

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### House Bill 2562

FISCAL  
NOTE

BY DELEGATES HOTT, D. JEFFRIES, AND D. KELLY,

[Introduced February 16, 2021; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §22-15A-4 of the Code of West Virginia, 1931, as amended; and to  
 2 amend said code by adding thereto a new section designated §22-15A-4a; all relating to  
 3 litter control; providing for relocating civil and criminal penalties; providing for mirrored  
 4 fines between water-based litter and land-based litter; providing for ranges of fines;  
 5 providing for a specific penalty for litter relating to commercial waste that is improperly  
 6 disposed of in this state; providing for verification of any court imposed community service  
 7 sentence by the Department of Environmental Protection; and providing for other technical  
 8 changes.

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

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL  
 ACTION PLAN.**

**§22-15A-4. Unlawful disposal of litter; ~~civil and criminal penalty; litter control fund~~  
 evidence; notice violations; litter receptacle placement; penalty; duty to enforce  
 violations.**

1 (a) ~~(1)~~ A person may not place, deposit, dump, throw, or cause to be placed, deposited,  
 2 dumped, or thrown any litter as defined in §22-15A-2 of this code, in or upon any public or private  
 3 highway, road, street, or alley; any private property; any public property; or the waters of the state  
 4 or within 100 feet of the waters of this state, except in a proper litter or other solid waste receptacle.

5 ~~(2)~~(b) A person may not place, deposit, dump, throw, or cause to be placed, deposited,  
 6 dumped, or thrown any litter from a motor vehicle or other conveyance or perform any act which  
 7 constitutes a violation of the motor vehicle laws contained in §17C-14-14 of this code.

8 ~~(3)~~(c) If any litter is placed, deposited, dumped, discharged, thrown, or caused to be  
 9 placed, deposited, dumped, or thrown from a motor vehicle, boat, airplane, or other conveyance,  
 10 it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane, or  
 11 other conveyance intended to violate the provisions of this section.

12           ~~(4)(d)~~ Any person who violates the provisions of this section by placing, depositing,  
13           dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter on his or  
14           her private property in an amount not exceeding 50 pounds in weight is not subject to the criminal  
15           provisions of ~~this section~~ §22-15A-4a of this code, but may be issued a notice of violation from  
16           any law enforcement officer or officers.

17           (e) All law-enforcement agencies, officers, and environmental inspectors shall enforce  
18           compliance with this section within the limits of each agency's statutory authority.

19           (f) No magistrate or municipal court judge may dismiss an action brought under the  
20           provisions of this section or §22-15A-4a of this code without notification to the prosecuting  
21           attorney of that county of his or her intention to do so and affording the prosecuting attorney an  
22           opportunity to be heard.

23           (g) No portion of this section restricts an owner, renter, or lessee in the lawful use of his  
24           or her own private, rented, or leased property from the prohibition of disposal of any industrial and  
25           other wastes into waters of this state in a manner consistent with the provisions of §22-11-1 et  
26           seq. of this code. But if any owner, renter, or lessee, private or otherwise, knowingly permits any  
27           of these materials or substances to be placed, deposited, dumped, or thrown in a location that  
28           high water or normal drainage conditions will cause these materials or substances to wash into  
29           any waters of the state, it is prima facie evidence that the owner, renter, or lessee intended to  
30           violate the provisions of this section: *Provided*, That if a landowner, renter, or lessee, private or  
31           otherwise, reports any placing, depositing, dumping, or throwing of these substances or materials  
32           upon his or her property to the prosecuting attorney, county commission, the Division of Natural  
33           Resources, or the Department of Environmental Protection, the landowner, renter, or lessee will  
34           be presumed to not have knowingly permitted the placing, depositing, dumping, or throwing of the  
35           materials or substances.

36           ~~(5) Any person who violates the provisions of this section by placing, depositing, dumping,~~  
37           ~~or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for~~

38 commercial purposes, in an amount not exceeding 100 pounds in weight or 27 cubic feet in size,  
39 is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than \$100  
40 nor more than \$2,500, or in the discretion of the court, sentenced to perform community service  
41 by cleaning up litter from any public highway, road, street, alley, or any other public park or public  
42 property, or waters of the state, as designated by the court, for not less than eight nor more than  
43 100 hours, or both. If any person is convicted of the misdemeanor by placing, depositing,  
44 dumping, or throwing litter in the waters of the state, that person shall be fined not less than \$500  
45 nor more than \$3,000, or in the discretion of the court sentenced to perform community service  
46 by cleaning up litter from any waters of the state, as designated by the court, for not less than 20  
47 hours nor more than 120 hours, or both.

