

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2303**

BY DELEGATES PHILLIPS, WESTFALL, FOLK, SOBONYA,

OVERINGTON, PAYNTER, ELDRIDGE AND MILLER, R.

[Originating in the Committee on the Judiciary]

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

*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 ~~shall~~ 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 of another; any public property; or the waters  
4 of the state or within one hundred feet of the waters of this state, except in a proper litter or other  
5 solid waste 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, not collected for  
16 commercial purposes, in an amount not exceeding one hundred pounds in weight or twenty-seven  
17 cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not  
18 less than \$100 nor more than ~~\$1,000~~ \$2,500, or in the discretion of the court, sentenced to perform  
19 community service by cleaning up litter from any public highway, road, street, alley or any other  
20 public park or public property, or waters of the state, as designated by the court, for not less than  
21 eight nor more than ~~sixteen hours~~ one hundred hours, or both.

22 (5) Any person who violates the provisions of this section by placing, depositing, dumping  
23 or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for  
24 commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven  
25 cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet  
26 in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than  
27 ~~\$1,000~~ \$2,500 nor more than ~~\$2,000~~ \$5,000, or in the discretion of the court, may be sentenced  
28 to perform community service by cleaning up litter from any public highway, road, street, alley or

29 any other public park or public property, or waters of the state, as designated by the court, for not  
30 less than sixteen nor more than ~~thirty-two hours~~ two hundred hours, or both.

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

39 (7) Any person convicted of a second or subsequent violation of ~~this section~~ subsections  
40 (a)(4) or (a)(5) is subject to double the authorized range of fines and community service for the  
41 subsection violated.

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

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

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

52 (11) No portion of this section restricts an owner, renter or lessee in the lawful use of his  
53 or her own private property or rented or leased property or to prohibit the disposal of any industrial  
54 and other wastes into waters of this state in a manner consistent with the provisions of article

55 eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise,  
56 knowingly permits any ~~such~~ of these materials or substances to be placed, deposited, dumped or  
57 thrown in ~~such a~~ location that high water or normal drainage conditions will cause ~~any such~~ these  
58 materials or substances to wash into any waters of the state, it is prima facie evidence that the  
59 owner, renter or lessee intended to violate the provisions of this section: *Provided*, That if a  
60 landowner, renter or lessee, private or otherwise, reports any placing, depositing, dumping or  
61 throwing of these substances or materials upon his or her property to the prosecuting attorney,  
62 county commission, the Division of Natural Resources or the Department of Environmental  
63 Protection, the landowner, renter or lessee will be presumed to not have knowingly permitted the  
64 placing, depositing, dumping or throwing of the materials or substances.

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

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

74 The clerk of the circuit court, magistrate court or municipal court in which these additional  
75 costs are imposed shall, on or before the last day of each month, transmit fifty percent of a civil  
76 penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury  
77 to the credit of a special revenue fund ~~to be~~ known as the Litter Control Fund which ~~is hereby~~  
78 ~~continued and~~ was transferred to the Department of Environmental Protection. Expenditures for  
79 purposes set forth in this section are not authorized from collections but are to be made only in  
80 accordance with appropriation and in accordance with the provisions of article three, chapter

81 twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of  
82 this code. Amounts collected which are found from time to time to exceed the funds needed for  
83 the purposes set forth in this article may be transferred to other accounts or funds and designated  
84 for other purposes by appropriation of the Legislature.

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

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

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

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

107 rules 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 a heading or the present law and underscoring indicates new language that would be added.