

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.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

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

.....
Governor