48 ~~(6) Any person who violates the provisions of this section by placing, depositing, dumping,~~  
49 ~~or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for~~  
50 ~~commercial purposes, in an amount greater than 100 pounds in weight or 27 cubic feet in size,~~  
51 ~~but less than 500 pounds in weight or 216 cubic feet in size is guilty of a misdemeanor. Upon~~  
52 ~~conviction, he or she is subject to a fine of not less than \$2,500 nor more than \$5,000, or in the~~  
53 ~~discretion of the court, may be sentenced to perform community service by cleaning up litter from~~  
54 ~~any public highway, road, street, alley, or any other public park or public property, or waters of~~  
55 ~~the state, as designated by the court, for not less than 16 hours nor more than 200 hours, or both.~~  
56 ~~If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter~~  
57 ~~in the waters of the state, that person shall be fined not less than \$3,000 nor more than \$5,500,~~  
58 ~~or in the discretion of the court sentenced to perform community service by cleaning up litter from~~  
59 ~~any waters of the state, as designated by the court, for not less than 20 hours nor more than 220~~  
60 ~~hours, or both.~~

61 ~~(7) Any person who violates the provisions of this section by placing, depositing, dumping,~~  
62 ~~or throwing or causing to be placed, deposited, dumped, or thrown any litter in an amount greater~~  
63 ~~than 500 pounds in weight or 216 cubic feet in size or any amount which had been collected for~~

64 ~~commercial purposes is guilty of a misdemeanor. Upon conviction, the person shall be fined not~~  
65 ~~less than \$2,500 nor more than \$25,000 or confinement in jail for not more than one year, or both.~~  
66 ~~If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter~~  
67 ~~in the waters of the state, that person shall be fined not less than \$3,000 nor more than \$11,000,~~  
68 ~~or confinement in jail for not more than one year, or both. In addition, he or she may be guilty of~~  
69 ~~creating or contributing to an open dump as defined in §22-15-2 of this code and subject to the~~  
70 ~~enforcement provisions of §22-15-15 of this code.~~

71 ~~(8) Any person convicted of a second or subsequent violation of this section is subject to~~  
72 ~~double the authorized range of fines and community service for the subsection violated.~~

73 ~~(9) The sentence of litter clean up shall be verified by environmental inspectors from the~~  
74 ~~Department of Environmental Protection. Any defendant receiving the sentence of litter clean up~~  
75 ~~shall provide, within a time to be set by the court, written acknowledgment from an environmental~~  
76 ~~inspector that the sentence has been completed and the litter has been disposed of lawfully.~~

77 ~~(10) Any person who has been found by the court to have willfully failed to comply with~~  
78 ~~the terms of a litter clean-up sentence imposed by the court pursuant to this section is subject to,~~  
79 ~~at the discretion of the court, double the amount of the original fines and community service~~  
80 ~~penalties originally ordered by the court.~~

81 ~~(11) All law enforcement agencies, officers, and environmental inspectors shall enforce~~  
82 ~~compliance with this section within the limits of each agency's statutory authority.~~

83 ~~(12) A magistrate or municipal court judge may not dismiss an action brought under the~~  
84 ~~provisions of this section without notification to the prosecuting attorney of that county of his or~~  
85 ~~her intention to do so and affording the prosecuting attorney an opportunity to be heard.~~

86 ~~(13) No portion of this section restricts an owner, renter, or lessee in the lawful use of his~~  
87 ~~or her own private property or rented or leased property or prohibits the disposal of any industrial~~  
88 ~~and other wastes into waters of this state in a manner consistent with the provisions of §22-11-1~~  
89 ~~et seq. of this code. But if any owner, renter, or lessee, private or otherwise, knowingly permits~~

90 ~~any of these materials or substances to be placed, deposited, dumped, or thrown in a location~~  
91 ~~that high water or normal drainage conditions will cause these materials or substances to wash~~  
92 ~~into any waters of the state, it is prima facie evidence that the owner, renter, or lessee intended~~  
93 ~~to violate the provisions of this section: *Provided*, That if a landowner, renter, or lessee, private or~~  
94 ~~otherwise, reports any placing, depositing, dumping, or throwing of these substances or materials~~  
95 ~~upon his or her property to the prosecuting attorney, county commission, the Division of Natural~~  
96 ~~Resources, or the Department of Environmental Protection, the landowner, renter, or lessee will~~  
97 ~~be presumed to not have knowingly permitted the placing, depositing, dumping, or throwing of the~~  
98 ~~materials or substances~~

99 ~~(b)(h)~~ Any indication of ownership found in litter is prima facie evidence that the person  
100 identified violated the provisions of this section: *Provided*, That no inference may be drawn solely  
101 from the presence of any logo, trademark, trade name, or other similar mass reproduced things  
102 of identifying character appearing on the found litter.

