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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

Committee Substitute for
SENATE BILL NO. 48

(By Senator J. Manchin, et al.)

PASSED March 2 1992
In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 48

(SENATORS J. MANCHIN, HAWSE, FELTON, CHERNENKO
AND DITTMAR, *original sponsors*)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article seven of said chapter, relating to littering and criminal penalties therefore; presumption; responsibility for animals; alternative sentences and courts authorized to impose them; verification of compliance with alternative sentence; penalties for failure to comply with alternative sentence; requirement that litter control fund be appropriated; and requirement that commissioner of highways place signs informing persons of maximum penalties for littering.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-six, article seven of said chapter be amended and reenacted to read as follows:

ARTICLE 5. WATER RESOURCES.**§20-5-15. Litter along streams, criminal penalties, enforcement.**

1 (a) It shall be unlawful to place, deposit, dump or
2 throw, or cause to be placed, deposited, dumped or
3 thrown, any litter as defined in section twenty-four,
4 article seven of this chapter and also any garbage,
5 refuse, trash, can, bottle, paper, ashes, carcass of any
6 dead animal or any part thereof, offal or any other
7 offensive or unsightly matter into any river, stream,
8 creek, branch, brook, lake or pond, or upon the surface
9 of any land within one hundred yards thereof, or in
10 such location that high water or normal drainage
11 conditions will cause any such materials or substances
12 to be washed into any river, stream, creek, branch,
13 brook, lake or pond.

14 (b) No portion of this section shall be construed to
15 restrict an owner, renter or lessee in the use of his
16 own private property or rented or leased property or
17 to prohibit the disposal of any industrial and other
18 wastes into waters of this state in a manner consistent
19 with the provisions of article five-a of this chapter. But
20 if any owner, renter or lessee, private or otherwise,
21 knowingly permits any such materials or substances to
22 be placed, deposited, dumped or thrown in such
23 location that high water or normal drainage conditions
24 will cause any such materials or substances to wash
25 into any river, stream, creek, branch, brook, lake or
26 pond, it shall be deemed prima facie evidence that
27 such owner, renter or lessee intended to violate the
28 provisions of this section: *Provided*, That if a land-
29 owner, renter or lessee, private or otherwise, reports
30 any such placing, depositing, dumping or throwing of
31 any such substances or materials upon his or her
32 property to the prosecuting attorney, county commis-
33 sion, or the division of natural resources, then the
34 landowner, renter or lessee will be presumed to not
35 have knowingly permitted such placing, depositing,
36 dumping or throwing of such materials or substances.

37 (c) In addition to enforcement by the director, the

38 chief of the division of water resources, and the
39 division's chief law-enforcement officer, the provisions
40 of this section may be enforced by all other proper
41 law-enforcement agencies.

42 (d) (1) Any person violating any provision of this
43 section shall be guilty of a misdemeanor, and, upon his
44 or her first conviction, shall be fined not less than fifty
45 nor more than five hundred dollars. At the request of
46 the defendant or in the discretion of the court, the
47 court may sentence the defendant to pick up and
48 remove from any area of a bank of any river, stream,
49 creek, branch, brook, lake or pond, or other property
50 with prior permission of the owner, the area to be
51 specified by the court, any and all litter, garbage,
52 refuse, trash, cans, bottles, papers, ashes, carcass of
53 any dead animal or any part thereof, offal or any other
54 offensive or unsightly matter placed, deposited,
55 dumped or thrown contrary to the provisions of this
56 section by anyone prior to the date of such conviction.
57 For the first offense, the alternative sentence of litter
58 pickup shall be not less than eight hours nor more
59 than sixteen hours in lieu of a fine. For purposes of
60 this subdivision, the term "court" shall include circuit,
61 magistrate and municipal courts.

