

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2148**

4 (By Delegate Gearheart, Hamrick, Smith, R., Nelson, E.,
5 Howell, Arvon, Butler, Azinger, Espinosa, Frich and Kessinger)
6

7 (Originating in the House Committee on Judiciary)

8 [February 25, 2015]
9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
11 designated §17C-5D-1, §17C-5D-2, §17C-5D-3, and §17C-5D-4; and to amend and reenact
12 §60-6-9 of said code, all relating to creating a misdemeanor offense for open containers of
13 alcoholic beverages in certain areas of vehicles; providing comity with federal law governing
14 open containers of alcoholic beverages in vehicles; providing penalties; defining terms;
15 providing exceptions; and specifying procedure upon arrest.

16 *Be it enacted by the Legislature of West Virginia:*

17 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
18 article, designated §17C-5D-1, §17C-5D-2, §17C-5D-3, and §17C-5D-4; and that §60-6-9 of said
19 code be amended and reenacted, all to read as follows:

20 **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

21 **ARTICLE 5D. OPEN CONTAINER LAWS.**

22 **§17C-5D-1. Purpose.**

23 The purpose of this article is to avoid the imposition of sanctions against this state and the

1 loss of federal-aid highway construction funds under section 1405(a) of the federal Transportation
2 Equity Act for the Twenty-first Century (23 U.S.C. §154), as amended, which requires states to enact
3 and enforce a law that prohibits the consumption of an alcoholic beverage or the possession of an
4 open alcoholic beverage container in the passenger area of a motor vehicle that is located on a public
5 highway or the right-of-way adjacent to a public highway.

6 **§17C-5D-2. Definitions.**

7 For the purposes of this article, the words or terms defined in this article have the meanings
8 ascribed to them:

9 (a) “Alcoholic beverage” means:

10 (1) Alcoholic liquor as defined in section five, article one, chapter sixty of this code; and

11 (2) Nonintoxicating beer as defined in section three, article sixteen, chapter eleven of this
12 code.

13 (b) “Motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured
14 primarily for use on public highways, but does not include a vehicle operated solely on a rail or rails.

15 (c) “Open alcoholic beverage container” means any bottle, can or other receptacle that:

16 (1) Contains any amount of alcoholic beverage; and

17 (2)(A) Is open or has a broken seal; or

18 (B) Has had its contents partially removed.

19 (d) “Passenger area of a motor vehicle” means the area designed to seat the driver and
20 passengers while the motor vehicle is in operation and any area that is readily accessible to the driver
21 or a passenger while in their seating positions. For purposes of this article, the passenger area of a
22 motor vehicle does not include:

1 (1) (A) A locked glove compartment; or

2 (B) A fixed center console or other similar fixed compartment that is locked;

3 (2) In a motor vehicle that is not equipped with a trunk;

4 (A) The area behind the last upright seat; or

5 (B) An area not normally occupied by the driver or a passenger; or

6 (3) In a pickup truck that has no trunk, camper top or separate enclosed area other than the
7 cab of the truck, in the area behind the front seat of the truck in a locked case or container located
8 so as to not be readily accessible to the driver or passengers while in their seating positions.

9 (e) "Public highway or right-of-way of a public highway" means the entire width between
10 and immediately adjacent to the boundary lines of every way that is publicly maintained, when any
11 part thereof is open to the use of the public for purposes of vehicular travel.

12 **§17C-5D-3. Possession of an open alcoholic beverage container in the passenger area of a**
13 **motor vehicle; exceptions; penalties.**

14 (a) It is unlawful for the operator or a passenger of a motor vehicle to consume any alcoholic
15 beverage in the passenger area of a motor vehicle located on a public highway or right-of-way of a
16 public highway in this state, whether the vehicle is in motion or at rest.

17 (b) It is unlawful for the operator or a passenger of a motor vehicle to knowingly possess any
18 open alcoholic beverage container in the passenger area of any motor vehicle that is located on a
19 public highway or right-of-way of a public highway in this state, whether the vehicle is in motion
20 or at rest. Possession by a person of one or more open containers in a single criminal occurrence is
21 a single offense.

1 (c) The provisions of this section are not applicable to a passenger:

2 (1) In the passenger area of a motor vehicle designed, maintained or used primarily for the
3 transportation of persons for compensation including, but not limited to, a bus, taxicab or limousine;
4 or

5 (2) In the living quarters of a motorized or nonmotorized house coach, house trailer, motor
6 home or self-contained camper.

7 (d) A person who violates the provisions of subsection (a) or (b) of this section is guilty of
8 a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$100.

9 **§17C-5D-4. Procedure on arrest.**

10 If a person is arrested for an offense under the provisions of this article, unless the provisions
11 of section three, article nineteen of this chapter require that the person arrested be taken immediately
12 before a magistrate for an offense described in that section, the provisions of article nineteen of this
13 chapter regarding the issuance of a traffic citation containing a notice to appear applies.