103 ~~(c) (1) Every person who is convicted of or pleads guilty to disposing of litter in violation of~~  
104 ~~subsection (a) of this section shall pay a civil penalty of not less than \$200 nor more than \$2,000~~  
105 ~~as costs for clean up, investigation, and prosecution of the case, in addition to any other court~~  
106 ~~costs that the court is otherwise required by law to impose upon a convicted person.~~

107 ~~(2) The clerk of the circuit court, magistrate court, or municipal court in which these~~  
108 ~~additional costs are imposed shall, on or before the last day of each month, transmit 50 percent~~  
109 ~~of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State~~  
110 ~~Treasury to the credit of a special revenue fund known as the Litter Control Fund which was~~  
111 ~~transferred to the Department of Environmental Protection. Expenditures for purposes set forth in~~  
112 ~~this section are not authorized from collections but are to be made only in accordance with~~  
113 ~~appropriation and in accordance with the provisions of §12-3-1 et seq. of this code and upon~~  
114 ~~fulfillment of the provisions set forth in §5A-2-1 et seq. of this code. Amounts collected which are~~  
115 ~~found from time to time to exceed the funds needed for the purposes set forth in this article may~~

116 ~~be transferred to other accounts or funds and designated for other purposes by appropriation of~~  
 117 ~~the Legislature.~~

118 ~~(d) The remaining 50 percent of each civil penalty collected pursuant to this section shall~~  
 119 ~~be transmitted to the county or regional solid waste authority in the county where the litter violation~~  
 120 ~~occurred. Moneys shall be expended by the county or regional solid waste authority for the~~  
 121 ~~purpose of litter prevention, clean up, and enforcement. The county commission shall cooperate~~  
 122 ~~with the county or regional solid waste authority serving the respective county to develop a~~  
 123 ~~coordinated litter control program pursuant to §22C-4-8 of this code~~

124 ~~(e) (i) The Commissioner of the Division of Motor Vehicles, upon registering a motor~~  
 125 ~~vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the~~  
 126 ~~case may be, a summary of this section, §22-15A-4a of this code, and §17C-14-14 of and §17C-~~  
 127 ~~14-14 of this code.~~

128 ~~(f) (j) The Commissioner of the Division of Highways shall cause appropriate signs to be~~  
 129 ~~placed at the state boundary on each primary and secondary road, and at other locations~~  
 130 ~~throughout the state, informing those entering the state of the maximum penalty provided for~~  
 131 ~~disposing of litter in violation of subsection (a) of this section.~~

132 ~~(g) (k) Any state agency or political subdivision that owns, operates, or otherwise controls~~  
 133 ~~any public area designated by the secretary by rule promulgated pursuant to §22-15A-3(a)(8) of~~  
 134 ~~this code shall procure and place litter receptacles at its own expense upon its premises and shall~~  
 135 ~~remove and dispose of litter collected in the litter receptacles. After receiving two written warnings~~  
 136 ~~from any law-enforcement officer or officers to comply with this subsection or the rules of the~~  
 137 ~~secretary, any state agency or political subdivision that fails to place and maintain the litter~~  
 138 ~~receptacles upon its premises in violation of this subsection or the rules of the secretary shall be~~  
 139 ~~finned \$30 per day of the violation.~~

**§22-15A-4a. Criminal and civil penalties; community service verification; litter control fund.**

1 ~~(a) Any person who violates the provisions of §22-15A-4 of this code by placing,~~

2 depositing, dumping, or throwing, or causing to be placed, deposited, dumped, or thrown any  
3 litter, not collected for commercial purposes, on any public or private highway, road, street, alley,  
4 or private or public property within this state:

5 (1) In an amount up to 100 pounds in weight or 27 cubic feet in size, is guilty of a  
6 misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than  
7 \$3,000, or may be ordered to perform community service by cleaning up litter from any public  
8 highway, road, street, alley, or any other public park or public property, as designated by the court,  
9 for not less than eight nor more than 120 hours, or both fined and community service;

10 (2) In an amount greater than 100 pounds in weight or 27 cubic feet in size, but less than  
11 500 pounds in weight or 216 cubic feet in size is guilty of a misdemeanor and, upon conviction  
12 thereof shall be fined not less than \$2,500 nor more than \$5,500, or, may be ordered to perform  
13 community service by cleaning up litter from any public highway, road, street, alley, or any other  
14 public park or public property, as designated by the court, for not less than 16 nor more than 220  
15 hours, or both fined and community service;

16 (3) In an amount greater than 500 pounds in weight or 216 cubic feet in size is guilty of a  
17 misdemeanor and, upon conviction thereof, shall be fined not less than \$2,500 nor more than  
18 \$25,000 or confined in jail not more than one year or both fined and confined. In addition, the  
19 violation may be guilty of creating or contributing to an open dump as defined in §22-15-2 of this  
20 code and subject to the enforcement provisions of §22-15-15 of this code.

