operator of the motor vehicle,
15 boat, airplane or other conveyance intended to violate the
16 provisions of this section.

17 (4) Any person who violates the provisions of this section by
18 placing, depositing, dumping or throwing or causing to be placed,
19 deposited, dumped or thrown any litter, not collected for
20 commercial purposes, in an amount not exceeding one hundred pounds
21 in weight or twenty-seven cubic feet in size, is guilty of a
22 misdemeanor. Upon conviction, he or she ~~is subject to a fine of~~
23 ~~not less than \$100 nor more than~~ shall be fined \$1,000, or in the
24 discretion of the court, sentenced to perform community service by

1 cleaning up litter from any public highway, road, street, alley or
2 any other public park or public property, or waters of the state,
3 as designated by the court, for ~~not less than eight nor more than~~
4 ~~sixteen hours, or both~~ one hundred hours.

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

19 (6) Any person who violates the provisions of this section by
20 placing, depositing, dumping or throwing or causing to be placed,
21 deposited, dumped or thrown any litter in an amount greater than
22 five hundred pounds in weight or two hundred sixteen cubic feet in
23 size or any amount which had been collected for commercial purposes
24 is guilty of a misdemeanor. Upon conviction, the person ~~is subject~~

1 ~~to a fine~~ shall be fined not less than \$2,500 or not more than
2 \$25,000 or confinement in jail for not more than one year or both.
3 In addition, the violator may be guilty of creating or contributing
4 to an open dump as defined in section two, article fifteen, chapter
5 twenty-two of this code and subject to the enforcement provisions
6 of section fifteen of ~~said~~ that article.

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

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

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

22 (10) All law-enforcement agencies, officers and environmental
23 inspectors shall enforce compliance with this section within the
24 limits of each agency's statutory authority.

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

21 (b) Any indication of ownership found in litter ~~shall be~~ is
22 prima facie evidence that the person identified violated the
23 provisions of this section: *Provided*, That no inference may be
24 drawn solely from the presence of any logo, trademark, trade name

1 or other similar mass reproduced things of identifying character
2 appearing on the found litter.

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

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

1 designated for other purposes by appropriation of the Legislature.

2 (d) The remaining fifty percent of each civil penalty
3 collected pursuant to this section shall be transmitted to the
4 county or regional solid waste authority in the county where the
5 litter violation occurred. Moneys shall be expended by the county
6 or regional solid waste authority for the purpose of litter
7 prevention, clean up and enforcement. The county commission shall
8 cooperate with the county or regional solid waste authority serving
9 the respective county to develop a coordinated litter control
10 program pursuant to section eight, article four, chapter
11 twenty-two-c of this code.

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

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

23 (g) Any state agency or political subdivision that owns,
24 operates or otherwise controls any public area ~~as may be~~ designated

1 by the secretary by rule promulgated pursuant to subdivision (8),
2 subsection (a), section three of this article shall procure and
3 place litter receptacles at its own expense upon its premises and
4 shall remove and dispose of litter collected in the litter
5 receptacles. After receiving two written warnings from any
6 law-enforcement officer or officers to comply with this subsection
7 or the rules of the secretary, any state agency or political
8 subdivision that fails to place and maintain the litter receptacles
9 upon its premises in violation of this subsection or the rules of
10 the secretary shall be fined \$30 per day of the violation.

NOTE: The purpose of this bill is to increase the fines and
community service hours for littering.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.