

Senate Bill No. 523

(By Senators Cole (Mr. President) and Kessler,

By Request of the Executive)

[Introduced February 19, 2015; referred to the Committee on the Judiciary.]

9 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
10 designated §16-47-1, §16-47-2, §16-47-3, §16-47-4, §16-47-5 and §16-47-6, all relating to
11 obtaining emergency medical assistance for persons who may be experiencing alcohol or
12 drug overdose; establishing short title; stating legislative findings; defining terms; providing
13 immunity from prosecution in limited circumstances for persons who call for emergency
14 medical assistance for person who reasonably appears to be experiencing drug or alcohol
15 overdose; specifying actions that must be taken to be eligible for immunity from prosecution
16 for certain misdemeanor offenses; providing seeking emergency medical assistance may be
17 raised as mitigating factor at sentencing in certain criminal proceedings; clarifying limited
18 immunity does not preclude civil claims based on violation of misdemeanor criminal statutes
19 at issue; providing option of limited immunity from prosecution; and providing deferred
20 prosecution, pretrial diversion, adjudication in drug court and other clemency options for
21 prosecution to consider for persons who experienced drug or alcohol overdose for whom

1 emergency medical assistance was sought; allowing persons to plead guilty to certain
2 exempted criminal offenses if desired; and providing limited civil immunity to
3 law-enforcement officers except in cases of willful, wanton and reckless misconduct in
4 arresting or issuing citations.

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

6 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
7 article, designated §16-47-1, §16-47-2, §16-47-3, §16-47-4, §16-47-5 and §16-47-6, all to read as
8 follows:

9 **ARTICLE 47. ALCOHOL AND DRUG OVERDOSE PREVENTION AND CLEMENCY**

10 **ACT.**

11 **§16-47-1. Short Title.**

12 This article is known as and may be cited as the "Alcohol and Drug Overdose Prevention and
13 Clemency Act."

14 **§16-47-2. Legislative Findings.**

15 (a) West Virginia currently has the highest drug overdose mortality rate in the United States.
16 Since 1999, the number of drug overdose deaths in West Virginia has increased by over six hundred
17 percent. Similarly, the age-adjusted death rate from alcohol related overdoses has significantly
18 increased in West Virginia, and throughout the United States, in the past ten years.

19 (b) The Legislature finds it is in the public interest to encourage citizens to intervene in drug
20 and alcohol overdose situations by seeking potentially life-saving emergency medical assistance for
21 others without fear of being subject to certain criminal penalties.

1 §16-47-3. Definitions.

2 As used in this article:

3 (1) "Overdose" means an acute condition, including, but not limited to, life-threatening
4 physical illness, coma, mania, hysteria or death, which is the result of the consumption or use of a
5 controlled substance or alcohol.

6 (2) "Emergency medical assistance" means medical services provided to a person who may
7 be experiencing an overdose by a health care professional licensed, registered, or certified under
8 chapter thirty or chapter sixteen of this code, acting within his or her lawful scope of practice.

9 **§16-47-4. Limited immunity from prosecution.**

10 (a) Subject to the requirements of subsection (c) of this section, a person who, in good faith
11 and in a timely manner, seeks emergency medical assistance for a person who reasonably appears
12 to be experiencing an overdose may not be held criminally responsible for a violation of the
13 following:

14 (1) Purchasing, consuming, or possessing wine or other alcoholic liquor by someone under
15 age twenty-one as prohibited by subsection (a), section twenty-a, article eight, chapter sixty of this
16 code;

17 (2) Purchasing wine or other alcoholic liquors from a licensee through misrepresentation of
18 age, presenting or offering any written evidence of age which is false, fraudulent or not actually one's
19 own, or illegally attempting to purchase wine or other alcoholic liquors as prohibited by subsection
20 (b), section twenty-a, article eight, chapter sixty of this code;

21 (3) Purchasing, consuming, or possessing alcoholic liquor by someone under age twenty-one

1 as prohibited by subdivision (1), subsection (a), section twenty-four, article three-a, chapter sixty of
2 this code;

3 (4) Purchasing liquor from a retail licensee through misrepresentation of age, presenting or
4 offering any written evidence of age which is false, fraudulent or not actually one's own, or illegally
5 attempting to purchase liquor from a retail licensee as prohibited by subsection (b), section
6 twenty-four, article three-a, chapter sixty of this code;

7 (5) Ordering, paying for, sharing the cost of, purchasing, consuming, or possessing
8 nonintoxicating beer, wine, or alcoholic liquor by someone under age twenty-one as prohibited by
9 subsection (a), section twelve-a, article seven, chapter sixty of this code;

10 (6) Purchasing nonintoxicating beer, wine, or alcoholic liquors from a licensee through
11 misrepresentation of age, presenting or offering any written evidence of age which is false,
12 fraudulent or not actually one's own, or illegally attempting to purchase nonintoxicating beer, wine,
13 or alcoholic liquors from a licensee as prohibited by subsection (b), section twelve-a, article seven,
14 chapter sixty of this code;

15 (7) Purchasing, consuming, or possessing nonintoxicating beer by someone under age
16 twenty-one as prohibited by subdivision (1), subsection (a), section nineteen, article sixteen, chapter
17 eleven of this code;

18 (8) Purchasing nonintoxicating beer through misrepresentation of age, presenting or offering
19 any written evidence of age which is false, fraudulent or not actually one's own, or illegally
20 attempting to purchase nonintoxicating beer as prohibited by subsection (b), section nineteen, article
21 sixteen, chapter eleven;

1 (9) Knowingly or intentionally possessing a controlled substance or imitation controlled
2 substance without a prescription, as prohibited by subsection (c), section four hundred one, article
3 four, chapter sixty-a of this code; or

4 (10) Appearing in a public place in an intoxicated condition; drinking alcoholic liquor in a
5 public place; drinking alcoholic liquor in a motor vehicle on a highway, street, alley, or in a public
6 garage; tendering a drink of alcoholic liquor to another person in a public place; or possessing
7 alcoholic liquor which was manufactured or acquired in violation of the provisions of chapter sixty
8 of this code, as prohibited by subdivisions (1), (2), (3), (4) and (6), subsection (a), section nine,
9 article six, chapter sixty of this code.

