

COMMITTEE SUBSTITUTE

for

H. B. 2148

(BY DELEGATE(S) GEARHEART, HAMRICK,
R. SMITH, E. NELSON, HOWELL, ARVON, BUTLER, AZINGER,
ESPINOSA, FRICH AND KESSINGER)

(Originating in the House Committee on the Judiciary)

[February 25, 2015]

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, and §17C-5D-4; and to amend and reenact §60-6-9 of said code, all relating to creating a misdemeanor offense for open containers of alcoholic beverages in certain areas of vehicles; providing comity with federal law governing open containers of

alcoholic beverages in vehicles; providing penalties; defining terms; providing exceptions; and specifying procedure upon arrest.

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, and §17C-5D-4; and that §60-6-9 of said code be amended and reenacted, all to read as follows:

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

ARTICLE 5D. OPEN CONTAINER LAWS.

§17C-5D-1. Purpose.

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

§17C-5D-2. Definitions.

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

3 (a) “Alcoholic beverage” means:

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

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

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

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

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

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

16 (B) Has had its contents partially removed.

17 (d) “Passenger area of a motor vehicle” means the area
18 designed to seat the driver and passengers while the motor
19 vehicle is in operation and any area that is readily accessible to

20 the driver or a passenger while in their seating positions. For
21 purposes of this article, the passenger area of a motor vehicle
22 does not include:

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

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

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

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

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

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

35 (e) “Public highway or right-of-way of a public highway”
36 means the entire width between and immediately adjacent to the
37 boundary lines of every way that is publicly maintained, when
38 any part thereof is open to the use of the public for purposes of
39 vehicular travel.

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

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

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

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

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

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

22 (d) A person who violates the provisions of subsection (a) or
23 (b) of this section is guilty of a misdemeanor and, upon
24 conviction thereof, shall be fined not less than \$50 nor more than
25 \$100.

§17C-5D-4. Procedure on arrest.

1 If a person is arrested for an offense under the provisions of
2 this article, unless the provisions of section three, article
3 nineteen of this chapter require that the person arrested be taken
4 immediately before a magistrate for an offense described in that
5 section, the provisions of article nineteen of this chapter
6 regarding the issuance of a traffic citation containing a notice to
7 appear applies.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

6 ~~(4)~~ (3) Tender a drink of alcoholic liquor to another person
7 in a public place;

8 ~~(5)~~ (4) Possess alcoholic liquor in the amount in excess of
9 ten gallons, in containers not bearing stamps or seals of the
10 commissioner, without having first obtained written authority
11 from the ~~said~~ commissioner therefor; or

12 ~~(6)~~ (5) Possess any alcoholic liquor which was manufactured
13 or acquired in violation of the provisions of this chapter.

14 (b) Any law-enforcement officer may arrest without a
15 warrant and take the following actions against a person who, in
16 his or her presence, violates subdivision (1) of subsection (a) of
17 this section: (1) If there is some nonintoxicated person who will
18 accept responsibility for the intoxicated person, the officer may
19 issue the intoxicated person a citation specifying a date for
20 appearance before a judicial officer and release him or her to the
21 custody of the individual accepting responsibility: *Provided,*

22 That the issuance of a citation shall be used whenever feasible;
23 (2) if it does not impose an undue burden on the officer, he or
24 she may, after issuance of ~~such~~ the a citation, transport the
25 individual to the individual's present residence or arrange for
26 ~~such~~ the transportation; (3) if the individual is incapacitated or
27 the alternatives provided in subdivisions (1) and (2) of this
28 subsection are not possible, the officer shall transport or arrange
29 for transportation to the appropriate judicial officer as defined by
30 section seventeen, article eleven, chapter twenty-seven of this
31 code; or (4) if the individual is incapacitated and, in the
32 law-enforcement officer's judgment, is in need of acute medical
33 attention, that officer shall arrange for transportation by
34 ambulance or otherwise to a hospital emergency room. The
35 officer shall accompany the individual until he or she is
36 discharged from the emergency room or admitted to the hospital.
37 If the individual is released from the emergency room, the
38 officer may proceed as described in subdivisions (1), (2) and (3)
39 of this subsection. If the individual is admitted to the hospital,
40 the officer shall issue a citation to the individual specifying a
41 date for appearance before a judicial officer.

42 (c) Upon presentment before the proper judicial officer, the
43 law-enforcement officer ~~shall serve~~ serves as the chief
44 complaining witness. The judicial officer ~~must make a finding~~
45 ~~that~~ shall determine if there is probative evidence that the
46 individual may be guilty of the charge of public intoxication. If
47 such evidence is not presented, the charge shall be dismissed and
48 the individual released. If sufficient evidence is presented, the
49 judicial officer shall issue a warrant and establish bail or issue a
50 summons to the individual. Once a warrant or summons has been
51 issued, the following actions may be taken:

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

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

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

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

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

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

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

86 (3) Upon third and subsequent convictions, a fine of not less
87 than \$5 nor more than \$100 and not less than five nor more than
88 sixty days in ~~county or regional~~ jail or a fine of not less than \$5
89 nor more than \$100 and completion of not less than five hours of
90 alcoholism counseling at the nearest community mental health
91 — mental retardation center: *Provided*, That three convictions
92 for public intoxication within the preceding six months ~~shall be~~
93 is considered evidence of alcoholism. ~~*Provided, however, That*~~
94 For the educational counseling programs described in this
95 subsection the community mental health — mental retardation
96 center may charge each participant its usual and customary fee
97 and shall certify in writing to the referring judicial officer the
98 completion or failure to complete the prescribed program for
99 each individual.

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

105 (g) Any person who violates subdivision (2), subsection (a)
106 of this section ~~shall be~~ is guilty of a misdemeanor and, upon
107 conviction thereof, shall be fined not less than \$5 nor more than
108 \$100; and upon a second or subsequent conviction thereof, shall
109 be fined not less than \$5 nor more than \$100, or confined in ~~the~~
110 ~~county or regional~~ jail not more than sixty days, or both.

111 (h) Any person who violates subdivision (3), subsection (a)
112 of this section ~~shall be~~ is guilty of a misdemeanor and, upon
113 conviction thereof, shall be fined not less than \$5 nor more than
114 \$100, or confined in ~~the county or regional~~ jail not more than
115 sixty days, or both.

116 (i) Any person who violates subdivision (4) or (5),
117 subsection (a) of this section ~~shall be~~ is guilty of a misdemeanor
118 and, upon his or her first conviction, shall be fined not less than
119 \$100 nor more than \$500; and upon conviction of second or

120 subsequent offense, he or she ~~shall be~~ is guilty of a felony and,
121 shall be confined in ~~the penitentiary of this state~~ a state
122 correctional facility for a period of not less than one year nor
123 more than three years.

