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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

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ENROLLED

Senate Bill No. 627

(BY SENATORS STOLLINGS, BROWNING AND UNGER)

[Passed March 13, 2010; in effect ninety days from passage.]

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(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.

1 (a) After July 1, 2005, the litter control and recycling
2 programs heretofore operated and managed by the Divi-
3 sion of Natural Resources shall transfer to the Department
4 of Environmental Protection.

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

13 (b) The Commissioner of the Division of Natural Re-
14 sources and the Secretary of the Department of Environ-
15 mental Protection shall determine which employees of the
16 Division of Natural Resources will be transferred to the
17 Department of Environmental Protection. All employees
18 including administrators of the litter control and recycling
19 programs are subject to being transferred to the Depart-
20 ment of Environmental Protection. Employees in the
21 classified service who have gained permanent status as of
22 the effective date of this article, enacted during the 2005
23 regular session of the Legislature, will not be subject to
24 further qualifying examination in their respective classifi-
25 cations by reason of the transfer required by the provi-
26 sions of this section. Nothing contained in this section
27 may be construed to either abridge the rights of employees
28 within the classified service of the state to the procedures
29 and protections set forth in article six, chapter twenty-
30 nine of this code or to preclude the reclassification or
31 reallocation of positions in accordance with procedures set
32 forth in said article. The Division of Personnel shall work
33 with the commission and secretary to efficiently transfer
34 employees from the Division of Natural Resources to the
35 Department of Environmental Protection.

36 (c) In addition to all other powers, duties and responsi-
37 bilities granted and assigned to the Secretary of the
38 Department of Environmental Protection in this chapter
39 and elsewhere by law, the secretary, in the administration
40 of the West Virginia Litter Control Program created by
41 this section, shall:

42 (1) Coordinate all industry and business organizations
43 seeking to aid in the litter control and recycling effort;

44 (2) Cooperate with all local governments to accomplish
45 coordination of local litter control and recycling efforts;

46 (3) Encourage, organize, coordinate and increase public
47 awareness of and participation in all voluntary litter
48 control and recycling campaigns, including citizen litter
49 watch programs, seeking to focus the attention of the
50 public on the litter control and recycling programs of the
51 state and local governments and of private recycling
52 centers;

53 (4) Recommend to local governing bodies that they adopt
54 ordinances similar to the provisions of section four of this
55 article;

56 (5) Investigate the methods and success of techniques of
57 litter control, removal and disposal utilized in other states,
58 and develop, encourage, organize and coordinate local
59 litter control programs funded by grants awarded pursu-
60 ant to subsection (d) of this section utilizing such success-
61 ful techniques;

62 (6) Investigate the availability of, and apply for, funds
63 available from any and all private or public sources to be
64 used in the litter control program created by this section;

65 (7) Attract to the state persons or industries that pur-
66 chase, process or use recyclable materials;

67 (8) Contract for the development, production and
68 broadcast of radio and television messages promoting the

69 West Virginia Litter Control Program. The messages
70 should increase public awareness of and promote citizen
71 responsibility toward the reduction of litter; and

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

75 (d) All authority to promulgate rules pursuant to article
76 three, chapter twenty-nine-a of this code establishing
77 criteria for awarding direct or matching grants for the
78 study of available research and development in the fields
79 of litter control, removal and disposal, methods for the
80 implementation of such research and development, and the
81 development of public educational programs concerning
82 litter control is hereby transferred from the Division of
83 Natural Resources to the Secretary of the Department of
84 Environmental Protection as of the effective date of
85 enactment of this section and article during the 2005
86 session of the Legislature: *Provided*, That any rule pro-
87 mulgated by the Division of Natural Resources relating to
88 such grants shall remain in force and effect as though
89 promulgated by the Department of Environmental Protec-
90 tion until the Secretary amends the rules in accordance
91 with the provisions of article three, chapter twenty-nine-a
92 of this code.

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

104 promulgated by the Secretary until amended by the
105 secretary.

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

114 (g) The Secretary of the Department of Environmental
115 Protection in cooperation with the Commissioner of
116 Highways, the Department of Commerce, the West Vir-
117 ginia State Police, the United States Forestry Service and
118 other local, state and federal law-enforcement agencies
119 shall be responsible for the administration and enforce-
120 ment of all laws and rules relating to the maintenance of
121 cleanliness and improvement of appearances on and along
122 highways, roads, streets, alleys and any other private or
123 public areas of the state. These other agencies shall make
124 recommendations to the Secretary, from time to time,
125 concerning means and methods of accomplishing litter
126 control consistent with the provisions of this chapter.
127 Such cooperation shall include, but not be limited to,
128 contracts with the Commissioner of Highways to operate
129 a litter control program.

130 (h) All other state agencies and local governments shall
131 cooperate with the Secretary in effecting the purposes of
132 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.**

1 (a) (1) No person shall place, deposit, dump, throw or
2 cause to be placed, deposited, dumped or thrown any litter

3 as defined in section two of this article, in or upon any
4 public or private highway, road, street or alley; any
5 private property; any public property; or the waters of the
6 state or within one hundred feet of the waters of this state,
7 except in a proper litter or other solid waste receptacle.

