

Senate Bill No. 14

(By Senator Nohe)

[Introduced February 13, 2013; referred to the Committee on
Natural Resources; and then to the Committee on the Judiciary.]

A BILL to amend and reenact §22-15A-4 of the Code of West Virginia,
1931, as amended, relating to requiring the Secretary of the
Department of Environmental Protection to propose rules for
legislative approval to implement procedures under which
county commissions and municipal governments are granted a
limited exemption from certain litter provisions to undertake
timely and efficient removal or burning of litter, trash and
debris resulting from storms and other weather-related events
causing extensive property damage.

Be it enacted by the Legislature of West Virginia:

That §22-15A-4 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL
ACTION PLAN.**

1 **§22-15A-4. Unlawful disposal of litter; civil and criminal**
2 **penalty; litter control fund; evidence; notice**
3 **violations; litter receptacle placement; penalty;**
4 **duty to enforce violations.**

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

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

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

1 (4) Any person who violates the provisions of this section by
2 placing, depositing, dumping or throwing or causing to be placed,
3 deposited, dumped or thrown any litter, not collected for
4 commercial purposes, in an amount not exceeding one hundred pounds
5 in weight or twenty-seven cubic feet in size, is guilty of a
6 misdemeanor. Upon conviction, he or she ~~is subject to a fine of~~
7 may be fined not less than \$100 nor more than \$1,000, or in the
8 discretion of the court, may be sentenced to perform community
9 service by cleaning up litter from any public highway, road,
10 street, alley or any other public park or public property, or
11 waters of the state, as designated by the court, for not less than
12 eight nor more than sixteen hours, or both.

13 (5) Any person who violates the provisions of this section by
14 placing, depositing, dumping or throwing or causing to be placed,
15 deposited, dumped or thrown any litter, not collected for
16 commercial purposes, in an amount greater than one hundred pounds
17 in weight or twenty-seven cubic feet in size, but less than five
18 hundred pounds in weight or two hundred sixteen cubic feet in size
19 is guilty of a misdemeanor. Upon conviction he or she ~~is subject~~
20 ~~to a fine of~~ may be fined not less than \$1,000 nor more than
21 \$2,000, or in the discretion of the court, may be sentenced to
22 perform community service by cleaning up litter from any public
23 highway, road, street, alley or any other public park or public
24 property, or waters of the state, as designated by the court, for

1 not less than sixteen nor more than thirty-two hours, or both.

2 (6) Any person who violates the provisions of this section by
3 placing, depositing, dumping or throwing or causing to be placed,
4 deposited, dumped or thrown any litter in an amount greater than
5 five hundred pounds in weight or two hundred sixteen cubic feet in
6 size or any amount which had been collected for commercial purposes
7 is guilty of a misdemeanor. Upon conviction, the person ~~is subject~~
8 ~~to a fine~~ may be fined not less than \$2,500 ~~or not~~ nor more than
9 \$25,000 or ~~confinement~~ confined in jail for not more than one year,
10 or both fined and confined. In addition, the violator may be
11 guilty of creating or contributing to an open dump as defined in
12 section two, article fifteen, chapter twenty-two of this code and
13 subject to the enforcement provisions of section fifteen of ~~said~~
14 that article.

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

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

24 (9) Any person who has been found by the court to have

1 willfully failed to comply with the terms of a litter clean up
2 sentence imposed by the court pursuant to this section is subject
3 to, at the discretion of the court, double the amount of the
4 original fines and community service penalties originally ordered
5 by the court.

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

9 (11) No portion of this section restricts an owner, renter or
10 lessee in the lawful use of his or her own private property or
11 rented or leased property or to prohibit the disposal of any
12 industrial and other wastes into waters of this state in a manner
13 consistent with the provisions of article eleven, chapter twenty-
14 two of this code. But if any owner, renter or lessee, private or
15 otherwise, knowingly permits any such materials or substances to be
16 placed, deposited, dumped or thrown in such location that high
17 water or normal drainage conditions will cause any such materials
18 or substances to wash into any waters of the state, it is prima
19 facie evidence that the owner, renter or lessee intended to violate
20 the provisions of this section: *Provided, That if a landowner,*
21 *renter or lessee, private or otherwise, reports any placing,*
22 *depositing, dumping or throwing of these substances or materials*
23 *upon his or her property to the prosecuting attorney, county*
24 *commission, the Division of Natural Resources or the Department of*

1 Environmental Protection, the landowner, renter or lessee will be
2 presumed to not have knowingly permitted the placing, depositing,
3 dumping or throwing of the materials or substances.

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

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

16 The clerk of the circuit court, magistrate court or municipal
17 court in which these additional costs are imposed shall, on or
18 before the last day of each month, transmit fifty percent of a
19 civil penalty received pursuant to this section to the State
20 Treasurer for deposit in the State Treasury to the credit of a
21 special revenue fund to be known as the Litter Control Fund which
22 is ~~hereby~~ continued and transferred to the Department of
23 Environmental Protection. Expenditures for purposes set forth in
24 this section are not authorized from collections but are to be made

1 only in accordance with appropriation and in accordance with the
2 provisions of article three, chapter twelve of this code and upon
3 fulfillment of the provisions set forth in article two, chapter
4 five-a of this code. Amounts collected which are found from time
5 to time to exceed the funds needed for the purposes set forth in
6 this article may be transferred to other accounts or funds and
7 designated for other purposes by appropriation of the Legislature.

8 (d) The remaining fifty percent of each civil penalty
9 collected pursuant to this section shall be transmitted to the
10 county or regional solid waste authority in the county where the
11 litter violation occurred. Moneys shall be expended by the county
12 or regional solid waste authority for the purpose of litter
13 prevention, clean up and enforcement. The county commission shall
14 cooperate with the county or regional solid waste authority serving
15 the respective county to develop a coordinated litter control
16 program pursuant to section eight, article four, chapter twenty-
17 two-c of this code.

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

23 (f) The Commissioner of the Division of Highways shall cause
24 appropriate signs to be placed at the state boundary on each

1 primary and secondary road, and at other locations throughout the
2 state, informing those entering the state of the maximum penalty
3 provided for disposing of litter in violation of subsection (a) of
4 this section.

5 (g) Any state agency or political subdivision that owns,
6 operates or otherwise controls any public area as may be designated
7 by the secretary by rule promulgated pursuant to subdivision (8),
8 subsection (a), section three of this article shall procure and
9 place litter receptacles at its own expense upon its premises and
10 shall remove and dispose of litter collected in the litter
11 receptacles. After receiving two written warnings from any law-
12 enforcement officer or officers to comply with this subsection or
13 the rules of the secretary, any state agency or political
14 subdivision that fails to place and maintain the litter receptacles
15 upon its premises in violation of this subsection or the rules of
16 the secretary shall be fined \$30 per day of the violation.

17 (h) The secretary shall propose rules for legislative approval
18 in accordance with the provisions of article three, chapter twenty-
19 nine-a of this code to implement procedures under which county
20 commissions and municipal governments are granted a limited
21 exemption to the provisions of this article to undertake timely and
22 efficient removal or burning of litter, trash and debris resulting
23 from storms and other weather related events causing extensive
24 property damage.

NOTE: The purpose of this bill is to provide a limited exemption to litter laws to allow county and municipal governments to undertake timely and efficient removal or burning of litter, trash and debris resulting from storms and other weather related events causing extensive property damage.

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