62 (2) Upon his or her second conviction, such person
63 shall be fined not less than two hundred fifty dollars
64 nor more than one thousand dollars and imprisoned in
65 the county jail not less than twenty-four hours nor
66 more than six months. At the request of the defendant
67 or in the discretion of the court, the court may
68 sentence the defendant to pick up and remove from
69 any area of a bank of any river, stream, creek, branch,
70 brook, lake or pond, or other property with prior
71 permission of the owner, the area to be specified by
72 the court, any and all litter, garbage, refuse, trash,
73 cans, bottles, papers, ashes, carcass of any dead animal
74 or any part thereof, offal or any other offensive or
75 unsightly matter placed, deposited, dumped or thrown
76 contrary to the provisions of this section by anyone
77 prior to the date of such conviction. For the second
78 offense, the alternative sentence of litter pickup shall

79 be not less than sixteen hours nor more than thirty-
80 two hours in lieu of such fine or incarceration, but not
81 both. For purposes of this subdivision, the term
82 "court" shall include circuit and magistrate courts.

83 (3) Upon such person's third and successive convic-
84 tion, he or she shall be fined not less than five
85 hundred dollars nor more than two thousand dollars
86 and imprisoned in the county jail not less than forty-
87 eight hours nor more than one year. At the request of
88 the defendant or in the discretion of the court, the
89 court may sentence the defendant to pick up and
90 remove from any area of a bank of any river, stream,
91 creek, branch, brook, lake or pond, or other property
92 with prior permission of the owner, the area to be
93 specified by the court, any and all litter, garbage,
94 refuse, trash, cans, bottles, papers, ashes, carcass of
95 any dead animal or any part thereof, offal or any other
96 offensive or unsightly matter placed, deposited,
97 dumped or thrown contrary to the provisions of this
98 section by anyone prior to the date of such conviction.
99 Upon a third conviction the alternative sentence of
100 litter pickup shall be not less than thirty-two hours
101 nor more than sixty-four hours in lieu of such fine or
102 incarceration, but not both. For purposes of this
103 subdivision, the term "court" shall include circuit and
104 magistrate courts.

105 (4) The alternative sentence of litter pickup herein
106 set forth shall be verified by the conservation officers
107 or environmental inspectors from the division of
108 natural resources, office of environmental enforce-
109 ment or a regional engineering technician from the
110 division of natural resources, pollution prevention and
111 open dumps program (PPOD) of the county in which
112 the offense occurred. Any defendant receiving the
113 herein specified alternative sentence of litter pickup
114 shall provide within a time to be set by the court
115 written acknowledgement from said conservation
116 officers or environmental officers that the sentence
117 has been completed.

118 (5) Any person who has been found by the court to
119 have willfully failed to comply with the terms of an

120 alternative sentence imposed by the court pursuant to
121 this section shall be subject at the discretion of the
122 court to up to twice the original penalty provisions
123 available to the court at the time of conviction.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-26. Unlawful disposal of litter; civil and criminal penalties; litter control fund; evidence; notice of violations; litter receptacle placement; penalties; duty to enforce violations.

1 (a) (1) Any person who places, deposits, dumps or
2 throws or causes to be placed, deposited, dumped or
3 thrown any litter as defined in section twenty-four of
4 this article, in or upon any public or private highway,
5 road, street or alley, or upon any private property
6 without the consent of the owner, or in or upon any
7 public park or other public property other than in
8 such place as may be set aside for such purpose by the
9 governing body having charge thereof, is guilty of a
10 misdemeanor, and, upon his or her first conviction,
11 shall be fined not less than fifty dollars nor more than
12 five hundred dollars: *Provided*, That a person shall not
13 be held responsible for the actions of animals under
14 their direct control. At the request of the defendant or
15 in the discretion of the court, the court may sentence
16 the defendant to pick up and remove from any public
17 highway, road, street, alley or any other public park or
18 public property as designated by the court, any and all
19 litter, garbage, refuse, trash, cans, bottles, papers,
20 ashes, carcass of any dead animal or any part thereof,
21 offal or any other offensive or unsightly matter placed,
22 deposited, dumped or thrown contrary to the provi-
23 sions of this section by anyone prior to the date of such
24 conviction. For the first offense, the alternative
25 sentence of litter pickup shall be not less than eight
26 hours nor more than sixteen hours in lieu of other
27 such fine. For purposes of this subdivision, the term
28 "court" shall include circuit, magistrate and municipal
29 courts.