21 (b) Any person who violates the provisions of §22-15A-4 of this code by placing,  
22 depositing, dumping, or throwing, or causing to be placed, deposited, dumped, or thrown any  
23 litter, not collected for commercial purposes, into the waters of the state:

24 (1) In an amount up to 100 pounds in weight or 27 cubic feet in size, is guilty of a  
25 misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than  
26 \$3,000, or may be ordered to perform community service by cleaning up litter from any waters of  
27 the state, as designated by the court, for not less than eight nor more than 120 hours, or both



28 fined and community service;

29 (2) In an amount greater than 100 pounds in weight or 27 cubic feet in size, but less than  
30 500 pounds in weight or 216 cubic feet in size is guilty of a misdemeanor and, upon conviction  
31 thereof, shall be fined not less than \$2,500 nor more than \$5,500, or ordered to perform  
32 community service by cleaning up litter from any waters of the state, as designated by the court,  
33 for not less than 16 nor more than 220 hours, or both fined and community service;

34 (3) In an amount greater than 500 pounds in weight or 216 cubic feet in size is guilty of a  
35 misdemeanor and, upon conviction thereof, shall be fined not less than \$2,500 nor more than  
36 \$25,000, or confined in jail for not more than one year, or both fined and confined. In addition,  
37 the violator may be guilty of creating or contributing to an open dump as defined in §22-15-2 of  
38 this code and subject to the enforcement provisions of §22-15-15 of this code.

39 (c) Any person who violates the provisions of §22-15A-4 of this code by placing,  
40 depositing, dumping, or throwing, or causing to be placed, deposited, dumped, or thrown any litter  
41 in any amount which had been collected for commercial purposes is guilty of a misdemeanor and,  
42 upon conviction thereof, shall be fined not less than \$2,500 nor more than \$25,000, or confined  
43 in jail for not more than one year, or both fined and confined. In addition, the violator may be guilty  
44 of creating or contributing to an open dump as defined in §22-15-2 of this code and subject to the  
45 enforcement provisions of §22-15-15 of this code.

46 (d) Any person convicted of a second or subsequent violation of §22-15A-4 of this code is  
47 subject to double the authorized range of fines and community service for the subsection violated  
48 in this section.

49 (e) Anyone sentenced to litter clean up shall have his or her litter clean up sentence  
50 verified by environmental inspectors from the Department of Environmental Protection. Any  
51 defendant receiving the sentence of litter clean up shall provide, within a time to be set by the  
52 court, written acknowledgment from an environmental inspector that the sentence has been  
53 completed and the litter has been disposed of lawfully.

54 (f) Any person who has been found by the court to have willfully failed to comply with the  
55 terms of a litter clean up sentence imposed by the court pursuant to this section is subject to, at  
56 the discretion of the court, double the amount of the original fines and community service penalties  
57 originally ordered by the court.

58 (g) Every person who is convicted of or pleads guilty to disposing of litter in violation of  
59 §22-15A-4 of this code and §22-15A-4a of this code shall pay a civil penalty of not less than \$200  
60 nor more than \$2,000 as costs for clean-up, investigation, and prosecution of the case, in addition  
61 to any other court costs that the court is otherwise required by law to impose upon a convicted  
62 person.

63 (1) The clerk of the circuit court, magistrate court, or municipal court in which these  
64 additional costs are imposed shall, on or before the last day of each month, transmit 50 percent  
65 of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State  
66 Treasury to the credit of a special revenue fund known as the Litter Control Fund which was  
67 transferred to the Department of Environmental Protection. Expenditures for purposes set forth  
68 in this section are not authorized from collections but are to be made only in accordance with  
69 appropriation and in accordance with the provisions of §12-3-1 et seq., of this code and upon  
70 fulfillment of the provisions set forth in §5A-2-1 et seq., of this code. Amounts collected which are  
71 found from time to time to exceed the funds needed for the purposes set forth in this article may  
72 be transferred to other accounts or funds and designated for other purposes by appropriation of  
73 the Legislature.

74 (2) The remaining 50 percent of each civil penalty collected pursuant to this subsection  
75 shall be transmitted to the county or regional solid waste authority in the county where the litter  
76 violation occurred. Moneys shall be expended by the county or regional solid waste authority for  
77 the purpose of litter prevention, clean up, and enforcement. The county commission shall  
78 cooperate with the county or regional solid waste authority serving the respective county to  
79 develop a coordinated litter control program pursuant to §22C-4-8 of this code.

NOTE: The purpose of this bill is to provide specific misdemeanor and civil penalties for litter relating to commercial waste that is improperly disposed of in this state.

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