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H. B. 2275

(By Delegates R. Phillips, H. White, Perdue, Hartman, Marcum,
Moffatt, Folk, R. Smith, J. Nelson, Sobonya and Westfall)

[Introduced January 23, 2015; referred to the
Committee on the Judiciary.]

**FISCAL
NOTE**

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

1 receptacle.

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

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

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

18 (5) Any person who violates the provisions of this section by placing, depositing, dumping
19 or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for
20 commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven
21 cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in
22 size is guilty of a misdemeanor. Upon conviction he or she ~~is subject to a fine of not less than~~

1 ~~\$1,000 nor more than~~ shall be fined \$2,000, or in the discretion of the court, may be sentenced to
2 perform community service by cleaning up litter from any public highway, road, street, alley or any
3 other public park or public property, or waters of the state, as designated by the court, for ~~not less~~
4 ~~than sixteen nor more than thirty-two hours, or both~~ two hundred hours.

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

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

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

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

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

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

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

20 (c) Every person who is convicted of or pleads guilty to disposing of litter in violation of
21 subsection (a) of this section shall pay a civil penalty ~~in the sum of not less than \$200 nor more than~~
22 ~~\$1,000~~ \$2,000 as costs for clean up, investigation and prosecution of the case, in addition to any

1 other court costs that the court is otherwise required by law to impose upon a convicted person.

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

13 (d) The remaining fifty percent of each civil penalty collected pursuant to this section shall
14 be transmitted to the county or regional solid waste authority in the county where the litter violation
15 occurred. Moneys shall be expended by the county or regional solid waste authority for the purpose
16 of litter prevention, clean up and enforcement. The county commission shall cooperate with the
17 county or regional solid waste authority serving the respective county to develop a coordinated litter
18 control program pursuant to section eight, article four, chapter twenty-two-c of this code.

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

22 (f) The Commissioner of the Division of Highways shall cause appropriate signs to be placed

1 at the state boundary on each primary and secondary road, and at other locations throughout the state,
2 informing those entering the state of the maximum penalty provided for disposing of litter in
3 violation of subsection (a) of this section.

4 (g) Any state agency or political subdivision that owns, operates or otherwise controls any
5 public area ~~as may be~~ designated by the secretary by rule promulgated pursuant to subdivision (8),
6 subsection (a), section three of this article shall procure and place litter receptacles at its own
7 expense upon its premises and shall remove and dispose of litter collected in the litter receptacles.
8 After receiving two written warnings from any law-enforcement officer or officers to comply with
9 this subsection or the rules of the secretary, any state agency or political subdivision that fails to
10 place and maintain the litter receptacles upon its premises in violation of this subsection or the rules
11 of 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.