WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED

Senate Bill No. 627
(By Senators Stollings, Browning and Unger)

[Passed March 13, 2010; in effect ninety days from passage.]
AN ACT to amend and reenact §22-15A-3 and §22-15A-4 of the Code of West Virginia, 1931, as amended, all relating to the crime of littering; increasing criminal and civil penalties; and directing the Secretary of the Department of Environmental Protection to organize a statewide litter reporting program.

Be it enacted by the Legislature of West Virginia:

That §22-15A-3 and §22-15A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§22-15A-3. West Virginia litter control and recycling programs; transfer of programs and employees; additional duties of secretary; grants to counties and municipalities; and rules relating thereto.
(a) After July 1, 2005, the litter control and recycling programs heretofore operated and managed by the Division of Natural Resources shall transfer to the Department of Environmental Protection.

With the transfer of the West Virginia Litter Control and Recycling Programs from the jurisdiction of the Division of Natural Resources to the jurisdiction of the Department of Environmental Protection, all records, assets and contracts, along with rights and obligations thereunder, obtained or signed on behalf of the Litter Control and Recycling Programs are hereby transferred and assigned to the Department of Environmental Protection.

(b) The Commissioner of the Division of Natural Resources and the Secretary of the Department of Environmental Protection shall determine which employees of the Division of Natural Resources will be transferred to the Department of Environmental Protection. All employees including administrators of the litter control and recycling programs are subject to being transferred to the Department of Environmental Protection. Employees in the classified service who have gained permanent status as of the effective date of this article, enacted during the 2005 regular session of the Legislature, will not be subject to further qualifying examination in their respective classifications by reason of the transfer required by the provisions of this section. Nothing contained in this section may be construed to either abridge the rights of employees within the classified service of the state to the procedures and protections set forth in article six, chapter twenty-nine of this code or to preclude the reclassification or reallocation of positions in accordance with procedures set forth in said article. The Division of Personnel shall work with the commission and secretary to efficiently transfer employees from the Division of Natural Resources to the Department of Environmental Protection.
(c) In addition to all other powers, duties and responsibilities granted and assigned to the Secretary of the Department of Environmental Protection in this chapter and elsewhere by law, the secretary, in the administration of the West Virginia Litter Control Program created by this section, shall:

1. Coordinate all industry and business organizations seeking to aid in the litter control and recycling effort;
2. Cooperate with all local governments to accomplish coordination of local litter control and recycling efforts;
3. Encourage, organize, coordinate and increase public awareness of and participation in all voluntary litter control and recycling campaigns, including citizen litter watch programs, seeking to focus the attention of the public on the litter control and recycling programs of the state and local governments and of private recycling centers;
4. Recommend to local governing bodies that they adopt ordinances similar to the provisions of section four of this article;
5. Investigate the methods and success of techniques of litter control, removal and disposal utilized in other states, and develop, encourage, organize and coordinate local litter control programs funded by grants awarded pursuant to subsection (d) of this section utilizing such successful techniques;
6. Investigate the availability of, and apply for, funds available from any and all private or public sources to be used in the litter control program created by this section;
7. Attract to the state persons or industries that purchase, process or use recyclable materials;
8. Contract for the development, production and broadcast of radio and television messages promoting the
West Virginia Litter Control Program. The messages should increase public awareness of and promote citizen responsibility toward the reduction of litter; and

(9) Encourage, organize, coordinate and increase public awareness of, and participation in, a volunteer litter reporting program state-wide.

(d) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code establishing criteria for awarding direct or matching grants for the study of available research and development in the fields of litter control, removal and disposal, methods for the implementation of such research and development, and the development of public educational programs concerning litter control is hereby transferred from the Division of Natural Resources to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the 2005 session of the Legislature: Provided, That any rule promulgated by the Division of Natural Resources relating to such grants shall remain in force and effect as though promulgated by the Department of Environmental Protection until the Secretary amends the rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(e) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code designating public areas where litter receptacles shall be placed and the minimum number of litter receptacles in accordance with subsection (g), section four of this article is hereby transferred from the Division of Natural Resources to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the 2005 session of the Legislature. Any rule promulgated by the Division of Natural Resources relating to littering receptacles shall remain in effect as if
promulgated by the Secretary until amended by the secretary.

(f) Commencing on July 1, 2005, the secretary shall expend annually at least fifty percent of the moneys credited to the Litter Control Fund in the previous fiscal year for matching grants to counties and municipalities for the initiation and administration of litter control programs. The secretary shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code establishing criteria for the awarding of matching grants.

