

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENGROSSED

House Bill 2562

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

[Introduced January 12, 2022; 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~~ 5 pounds in weight is not subject to the
15 criminal provisions of ~~this section~~ §22-15A-4a of this code, but may be issued a notice of violation
16 from 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 less than or equal to 100 pounds in weight or 27 cubic feet in size, is
6 guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more
7 than \$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 less than or equal to 100 pounds in weight or 27 cubic feet in size, is
25 guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more

26 than \$3,000, or may be ordered to perform community service by cleaning up litter from any
27 waters of the state, as designated by the court, for not less than eight nor more than 120 hours,
28 or both 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 or duly
51 appointed officer from the office, department or agency wherewith the criminal charge originated.

52 Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by
53 the court, written acknowledgment from an environmental inspector that the sentence has been
54 completed and the litter has been disposed of lawfully.

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

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

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

75 (2) The remaining 50 percent of each civil penalty collected pursuant to this subsection
76 shall be transmitted to the county or regional solid waste authority in the county where the litter
77 violation occurred. Moneys shall be expended by the county or regional solid waste authority for

- 78 the purpose of litter prevention, clean up, and enforcement. The county commission shall
79 cooperate with the county or regional solid waste authority serving the respective county to
80 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.