10 (b) The immunity provided in subsection (a) of this section does not apply to the following
11 crimes:

12 (1) Selling or serving wine or other alcoholic liquor by someone under age twenty-one as
13 prohibited by subsection (a), section twenty-a, article eight, chapter sixty of this code;

14 (2) Selling or serving alcoholic liquor by someone under age twenty-one as prohibited by
15 subdivision (1), subsection (a), section twenty-four, article three-a, chapter sixty of this code;

16 (3) Selling or serving nonintoxicating beer by someone under age twenty-one as prohibited
17 by subdivision (1), subsection (a), section nineteen, article sixteen, chapter eleven of this code; or

18 (4) Possessing alcoholic liquor in the amount in excess of ten gallons, in containers not
19 bearing stamps or seals of the West Virginia Alcohol and Beverage Control Commissioner, without
20 having first obtained written authority from the commissioner therefor, as prohibited by subdivision
21 (5), subsection (a), section nine, article six, chapter sixty of this code.

1 (c) A person is not eligible for immunity under subsection (a) of this section unless he or
2 she:

3 (1) Remains with the person who reasonably appears to be in need of emergency medical
4 assistance due to an overdose until such assistance is provided;

5 (2) Identifies himself or herself, if requested by emergency medical assistance personnel or
6 law-enforcement officers; and

7 (3) Cooperates with and provides any relevant information requested by emergency medical
8 assistance personnel or law-enforcement officers needed to treat the person reasonably believed to
9 be experiencing an overdose.

10 (d) Evidence of seeking emergency medical assistance for a person who reasonably appears
11 to be experiencing an overdose may be considered by a court or jury as a mitigating factor in the
12 sentencing phase of a criminal proceeding in a prosecution for which immunity is not granted in
13 subsection (a) of this section: *Provided*, That the criminal proceeding was instituted based on
14 conduct or evidence obtained as the result of the defendant seeking emergency medical assistance
15 as described in subsections (a) and (c) of this section.

16 (e) Notwithstanding any other provision of this section to the contrary, a person who acts
17 pursuant to subsections (a) and (c) of this section and is charged with an offense not exempted by
18 subsection (a) of this section may nevertheless enter a plea of guilty to an offense exempted by
19 subsection (a) of this section if the person, after consultation with his or her attorney, so desires.

20 (f) The limited immunity provided by this section does not preclude claims asserted in a civil
21 action based on violation of the statutes set forth in subsection (a) of this section, even if immunity

1 is provided in a criminal proceeding.

2 **§16-47-5. Immunity, alternative sentencing and clemency options for a person for whom**
3 **emergency medical assistance was sought.**

4 (a) The immunity provisions in subsection (a), section four of this article, extend to the
5 person for whom emergency medical assistance was sought if, subsequent to receiving emergency
6 medical assistance, the person participates in, complies with, and completes a secular or faith-based
7 substance abuse treatment or recovery program approved by the prosecution. Alternatively, the
8 prosecution may consider the following alternative sentencing and clemency options:

9 (1) Deferred prosecution under section twenty-six, article six, chapter sixty of this code or
10 under section four hundred seven, article four, chapter sixty-a of this code;

11 (2) Pretrial diversion under section twenty-two, article eleven, chapter sixty-one of this code;

12 (3) Adjudication in drug court under article fifteen, chapter sixty-two of this code or under
13 section two-b, article five, chapter forty-nine of this code; or

14 (4) Any other appropriate form of alternative sentencing or rehabilitation permitted by this
15 code, including, but not limited to:

16 (A) Probation;

17 (B) Conditional discharge under section twenty-six, article six, chapter sixty of this code; or

18 (C) The weekend jail program, the work program, or the community service program under
19 section one-a, article eleven-a, chapter sixty-two of this code.

20 (b) Notwithstanding any other provision of this section to the contrary, a person who may
21 seek immunity or clemency pursuant to subsection (a) of this section and is charged with an offense

1 not exempted by subsection (a), section four of this article, may still enter a plea of guilty to an
2 offense exempted by subsection (a), section four of this article if the person, after consultation with
3 his or her attorney, so desires.

4 **§16-47-6. Limited law-enforcement personnel immunity.**

5 Except in cases of willful, wanton, or reckless misconduct, law-enforcement personnel are
6 immune from civil liability for citing or arresting a person who is later determined to qualify for
7 immunity under this article.

NOTE: The purpose of this bill is to provide limited immunity from prosecution for certain misdemeanor offenses for a person who seeks emergency medical assistance for someone who is experiencing a drug or alcohol overdose. The bill also provides immunity to persons who experience an overdose upon completion of a drug rehabilitation program approved by the prosecution, as well as other clemency options that may be considered. This bill also provides limited immunity to law enforcement.

This article is new; therefore, strike-throughs and underscoring have been omitted.