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

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

21 (4) Any person who violates the provisions of this section
22 by placing, depositing, dumping or throwing or causing to
23 be placed, deposited, dumped or thrown any litter, not
24 collected for commercial purposes, in an amount not
25 exceeding one hundred pounds in weight or twenty-seven
26 cubic feet in size, is guilty of a misdemeanor. Upon
27 conviction, he or she is subject to a fine of not less than
28 \$100 nor more than \$1,000, or in the discretion of the
29 court, sentenced to perform community service by cleaning
30 up litter from any public highway, road, street, alley or
31 any other public park or public property, or waters of the
32 state, as designated by the court, for not less than eight
33 nor more than sixteen hours, or both.

34 (5) Any person who violates the provisions of this section
35 by placing, depositing, dumping or throwing or causing to
36 be placed, deposited, dumped or thrown any litter, not
37 collected for commercial purposes, in an amount greater

38 than one hundred pounds in weight or twenty-seven cubic
39 feet in size, but less than five hundred pounds in weight or
40 two hundred sixteen cubic feet in size is guilty of a
41 misdemeanor. Upon conviction he or she is subject to a
42 fine of not less than \$1,000 nor more than \$2,000, or in the
43 discretion of the court, may be sentenced to perform
44 community service by cleaning up litter from any public
45 highway, road, street, alley or any other public park or
46 public property, or waters of the state, as designated by
47 the court, for not less than sixteen nor more than thirty-
48 two hours, or both.

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

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

66 (8) The sentence of litter clean up shall be verified by
67 environmental inspectors from the Department of Envi-
68 ronmental Protection. Any defendant receiving the
69 sentence of litter clean up shall provide, within a time to
70 be set by the court, written acknowledgment from an
71 environmental inspector that the sentence has been
72 completed and the litter has been disposed of lawfully.

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

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

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

105 (b) Any indication of ownership found in litter shall be
106 prima facie evidence that the person identified violated
107 the provisions of this section: *Provided*, That no inference

108 may be drawn solely from the presence of any logo,
109 trademark, trade name or other similar mass reproduced
110 things of identifying character appearing on the found
111 litter.

112 (c) Every person who is convicted of or pleads guilty to
113 disposing of litter in violation of subsection (a) of this
114 section shall pay a civil penalty in the sum of not less than
115 \$200 nor more than \$1,000 as costs for clean up, investiga-
116 tion and prosecution of the case, in addition to any other
117 court costs that the court is otherwise required by law to
118 impose upon a convicted person.

119 The clerk of the circuit court, magistrate court or
120 municipal court in which these additional costs are
121 imposed shall, on or before the last day of each month,
122 transmit fifty percent of a civil penalty received pursuant
123 to this section to the State Treasurer for deposit in the
124 State Treasury to the credit of a special revenue fund to be
125 known as the Litter Control Fund which is hereby contin-
126 ued and transferred to the Department of Environmental
127 Protection. Expenditures for purposes set forth in this
128 section are not authorized from collections but are to be
129 made only in accordance with appropriation and in
130 accordance with the provisions of article three, chapter
131 twelve of this code and upon fulfillment of the provisions
132 set forth in article two, chapter five-a of this code.
133 Amounts collected which are found from time to time to
134 exceed the funds needed for the purposes set forth in this
135 article may be transferred to other accounts or funds and
136 designated for other purposes by appropriation of the
137 Legislature.

138 (d) The remaining fifty percent of each civil penalty
139 collected pursuant to this section shall be transmitted to
140 the county or regional solid waste authority in the county
141 where the litter violation occurred. Moneys shall be
142 expended by the county or regional solid waste authority

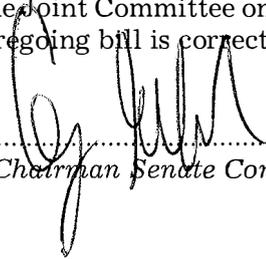
143 for the purpose of litter prevention, clean up and enforce-
144 ment. The county commission shall cooperate with the
145 county or regional solid waste authority serving the
146 respective county to develop a coordinated litter control
147 program pursuant to section eight, article four, chapter
148 twenty-two-c of this code.

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

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

160 (g) Any state agency or political subdivision that owns,
161 operates or otherwise controls any public area as may be
162 designated by the secretary by rule promulgated pursuant
163 to subdivision (8), subsection (a), section three of this
164 article shall procure and place litter receptacles at its own
165 expense upon its premises and shall remove and dispose of
166 litter collected in the litter receptacles. After receiving
167 two written warnings from any law-enforcement officer or
168 officers to comply with this subsection or the rules of the
169 secretary, any state agency or political subdivision that
170 fails to place and maintain the litter receptacles upon its
171 premises in violation of this subsection or the rules of the
172 secretary shall be fined \$30 per day of the violation.

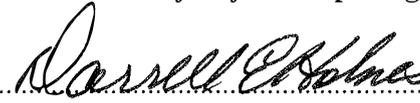
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

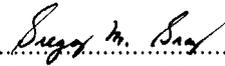

.....
Chairman Senate Committee

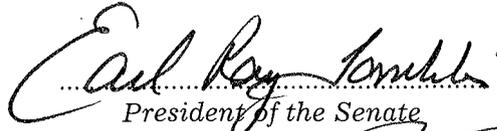

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Chairman House Committee

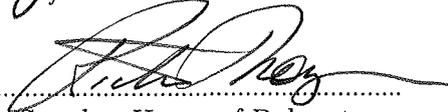
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *3/8*
Day of *March*, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2010

Time 3:45 pm