30 (2) Upon his or her second conviction, such person
31 shall be fined not less than two hundred fifty dollars

32 nor more than one thousand dollars and imprisoned in
33 the county jail not less than twenty-four hours nor
34 more than six months: *Provided*, That a person shall
35 not be held responsible for the actions of animals
36 under their direct control. At the request of the
37 defendant or in the discretion of the court, the court
38 may sentence the defendant to pick up and remove
39 from any public highway, road, street, alley or any
40 other public park or public property as designated by
41 the court, any and all litter, garbage, refuse, trash,
42 cans, bottles, papers, ashes, carcass of any dead animal
43 or any part thereof, offal or any other offensive or
44 unsightly matter placed, deposited, dumped or thrown
45 contrary to the provisions of this section by anyone
46 prior to the date of such conviction. For the second
47 offense, the alternative sentence of litter pickup shall
48 be not less than sixteen hours nor more than thirty-
49 two hours in lieu of such fine or incarceration, but not
50 both. For purposes of this subdivision the term
51 "court" shall include circuit and magistrate courts.

52 (3) Upon such person's third and successive convic-
53 tion, he or she shall be fined not less than five
54 hundred dollars nor more than two thousand dollars
55 and imprisoned in the county jail not less than forty-
56 eight hours nor more than one year: *Provided*, That a
57 person shall not be held responsible for the actions of
58 animals under their direct control. At the request of
59 the defendant or in the discretion of the court, the
60 court may sentence the defendant to pick up and
61 remove from any public highway, road, street, alley or
62 any other public park or public property as designated
63 by the court, any and all litter, garbage, refuse, trash,
64 cans, bottles, papers, ashes, carcass of any dead animal
65 or any part thereof, offal or any other offensive or
66 unsightly matter placed, deposited, dumped or thrown
67 contrary to the provisions of this section by anyone
68 prior to the date of such conviction. Upon a third
69 conviction, the alternative sentence of litter pickup
70 shall be not less than thirty-two hours nor more than
71 sixty-four hours in lieu of such fine or incarceration,
72 but not both. For purposes of this subdivision, the
73 term "court" shall include circuit and magistrate

74 courts.

75 (4) The alternative sentence of litter pickup herein
76 set forth shall be verified by the conservation officers
77 or environmental inspectors from the division of
78 natural resources, office of environmental enforce-
79 ment or a regional engineering technician from the
80 division of natural resources, pollution prevention and
81 open dumps program (PPOD) of the county in which
82 the offense occurred. Any defendant receiving the
83 herein specified alternative sentence of litter pickup
84 shall provide within a time to be set by the court
85 written acknowledgement from said conservation
86 officers or environmental officers that the sentence
87 has been completed.

88 (5) Any person who has been found by the court to
89 have willfully failed to comply with the terms of an
90 alternative sentence imposed by the court pursuant to
91 this section shall be subject at the discretion of the
92 court to up to twice the original penalty provisions
93 available to the court at the time of conviction.

94 (6) If any litter be thrown or cast from a motor
95 vehicle or boat, such action is prima facie evidence
96 that the driver of such motor vehicle or boat intended
97 to violate the provisions of this section. If any litter be
98 dumped or discharged from a motor vehicle or boat,
99 such action is prima facie evidence that the owner and
100 driver of such motor vehicle or boat intended to
101 violate the provisions of this section.

