

H. B. 2148

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

[Introduced January 20, 2015; referred to the
Committee on Roads and Transportation then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17C-5D-1, §17C-5D-2, §17C-5D-3, §17C-5D-4, §17C-5D-5, §17C-5D-6, §17C-5D-7, §17C-5D-8, §17C-5D-9 and §17C-5D-10; and to amend and reenact §60-6-9 of said code, all relating to conforming the motor vehicle law of this state to the requirements of section 1405(a) of the federal Transportation Equity Act for the Twenty-first Century (23 U.S.C. §154), as amended, which requires states to enact and enforce a law that prohibits the consumption of an alcoholic beverage or the possession of an open alcoholic beverage container in the passenger area of a motor vehicle that is located on a public highway or the right-of-way adjacent to a public highway.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §17C-5D-1, §17C-5D-2, §17C-5D-3, §17C-5D-4, §17C-5D-5, §17C-5D-6,

1 §17C-5D-7, §17C-5D-8, §17C-5D-9 and §17C-5D-10; and that §60-6-9 of said code be amended
2 and reenacted, all to read as follows:

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

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

5 **§17C-5D-1. Purpose.**

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

12 **§17C-5D-2. Applicability of definitions.**

13 For the purposes of this article, the words or terms defined in this article have the meanings
14 ascribed to them.

15 **§17C-5D-3. Alcoholic beverage defined.**

16 “Alcoholic beverage” means:

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

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

20 **§17C-5D-4. Motor vehicle defined.**

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

1 **§17C-5D-5. Open alcoholic beverage container defined.**

2 “Open alcoholic beverage container” means any bottle, can or other receptacle that:

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

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

5 (B) Has had its contents partially removed.

6 **§17C-5D-6. Passenger area of a motor vehicle defined.**

7 “Passenger area of a motor vehicle” means the area designed to seat the driver and passengers
8 while the motor vehicle is in operation and any area that is readily accessible to the driver or a
9 passenger while in their seating positions. For purposes of this article, the passenger area of a motor
10 vehicle does not include:

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

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

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

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

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

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

19 **§17C-5D-7. Public highway defined.**

20 “Public highway or right-of-way of a public highway” means the entire width between and
21 immediately adjacent to the boundary lines of every way that is publicly maintained, when any part
22 thereof is open to the use of the public for purposes of vehicular travel.

1 **§17C-5D-8. Possession of an open alcoholic beverage container in the passenger area of a**
2 **motor vehicle; penalties.**

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

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

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

13 **§17C-5D-9. Exceptions for passengers in certain vehicles.**

14 The provisions of section eight of this article are not applicable to a passenger:

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

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

20 **§17C-5D-10. Procedure on arrest.**

21 If a person is arrested for an offense under the provisions of this article, unless the provisions
22 of section three, article nineteen of this chapter require that the person arrested be taken immediately

1 before a magistrate for an offense described in that section, the provisions of article nineteen of this
2 chapter regarding the issuance of a traffic citation containing a notice to appear applies.

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

4 **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

5 **§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor;**
6 **arrests by sheriffs or their deputies for violation in their presence; penalties.**

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

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

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

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

12 ~~(4)~~ (3) Tender a drink of alcoholic liquor to another person in a public place;

13 ~~(5)~~ (4) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not
14 bearing stamps or seals of the commissioner, without having first obtained written authority from
15 the ~~said~~ commissioner therefor; or

16 ~~(6)~~ (5) Possess any alcoholic liquor which was manufactured or acquired in violation of the
17 provisions of this chapter.

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

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

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

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

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

22 (2) If the individual is still incapacitated but a nonintoxicated person is available to accept

1 responsibility for him or her, he or she may be released to the responsible person; or

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

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

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

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

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

20 (3) Upon third and subsequent convictions, a fine of not less than \$5 nor more than \$100 and
21 not less than five nor more than sixty days in ~~county or regional~~ jail or a fine of not less than \$5 nor
22 more than \$100 and completion of not less than five hours of alcoholism counseling at the nearest

1 community mental health -- mental retardation center: *Provided*, That three convictions for public
2 intoxication within the preceding six months ~~shall be~~ is considered evidence of alcoholism.
3 ~~*Provided, however, That*~~ For the educational counseling programs described in this subsection the
4 community mental health -- mental retardation center may charge each participant its usual and
5 customary fee and shall certify in writing to the referring judicial officer the completion or failure
6 to complete the prescribed program for each individual.

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

10 (g) Any person who violates subdivision (2), subsection (a) of this section ~~shall be~~ is guilty
11 of a misdemeanor and, upon conviction thereof, shall be fined not less than \$5 nor more than \$100;
12 and upon a second or subsequent conviction thereof, shall be fined not less than \$5 nor more than
13 \$100, or confined in ~~the county or regional~~ jail not more than sixty days, or both.

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

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

NOTE: The purpose of this bill is to prohibit the consumption of an alcoholic beverage as well as the possession of an open alcoholic beverage container in a motor vehicle.

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

Article 17C-5D-1 through 10 is new; therefore, it has completely underscored.