(g) The Secretary of the Department of Environmental Protection in cooperation with the Commissioner of Highways, the Department of Commerce, the West Virginia State Police, the United States Forestry Service and other local, state and federal law-enforcement agencies shall be responsible for the administration and enforcement of all laws and rules relating to the maintenance of cleanliness and improvement of appearances on and along highways, roads, streets, alleys and any other private or public areas of the state. These other agencies shall make recommendations to the Secretary, from time to time, concerning means and methods of accomplishing litter control consistent with the provisions of this chapter. Such cooperation shall include, but not be limited to, contracts with the Commissioner of Highways to operate a litter control program.

(h) All other state agencies and local governments shall cooperate with the Secretary in effecting the purposes of the litter control program.

§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.

(a) (1) No person shall place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter
as defined in section two of this article, in or upon any
public or private highway, road, street or alley; any
private property; any public property; or the waters of the
state or within one hundred feet of the waters of this state,
except in a proper litter or other solid waste receptacle.

(2) It is unlawful for any person to place, deposit, dump,
throw or cause to be placed, deposited, dumped or thrown
any litter from a motor vehicle or other conveyance or to
perform any act which constitutes a violation of the motor
vehicle laws contained in section fourteen, article fourteen,
chapter seventeen-c of this code.

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

(4) Any person who violates the provisions of this section
by placing, depositing, dumping or throwing or causing to
be placed, deposited, dumped or thrown any litter, not
collected for commercial purposes, in an amount not
exceeding one hundred pounds in weight or twenty-seven
cubic feet in size, is guilty of a misdemeanor. Upon
conviction, he or she is subject to a fine of not less than
$100 nor more than $1,000, or in the discretion of the
court, sentenced to perform community service by cleaning
up litter from any public highway, road, street, alley or
any other public park or public property, or waters of the
state, as designated by the court, for not less than eight
nor more than sixteen hours, or both.

(5) Any person who violates the provisions of this section
by placing, depositing, dumping or throwing or causing to
be placed, deposited, dumped or thrown any litter, not
collected for commercial purposes, in an amount greater
than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than $1,000 nor more than $2,000, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than sixteen nor more than thirty-two hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the person is subject to a fine not less than $2,500 or not more than $25,000 or confinement in jail for not more than one year or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in section two, article fifteen, chapter twenty-two of this code and subject to the enforcement provisions of section fifteen of said article.

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

(8) The sentence of litter clean up shall be verified by environmental inspectors from the Department of Environmental Protection. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the court, written acknowledgment from an environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.
(9) Any person who has been found by the court to have willfully failed to comply with the terms of a litter clean up sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties originally ordered by the court.

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

(11) No portion of this section restricts an owner, renter or lessee in the lawful use of his or her own private property or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise, knowingly permits any such materials or substances to be placed, deposited, dumped or thrown in such location that high water or normal drainage conditions will cause any such materials or substances to wash into any waters of the state, it is prima facie evidence that the owner, renter or lessee intended to violate the provisions of this section: Provided, That if a landowner, renter or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these substances or materials upon his or her property to the prosecuting attorney, county commission, the Division of Natural Resources or the Department of Environmental Protection, the landowner, renter or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping or throwing of the materials or substances.

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

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

The clerk of the circuit court, magistrate court or municipal court in which these additional costs are imposed shall, on or before the last day of each month, transmit fifty percent of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury to the credit of a special revenue fund to be known as the Litter Control Fund which is hereby continued and transferred to the Department of Environmental Protection. Expenditures for purposes set forth in this section are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code.

Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and designated for other purposes by appropriation of the Legislature.

(d) The remaining fifty percent of each civil penalty collected pursuant to this section shall be transmitted to the county or regional solid waste authority in the county where the litter violation occurred. Moneys shall be expended by the county or regional solid waste authority
for the purpose of litter prevention, clean up and enforce-
ment. The county commission shall cooperate with the
county or regional solid waste authority serving the
respective county to develop a coordinated litter control
program pursuant to section eight, article four, chapter
twenty-two-c of this code.

(e) The Commissioner of the Division of Motor Vehicles,
upon registering a motor vehicle or issuing an operator's
or chauffeur's license, shall issue to the owner or licensee,
as the case may be, a summary of this section and section
fourteen, article fourteen, chapter seventeen-c of the code.

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

(g) Any state agency or political subdivision that owns,
operates or otherwise controls any public area as may be
designated by the secretary by rule promulgated pursuant
to subdivision (8), subsection (a), section three of this
article shall procure and place litter receptacles at its own
expense upon its premises and shall remove and dispose of
litter collected in the litter receptacles. After receiving
two written warnings from any law-enforcement officer or
officers to comply with this subsection or the rules of the
secretary, any state agency or political subdivision that
fails to place and maintain the litter receptacles upon its
premises in violation of this subsection or the rules of the
secretary shall be fined $30 per day of the violation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within was approved this the Day of 2010.

Governor