102 (b) Any litter found on any public or private prop-
103 erty with any indication of ownership on it will be
104 evidence creating a rebuttable inference it was depos-
105 ited improperly by the person whose identity is
106 indicated, and any person who improperly disposes of
107 litter shall be subject to either a civil fine of up to five
108 hundred dollars for such litter or required to pay the
109 costs of removal of such litter if the removal of such
110 litter is required to be done by the division, at the
111 discretion of the director. All such fines and costs shall
112 be deposited to the litter control fund: *Provided*, That
113 no inference shall be drawn solely from the presence

114 of any logo, trademark, trade name or other similar
115 mass reproduced identifying character appearing on
116 litter found.

117 (c) Every person who is convicted of or pleads guilty
118 to disposing of litter in violation of subsection (a) of
119 this section shall pay the sum of not less than fifty
120 dollars nor more than five hundred dollars as costs for
121 clean-up, investigation and prosecution in such case, in
122 addition to any other court costs that the court is
123 otherwise required by law to impose upon such
124 convicted person.

125 The clerk of the circuit court, magistrate court or
126 municipal court wherein such additional costs are
127 imposed shall, on or before the last day of each month,
128 transmit all such costs received under this subsection
129 to the state treasurer for deposit in the state treasury
130 to the credit of a special revenue fund to be known as
131 the litter control fund which is hereby continued.
132 Expenditures for purposes set forth in this section are
133 not authorized from collections but are to be made
134 only in accordance with appropriation and in accor-
135 dance with the provisions of article three, chapter
136 twelve of this code and upon fulfillment of the
137 provisions set forth in article two, chapter five-a of
138 this code: *Provided*, That for the fiscal year ending the
139 thirtieth day of June, one thousand nine hundred
140 ninety-three, expenditures shall be authorized from
141 collections. Amounts collected which are found from
142 time to time to exceed the funds needed for the
143 purposes set forth in this article may be transferred to
144 other accounts or funds and redesignated for other
145 purposes by appropriation of the Legislature.

146 (d) (1) The commissioner of motor vehicles, upon
147 registering a motor vehicle or issuing an operator's or
148 chauffeur's license, shall issue to the owner or licens-
149 ee, as the case may be, a copy of subsection (a) of this
150 section.

151 (2) The commissioner of highways shall cause appro-
152 priate signs to be placed at the state boundary on each
153 primary and secondary road, and at other locations

154 throughout the state, informing those entering the
155 state of the maximum penalty provided for disposing
156 of litter in violation of subsection (a) of this section.

157 (e) Any state agency or political subdivision that
158 owns, operates or otherwise controls any public area
159 as may be designated by the director by rule promul-
160 gated pursuant to subdivision (8), subsection (a),
161 section twenty-five of this article, shall procure and
162 place litter receptacles at his own expense upon his
163 premises and shall remove and dispose of litter
164 collected in such litter receptacles. After receiving two
165 written warnings from any law-enforcement officer or
166 officers to comply with this subsection or the said
167 rules of the director, any person who fails to place and
168 maintain such litter receptacles upon his or her
169 premises in violation of this subsection or the rules of
170 the director shall be fined fifteen dollars per day of
171 such violation.

172 (f) No portion of this section shall be construed to
173 restrict a private owner in the use of his own private
174 property in any manner otherwise authorized by law.

175 (g) Any law-enforcement officer who shall observe a
176 person violating the provisions of this section shall
177 have a mandatory duty to arrest or otherwise prose-
178 cute the violator to the limits provided herein. The
179 West Virginia division of highways shall investigate
180 and cause to be prosecuted violations of this section
181 occurring upon the highways of the state as the term
182 "highways" is defined in chapter seventeen of this
183 code.

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

Wm. L. Lick
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Harrell E. Adams
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Paul F. Fautelle
.....
President of the Senate

Robt. Cole
.....
Speaker House of Delegates

The within *is approved* this the *18*
day of *April*, 1992.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/92

Time 3:40pm