

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 347

FISCAL
NOTE

BY SENATORS CLEMENTS, BOSO, MARONEY, SMITH,
TRUMP, WOELFEL, STOLLINGS, CLINE, AND SYPOLT

[Introduced January 18, 2019; Referred
to 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 limiting the civil penalty for persons convicted of littering to an amount up to \$2,000.

Be it enacted by the Legislature of West Virginia:

**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 100 feet of the waters of this state, except in a proper litter or other solid waste receptacle.

5 (2) It is unlawful for any person to place, deposit, dump, throw or cause to be placed,
6 deposited, dumped or thrown any litter from a motor vehicle or other conveyance or to perform
7 any act which constitutes a violation of the motor vehicle laws contained in §17C-14-14 of this
8 code.

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

13 (4) Any person who violates the provisions of this section by placing, depositing, dumping
14 or throwing or causing to be placed, deposited, dumped or thrown any litter on his or her private
15 property in an amount not exceeding 50 pounds in weight is not subject to the criminal provisions
16 of this section.

17 (5) Any person who violates the provisions of this section by placing, depositing, dumping

18 or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for
19 commercial purposes, in an amount not exceeding 100 pounds in weight or 27 cubic feet in size,
20 is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than \$100
21 nor more than \$2,500, or in the discretion of the court, sentenced to perform community service
22 by cleaning up litter from any public highway, road, street, alley or any other public park or public
23 property, or waters of the state, as designated by the court, for not less than eight nor more than
24 100 hours, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping
25 or throwing litter in the waters of the state, that person shall be fined \$500 to no more than \$3,000,
26 or in the discretion of the court sentenced to perform community service by cleaning up litter from
27 any waters of the state, as designated by the court, for not less than 20 to no more than one 120
28 hours, or both.

29 (6) Any person who violates the provisions of this section by placing, depositing, dumping
30 or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for
31 commercial purposes, in an amount greater than 100 pounds in weight or 27 cubic feet in size,
32 but less than 500 pounds in weight or 216 cubic feet in size is guilty of a misdemeanor. Upon
33 conviction he or she is subject to a fine of not less than \$2,500 nor more than \$5,000, or in the
34 discretion of the court, may be sentenced to perform community service by cleaning up litter from
35 any public highway, road, street, alley or any other public park or public property, or waters of the
36 state, as designated by the court, for not less than 16 nor more than 200, or both. If any person
37 is convicted of the misdemeanor by placing, depositing, dumping or throwing litter in the waters
38 of the state, that person shall be fined \$3,000 to no more than \$5,500, or in the discretion of the
39 court sentenced to perform community service by cleaning up litter from any waters of the state,
40 as designated by the court, for not less than 20 to no more than 220 hours, or both.

41 (7) Any person who violates the provisions of this section by placing, depositing, dumping
42 or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater
43 than 500 pounds in weight or 216 cubic feet in size or any amount which had been collected for

44 commercial purposes is guilty of a misdemeanor. Upon conviction, the person shall be fined not
45 less than \$2,500 or not more than \$25,000 or confinement in jail for not more than one year or
46 both. If any person is convicted of the misdemeanor by placing, depositing, dumping or throwing
47 litter in the waters of the state, that person shall be fined \$3,000 to no more than \$11,000, or
48 confinement in jail for not more than one year or both. In addition, the violator may be guilty of
49 creating or contributing to an open dump as defined in §22-15-2 of this code and subject to the
50 enforcement provisions of section 15 of that article.

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

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

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

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

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

66 (13) No portion of this section restricts an owner, renter or lessee in the lawful use of his
67 or her own private property or rented or leased property or to prohibit the disposal of any industrial
68 and other wastes into waters of this state in a manner consistent with the provisions of article
69 eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise,

70 knowingly permits any of these materials or substances to be placed, deposited, dumped or
71 thrown in a location that high water or normal drainage conditions will cause these materials or
72 substances to wash into any waters of the state, it is prima facie evidence that the owner, renter
73 or lessee intended to violate the provisions of this section: *Provided*, That if a landowner, renter
74 or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these
75 substances or materials upon his or her property to the prosecuting attorney, county commission,
76 the Division of Natural Resources or the Department of Environmental Protection, the landowner,
77 renter or lessee will be presumed to not have knowingly permitted the placing, depositing,
78 dumping or throwing of the materials or substances.

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

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

87 The clerk of the circuit court, magistrate court or municipal court in which these additional
88 costs are imposed shall, on or before the last day of each month, transmit 50 percent of a civil
89 penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury
90 to the credit of a special revenue fund known as the Litter Control Fund which was transferred to
91 the Department of Environmental Protection. Expenditures for purposes set forth in this section
92 are not authorized from collections but are to be made only in accordance with appropriation and
93 in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment
94 of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are
95 found from time to time to exceed the funds needed for the purposes set forth in this article may

96 be transferred to other accounts or funds and designated for other purposes by appropriation of
97 the Legislature.

98 (d) The remaining 50 percent of each civil penalty collected pursuant to this section shall
99 be transmitted to the county or regional solid waste authority in the county where the litter violation
100 occurred. Moneys shall be expended by the county or regional solid waste authority for the
101 purpose of litter prevention, clean up and enforcement. The county commission shall cooperate
102 with the county or regional solid waste authority serving the respective county to develop a
103 coordinated litter control program pursuant to §22C-4-8 of this code.

104 (e) The Commissioner of the Division of Motor Vehicles, upon registering a motor vehicle
105 or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case
106 may be, a summary of this section and §17C-14-14 of the code.

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

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

NOTE: The purpose of this bill is to limit the civil penalty for persons convicted of littering
to an amount up to \$2,000.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.