

HB 2148

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2148

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



Passed March 12, 2015

In effect ninety days from passage.

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H. B. 2148

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

[Passed March 12, 2015;
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AN ACT 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 may not:
- 2 (1) Appear in a public place in an intoxicated condition;
- 3 (2) Drink alcoholic liquor in a public place;
- 4 (3) Tender a drink of alcoholic liquor to another person in a
5 public place;
- 6 (4) Possess alcoholic liquor in the amount in excess of ten
7 gallons, in containers not bearing stamps or seals of the
8 commissioner, without having first obtained written authority
9 from the commissioner therefor; or

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

12 (b) Any law-enforcement officer may arrest without a
13 warrant and take the following actions against a person who, in
14 his or her presence, violates subdivision (1) of subsection (a) of
15 this section: (1) If there is some nonintoxicated person who will
16 accept responsibility for the intoxicated person, the officer may
17 issue the intoxicated person a citation specifying a date for
18 appearance before a judicial officer and release him or her to the
19 custody of the individual accepting responsibility: *Provided,*
20 That the issuance of a citation shall be used whenever feasible;
21 (2) if it does not impose an undue burden on the officer, he or
22 she may, after issuance of the a citation, transport the individual
23 to the individual's present residence or arrange for the
24 transportation; (3) if the individual is incapacitated or the
25 alternatives provided in subdivisions (1) and (2) of this
26 subsection are not possible, the officer shall transport or arrange
27 for transportation to the appropriate judicial officer as defined by
28 section seventeen, article eleven, chapter twenty-seven of this
29 code; or (4) if the individual is incapacitated and, in the
30 law-enforcement officer's judgment, is in need of acute medical
31 attention, that officer shall arrange for transportation by
32 ambulance or otherwise to a hospital emergency room. The
33 officer shall accompany the individual until he or she is
34 discharged from the emergency room or admitted to the hospital.
35 If the individual is released from the emergency room, the
36 officer may proceed as described in subdivisions (1), (2) and (3)
37 of this subsection. If the individual is admitted to the hospital,
38 the officer shall issue a citation to the individual specifying a
39 date for appearance before a judicial officer.

40 (c) Upon presentment before the proper judicial officer, the
41 law-enforcement officer serves as the chief complaining witness.
42 The judicial officer shall determine if there is probative evidence
43 that the individual may be guilty of the charge of public

44 intoxication. If such evidence is not presented, the charge shall
45 be dismissed and the individual released. If sufficient evidence
46 is presented, the judicial officer shall issue a warrant and
47 establish bail or issue a summons to the individual. Once a
48 warrant or summons has been issued, the following actions may
49 be taken:

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

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

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

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

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

72 (1) Upon first offense, a fine of not less than \$5 nor more
73 than \$100. If the individual, prior to conviction, agrees to

74 voluntarily attend an alcohol education program of not more than
75 six hours duration at the nearest community mental health —
76 mental retardation center, the judicial officer may delay
77 sentencing until the program is completed and upon completion
78 may dismiss the charges;

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

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

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

102 (g) Any person who violates subdivision (2), subsection (a)
103 of this section is guilty of a misdemeanor and, upon conviction
104 thereof, shall be fined not less than \$5 nor more than \$100; and
105 upon a second or subsequent conviction thereof, shall be fined

106 not less than \$5 nor more than \$100, or confined in jail not more
107 than sixty days, or both.

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

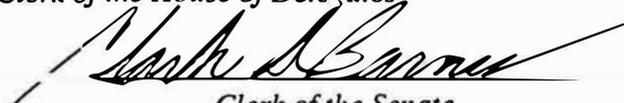

Chairman, House Committee

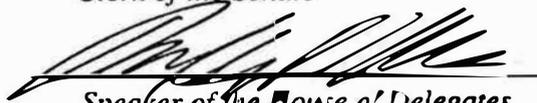

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


President of the Senate

The within is approved this the 25th
day of March, 2015.


Governor

PRESENTED TO THE GOVERNOR

MAR 18 2015

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