

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2303**

BY DELEGATES PHILLIPS, WESTFALL, FOLK, SOBONYA,

OVERINGTON, PAYNTER, ELDRIDGE AND R. MILLER

[Passed April 8, 2017; in effect ninety days from passage.]



1 AN ACT to amend and reenact §22-15A-4 of the Code of West Virginia, 1931, as amended,  
2 relating to the criminal offense of littering, clarifying that no person may place, deposit,  
3 dump, throw or cause to be placed, deposited, dumped or thrown any litter on the private  
4 property of another, increasing criminal penalties for littering in an amount not exceeding  
5 one hundred pounds in weight or twenty-seven cubic feet in size, increasing criminal  
6 penalties for littering in an amount greater than one hundred pounds in weight or twenty-  
7 seven cubic feet in size, but less than five hundred pounds in weight or two hundred  
8 sixteen cubic feet in size, modifying the penalties for littering greater than five hundred  
9 pounds in weight or two hundred sixteen cubic feet in size or any amount which had been  
10 collected for commercial purposes, increasing penalties for second or subsequent  
11 violations for littering in an amount not exceeding one hundred pounds in weight or twenty-  
12 seven cubic feet in size, increasing penalties for second or subsequent violations for  
13 littering in an amount greater than one hundred pounds in weight or twenty-seven cubic  
14 feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet  
15 in size and increasing civil penalties for littering, requiring magistrates or municipal court  
16 judges to consult with prosecuting attorneys before dismissing charges.

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

1 That §22-15A-4 of the Code of West Virginia, 1931, as amended, be amended and  
2 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.**

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

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

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

14          (4) Any person who violates the provisions of this section by placing, depositing, dumping  
15          or throwing or causing to be placed, deposited, dumped or thrown any litter on his or her private  
16          property in an amount not exceeding fifty pounds in weight is not subject to the criminal provisions  
17          of this section.

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 not exceeding one hundred pounds in weight or twenty-seven  
21          cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not  
22          less than \$100 nor more than \$2,500, or in the discretion of the court, sentenced to perform  
23          community service by cleaning up litter from any public highway, road, street, alley or any other  
24          public park or public property, or waters of the state, as designated by the court, for not less than  
25          eight nor more than one hundred hours, or both. If any person is convicted of the misdemeanor  
26          by placing, depositing, dumping or throwing litter in the waters of the state, that person shall be

27 fined \$500 to no more than \$3,000, or in the discretion of the court sentenced to perform  
28 community service by cleaning up litter from any waters of the state, as designated by the court,  
29 for not less than twenty to no more than one hundred twenty hours, or both.

30 (6) Any person who violates the provisions of this section by placing, depositing, dumping  
31 or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for  
32 commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven  
33 cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet  
34 in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than  
35 \$2,500 nor more than \$5,000, or in the discretion of the court, may be sentenced to perform  
36 community service by cleaning up litter from any public highway, road, street, alley or any other  
37 public park or public property, or waters of the state, as designated by the court, for not less than  
38 sixteen nor more than two hundred hours, or both. If any person is convicted of the misdemeanor  
39 by placing, depositing, dumping or throwing litter in the waters of the state, that person shall be  
40 fined \$3,000 to no more than \$5,500, or in the discretion of the court sentenced to perform  
41 community service by cleaning up litter from any waters of the state, as designated by the court,  
42 for not less than twenty to no more than two hundred twenty hours, or both.

43 (7) Any person who violates the provisions of this section by placing, depositing, dumping  
44 or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater  
45 than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which  
46 had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the  
47 person shall be fined not less than \$2,500 or not more than \$25,000 or confinement in jail for not  
48 more than one year or both. If any person is convicted of the misdemeanor by placing, depositing,  
49 dumping or throwing litter in the waters of the state, that person shall be fined \$3,000 to no more  
50 than \$11,000, or confinement in jail for not more than one year or both. In addition, the violator  
51 may be guilty of creating or contributing to an open dump as defined in section two, article fifteen,

52 chapter twenty-two of this code and subject to the enforcement provisions of section fifteen of that  
53 article.

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

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

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

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

66 (12) No magistrate or municipal court judge may dismiss an action brought under the  
67 provisions of this section without notification to the prosecuting attorney of that county of his or  
68 her intention to do so and affording the prosecuting attorney an opportunity to be heard.

69 (13) No portion of this section restricts an owner, renter or lessee in the lawful use of his  
70 or her own private property or rented or leased property or to prohibit the disposal of any industrial  
71 and other wastes into waters of this state in a manner consistent with the provisions of article  
72 eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise,  
73 knowingly permits any of these materials or substances to be placed, deposited, dumped or  
74 thrown in a location that high water or normal drainage conditions will cause these materials or  
75 substances to wash into any waters of the state, it is prima facie evidence that the owner, renter  
76 or lessee intended to violate the provisions of this section: *Provided*, That if a landowner, renter  
77 or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these

78 substances or materials upon his or her property to the prosecuting attorney, county commission,  
79 the Division of Natural Resources or the Department of Environmental Protection, the landowner,  
80 renter or lessee will be presumed to not have knowingly permitted the placing, depositing,  
81 dumping or throwing of the materials or substances.

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

86 (c) Every person who is convicted of or pleads guilty to disposing of litter in violation of  
87 subsection (a) of this section shall pay a civil penalty of \$2,000 as costs for clean-up, investigation  
88 and prosecution of the case, in addition to any other court costs that the court is otherwise required  
89 by law to impose upon a convicted person.

90 The clerk of the circuit court, magistrate court or municipal court in which these additional  
91 costs are imposed shall, on or before the last day of each month, transmit fifty percent of a civil  
92 penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury  
93 to the credit of a special revenue fund known as the Litter Control Fund which was transferred to  
94 the Department of Environmental Protection. Expenditures for purposes set forth in this section  
95 are not authorized from collections but are to be made only in accordance with appropriation and  
96 in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment  
97 of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are  
98 found from time to time to exceed the funds needed for the purposes set forth in this article may  
99 be transferred to other accounts or funds and designated for other purposes by appropriation of  
100 the Legislature.

101 (d) The remaining fifty percent of each civil penalty collected pursuant to this section shall  
102 be transmitted to the county or regional solid waste authority in the county where the litter violation  
103 occurred. Moneys shall be expended by the county or regional solid waste authority for the

104 purpose of litter prevention, clean up and enforcement. The county commission shall cooperate  
105 with the county or regional solid waste authority serving the respective county to develop a  
106 coordinated litter control program pursuant to section eight, article four, chapter twenty-two-c of  
107 this code.

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

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

116 (g) Any state agency or political subdivision that owns, operates or otherwise controls any  
117 public area designated by the secretary by rule promulgated pursuant to subdivision (8),  
118 subsection (a), section three of this article shall procure and place litter receptacles at its own  
119 expense upon its premises and shall remove and dispose of litter collected in the litter receptacles.  
120 After receiving two written warnings from any law-enforcement officer or officers to comply with  
121 this subsection or the rules of the secretary, any state agency or political subdivision that fails to  
122 place and maintain the litter receptacles upon its premises in violation of this subsection or the  
123 rules of the secretary shall be fined \$30 per day of the violation.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2017.

.....  
*Governor*