

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2148**

5 (By Delegate Gearheart, Hamrick, Smith, R., Nelson, E.,
6 Howell, Arvon, Butler, Azinger, Espinosa, Frich and Kessinger)
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8
9 [Passed March 12, 2015; in effect ninety days from passage.]
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11 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
12 designated §17C-5D-1, §17C-5D-2, §17C-5D-3, and §17C-5D-4; and to amend and reenact
13 §60-6-9 of said code, all relating to creating a misdemeanor offense for open containers of
14 alcoholic beverages in certain areas of vehicles; providing comity with federal law governing
15 open containers of alcoholic beverages in vehicles; providing penalties; defining terms;
16 providing exceptions; and specifying procedure upon arrest.

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

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

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

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

23 **§17C-5D-1. Purpose.**

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

7 **§17C-5D-2. Definitions.**

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

10 (a) “Alcoholic beverage” means:

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

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

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

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

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

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

19 (B) Has had its contents partially removed.

20 (d) “Passenger area of a motor vehicle” means the area designed to seat the driver and
21 passengers while the motor vehicle is in operation and any area that is readily accessible to the driver
22 or a passenger while in their seating positions. For purposes of this article, the passenger area of a

1 motor vehicle does not include:

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

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

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

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

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

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

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

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

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

18 (b) It is unlawful for the operator or a passenger of a motor vehicle to knowingly possess any
19 open alcoholic beverage container in the passenger area of any motor vehicle that is located on a
20 public highway or right-of-way of a public highway in this state, whether the vehicle is in motion
21 or at rest. Possession by a person of one or more open containers in a single criminal occurrence is
22 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 may not:

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

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

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

22 (4) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing

1 stamps or seals of the commissioner, without having first obtained written authority from the
2 commissioner therefor; or

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

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

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

10 *Provided*, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose
11 an undue burden on the officer, he or she may, after issuance of the a citation, transport the
12 individual to the individual's present residence or arrange for the transportation; (3) if the individual
13 is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not
14 possible, the officer shall transport or arrange for transportation to the appropriate judicial officer
15 as defined by section seventeen, article eleven, chapter twenty-seven of this code; or (4) if the
16 individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute
17 medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital
18 emergency room. The officer shall accompany the individual until he or she is discharged from the
19 emergency room or admitted to the hospital. If the individual is released from the emergency room,
20 the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the
21 individual is admitted to the hospital, the officer shall issue a citation to the individual specifying
22 a date for appearance before a judicial officer.

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

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

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

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

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

18 (e) Any person who violates subdivision (1), subsection (a) of this section is guilty of a
19 misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance
20 with the following options:

21 (1) Upon first offense, a fine of not less than \$5 nor more than \$100. If the individual, prior
22 to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours

1 duration at the nearest community mental health -- mental retardation center, the judicial officer may
2 delay sentencing until the program is completed and upon completion may dismiss the charges;

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

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

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

17 (g) Any person who violates subdivision (2), subsection (a) of this section is guilty of a
18 misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100; and
19 upon a second or subsequent conviction thereof, shall be fined not less than \$5 nor more than \$100,
20 or confined in jail not more than sixty days, or both.

21 (h) Any person who violates subdivision (3), subsection (a) of this section is guilty of a
22 misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100, or

1 confined in jail not more than sixty days, or both.

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