14 **CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

15 **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

16 **§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor;**
17 **arrests by sheriffs or their deputies for violation in their presence; penalties.**

18 (a) A person ~~shall~~ may not:

19 (1) Appear in a public place in an intoxicated condition;

20 (2) Drink alcoholic liquor in a public place;

21 ~~(3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public~~
22 ~~garage;~~

1 ~~(4)~~ (3) Tender a drink of alcoholic liquor to another person in a public place;

2 ~~(5)~~ (4) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not
3 bearing stamps or seals of the commissioner, without having first obtained written authority from
4 the ~~said~~ commissioner therefor; or

5 ~~(6)~~ (5) Possess any alcoholic liquor which was manufactured or acquired in violation of the
6 provisions of this chapter.

7 (b) Any law-enforcement officer may arrest without a warrant and take the following actions
8 against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section:

9 (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person,
10 the officer may issue the intoxicated person a citation specifying a date for appearance before a
11 judicial officer and release him or her to the custody of the individual accepting responsibility:

12 *Provided*, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose

13 an undue burden on the officer, he or she may, after issuance of ~~such~~ the a citation, transport the

14 individual to the individual's present residence or arrange for ~~such~~ the transportation; (3) if the

15 individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection

16 are not possible, the officer shall transport or arrange for transportation to the appropriate judicial

17 officer as defined by section seventeen, article eleven, chapter twenty-seven of this code; or (4) if

18 the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute

19 medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital

20 emergency room. The officer shall accompany the individual until he or she is discharged from the

21 emergency room or admitted to the hospital. If the individual is released from the emergency room,

22 the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the

1 individual is admitted to the hospital, the officer shall issue a citation to the individual specifying
2 a date for appearance before a judicial officer.

3 (c) Upon presentment before the proper judicial officer, the law-enforcement officer ~~shall~~
4 ~~serve~~ serves as the chief complaining witness. The judicial officer ~~must make a finding that shall~~
5 determine if there is probative evidence that the individual may be guilty of the charge of public
6 intoxication. If such evidence is not presented, the charge shall be dismissed and the individual
7 released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish
8 bail or issue a summons to the individual. Once a warrant or summons has been issued, the
9 following actions may be taken:

10 (1) If the individual is no longer incapacitated, he or she may be released;

11 (2) If the individual is still incapacitated but a nonintoxicated person is available to accept
12 responsibility for him or her, he or she may be released to the responsible person; or

13 (3) If the individual is still incapacitated and no responsible person is available, the judicial
14 officer shall proceed under the provisions of article five or six-a, chapter twenty-seven of this code.

15 (d) Any law-enforcement officer is ~~hereby authorized and empowered to~~ may arrest and hold
16 in custody, without a warrant, until complaint may be made before a judicial officer and a warrant
17 or summons issued, any person who in the presence of the law-enforcement officer violates any one
18 or more of subdivisions (1) through (6), subsection (a) of this section: *Provided*, That the
19 law-enforcement officer may use reasonable force to prevent harm to himself or herself, the
20 individual arrested or others in carrying out the provisions of this section.

21 (e) Any person who violates subdivision (1), subsection (a) of this section ~~shall be~~ is guilty
22 of a misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance

1 with the following options:

2 (1) Upon first offense, a fine of not less than \$5 nor more than \$100. If the individual, prior
3 to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours
4 duration at the nearest community mental health -- mental retardation center, the judicial officer may
5 delay sentencing until the program is completed and upon completion may dismiss the charges;

6 (2) Upon conviction for a second offense, a fine of not less than \$5 nor more than \$100 and
7 not more than sixty days in ~~the county or regional~~ jail or completion of not less than five hours of
8 alcoholism counseling at the nearest community mental health -- mental retardation center;

9 (3) Upon third and subsequent convictions, a fine of not less than \$5 nor more than \$100 and
10 not less than five nor more than sixty days in ~~county or regional~~ jail or a fine of not less than \$5 nor
11 more than \$100 and completion of not less than five hours of alcoholism counseling at the nearest
12 community mental health -- mental retardation center: *Provided*, That three convictions for public
13 intoxication within the preceding six months ~~shall be~~ is considered evidence of alcoholism.
14 ~~*Provided, however, That*~~ For the educational counseling programs described in this subsection the
15 community mental health -- mental retardation center may charge each participant its usual and
16 customary fee and shall certify in writing to the referring judicial officer the completion or failure
17 to complete the prescribed program for each individual.

18 (f) A person charged with a violation of subdivision (1), subsection (a) of this section who
19 is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant
20 to articles five and six-a, chapter twenty-seven of this code.

21 (g) Any person who violates subdivision (2), subsection (a) of this section ~~shall be~~ is guilty
22 of a misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100;

1 and upon a second or subsequent conviction thereof, shall be fined not less than \$5 nor more than
2 \$100, or confined in ~~the county or regional~~ jail not more than sixty days, or both.

3 (h) Any person who violates subdivision (3), subsection (a) of this section ~~shall be~~ is guilty
4 of a misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100,
5 or confined in ~~the county or regional~~ jail not more than sixty days, or both.

6 (i) Any person who violates subdivision (4) or (5), subsection (a) of this section ~~shall be~~ is
7 guilty of a misdemeanor and, upon his or her first conviction, shall be fined not less than \$100 nor
8 more than \$500; and upon conviction of second or subsequent offense, he or she ~~shall be~~ is guilty
9 of a felony and, shall be confined in ~~the penitentiary of this state~~ a state correctional facility for a
10 period of not less than one year nor more than three years.