WEST VIRGINIA CODE CHAPTER 17c ARTICLE 5D

WV Legislature

§17C-5D-1. Purpose.

The purpose of this article is to avoid the imposition of sanctions against this state and the loss of federal-aid highway construction funds under 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.

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§17C-5D-2. Definitions.

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

(a) "Alcoholic beverage" means:

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

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

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

(c) "Open alcoholic beverage container" means any bottle, can or other receptacle that:

(1) Contains any amount of alcoholic beverage; and

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

(B) Has had its contents partially removed.

(d) "Passenger area of a motor vehicle" means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions. For purposes of this article, the passenger area of a motor vehicle does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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§17C-5D-4. Procedure on arrest.

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

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