

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 35

SENATOR CLEMENTS, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on January 14, 2020]

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~~ A person may not place, deposit, dump, throw, or cause to be placed, deposited,
2 dumped, or thrown any litter as defined in §22-15A-2 of this code, 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~~ A person ~~to~~ may not place, deposit, dump, throw, or cause to be
6 placed, deposited, dumped, or thrown any litter from a motor vehicle or other conveyance or ~~to~~
7 perform any act which constitutes a violation of the motor vehicle laws contained in §17C-14-14
8 of this 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
11 prima 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,
25 dumping, or throwing litter in the waters of the state, that person shall be fined not less than \$500
26 ~~to not~~ nor more than \$3,000, or in the discretion of the court sentenced to perform community
27 service by cleaning up litter from any waters of the state, as designated by the court, for not less
28 than 20 ~~to not~~ hours nor more than one 120 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
36 the state, as designated by the court, for not less than 16 hours nor more than 200 hours, or both.
37 If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter
38 in the waters of the state, that person shall be fined not less than \$3,000 ~~to not~~ nor more than
39 \$5,500, or in the discretion of the court sentenced to perform community service by cleaning up
40 litter from any waters of the state, as designated by the court, for not less than 20 ~~to not~~ hours nor
41 more than 220 hours, or both.

42 (7) Any person who violates the provisions of this section by placing, depositing, dumping,
43 or throwing or causing to be placed, deposited, dumped, or thrown any litter in an amount greater
44 than 500 pounds in weight or 216 cubic feet in size or any amount which had been collected for
45 commercial purposes is guilty of a misdemeanor. Upon conviction, the person shall be fined not
46 less than \$2,500 ~~or not~~ nor more than \$25,000 or confinement in jail for not more than one year,
47 or both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or
48 throwing litter in the waters of the state, that person shall be fined not less than \$3,000 ~~to not~~ nor
49 more than \$11,000, or confinement in jail for not more than one year, or both. In addition, ~~the~~
50 ~~violate~~ he or she may be guilty of creating or contributing to an open dump as defined in §22-15-
51 2 of this code and subject to the enforcement provisions of §22-15-15 of this code.

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

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

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

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

64 (12) ~~No~~ A magistrate or municipal court judge may not dismiss an action brought under
65 the provisions of this section without notification to the prosecuting attorney of that county of his
66 or her intention to do so and affording the prosecuting attorney an opportunity to be heard.

67 (13) No portion of this section restricts an owner, renter, or lessee in the lawful use of his
68 or her own private property or rented or leased property or ~~to prohibit~~ prohibits the disposal of any
69 industrial and other wastes into waters of this state in a manner consistent with the provisions of
70 §22-11-1 *et seq.* of this code. But if any owner, renter, or lessee, private or otherwise, knowingly
71 permits any of these materials or substances to be placed, deposited, dumped, or thrown in a
72 location that high water or normal drainage conditions will cause these materials or substances
73 to wash into any waters of the state, it is prima facie evidence that the owner, renter, or lessee
74 intended to violate the provisions of this section: *Provided*, That if a landowner, renter, or lessee,
75 private or otherwise, reports any placing, depositing, dumping, or throwing of these substances
76 or materials upon his or her property to the prosecuting attorney, county commission, the Division
77 of Natural Resources, or the Department of Environmental Protection, the landowner, renter, or
78 lessee will be presumed to not have knowingly permitted the placing, depositing, dumping, or
79 throwing of the materials or substances.

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

84 (c) (1) Every person who is convicted of or pleads guilty to disposing of litter in violation of
85 subsection (a) of this section shall pay a civil penalty of up to \$2,000 as costs for clean up,
86 investigation, and prosecution of the case, in addition to any other court costs that the court is
87 otherwise required by law to impose upon a convicted person.

88 (2) The clerk of the circuit court, magistrate court, or municipal court in which these
89 additional costs are imposed shall, on or before the last day of each month, transmit 50 percent
90 of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State
91 Treasury to the credit of a special revenue fund known as the Litter Control Fund which was
92 transferred to the Department of Environmental Protection. Expenditures for purposes set forth in

93 this section are not authorized from collections but are to be made only in accordance with
94 appropriation and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon
95 fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are
96 found from time to time to exceed the funds needed for the purposes set forth in this article may
97 be transferred to other accounts or funds and designated for other purposes by appropriation of
98 the Legislature.

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

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

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

112 (g) Any state agency or political subdivision that owns, operates, or otherwise controls any
113 public area designated by the secretary by rule promulgated pursuant to §22-15A-3(a)(8) of this
114 code shall procure and place litter receptacles at its own expense upon its premises and shall
115 remove and dispose of litter collected in the litter receptacles. After receiving two written warnings
116 from any law-enforcement officer or officers to comply with this subsection or the rules of the
117 secretary, any state agency or political subdivision that fails to place and maintain the litter
118 receptacles upon its premises in violation of this subsection or the rules of the secretary shall be
119 fined \$30 per day of the violation.