

HB 4402

FILED

2014 MAR 26 A 10:09

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2014



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4402**

(By Delegates Delegates Manchin, Skinner, Sponaugle, Longstreth,  
Marcum, Lynch, Wells, Caputo, Marshall and Barrett)



Passed March 4, 2014

In effect ninety days from passage.

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**H. B. 4402**

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(BY DELEGATES MANCHIN, SKINNER, SPONAUGLE, LONGSTRETH,  
MARCUM, LYNCH, WELLS, CAPUTO, MARSHALL AND BARRETT)

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[Passed March 4, 2014; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60-6-26, relating to the conditional discharge for first offense underage purchase, consumption, sale, service, possession of nonintoxicating beer or alcoholic liquor or obtaining nonintoxicating beer or alcoholic liquor by misrepresentation of age; allowing for probation in lieu of conviction under certain circumstances; permitting the court to enter an adjudication upon violation of probation; providing for discharge and dismissal if terms of probation are met; stating the effect of the discharge and dismissal; prohibiting prosecution or penalty for failure of the person to disclose or acknowledge an

arrest or trial that was discharged and dismissed pursuant to this section; precluding a person from using the benefits of this section more than once; permitting expungement of records under certain circumstances; requiring payment of regular court costs by persons whose case is disposed of pursuant to this section; and ensuring court costs assessed are distributed according to code.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §60-6-26, to read as follows:

**ARTICLE 6. MISCELLANEOUS PROVISIONS.**

**§60-6-26. Conditional discharge for first offense of certain offenses related to nonintoxicating beer or alcoholic liquor.**

1 (a) When a person pleads guilty to or is found guilty of a  
2 violation of subdivision (1), subsection (a), section nineteen,  
3 article sixteen, chapter eleven of this code; subsection (b),  
4 section nineteen, article sixteen, chapter eleven of this code;  
5 subsection (a), section twenty-two-a, article three of this chapter;  
6 subdivision (1), subsection (a), section twenty-four, article three-  
7 a of this chapter; subsection (b), section twenty-four, article  
8 three-a of this chapter; subsection (a) or (b), section twelve-a,  
9 article seven of this chapter; or subsection (a) or (b), section  
10 twenty-a, article eight of this chapter, the court, without entering  
11 a judgment of guilt and with the consent of the accused, may  
12 defer further proceedings and place him or her on probation upon  
13 terms and conditions it considers appropriate, if the person has  
14 not previously been convicted of:

15 (1) Any of the offenses contained in the code provisions  
16 referenced in this subsection; or

17 (2) Any statute of the United States or of any state relating  
18 to underage purchase, consumption, sale, service or possession  
19 of nonintoxicating beer or alcoholic liquor.

20 (b) If the person violates a term or condition of the proba-  
21 tion, the court may enter an adjudication of guilt and proceed as  
22 otherwise provided by law.

23 (c) Upon fulfillment of the terms and conditions of the  
24 probation, the court shall discharge the person and dismiss the  
25 proceedings against him or her.

26 (1) Discharge and dismissal under this section is without  
27 adjudication of guilt and is not a conviction for purposes of this  
28 section or the section of the original charge, or for purposes of  
29 disqualifications or disabilities imposed by law upon conviction  
30 of a crime.

31 (2) The effect of the discharge and dismissal is to restore the  
32 person in contemplation of law to the status he or she occupied  
33 prior to arrest and trial.

34 (3) A person to whom a discharge and dismissal have been  
35 effected under this section may not be found guilty of perjury,  
36 false swearing or otherwise giving a false statement by reason of  
37 his or her failure to disclose or acknowledge his or her arrest or  
38 trial relating to a charge discharged and dismissed by this section  
39 in response to any inquiry made of him or her for any purpose.

40 (d) There may be only one discharge and dismissal under  
41 this section with respect to any one person.

42 (e) After a period of not less than six months after the  
43 expiration of a term of probation imposed upon a person under  
44 the provisions of this section, the person may apply to the court  
45 for an order to expunge from all official records all recordations  
46 of his or her arrest, trial and discharge pursuant to this section.  
47 If the court determines after a hearing that the person during the  
48 period of his or her probation and during the period prior to his  
49 or her application to the court under this subsection has not been  
50 guilty of any serious or repeated violation of the conditions of  
51 his or her probation, it shall order the expungement.

52 (f) Notwithstanding any provision of this code to the  
53 contrary, any person prosecuted for an alleged violation of an  
54 offense listed in subsection (a) of this section, whose case is  
55 disposed of pursuant to the provisions of this section, is liable for  
56 all court costs assessable against a person convicted of a  
57 violation of the section under which the person was prosecuted.  
58 Payment of the costs may be made a condition of probation. The  
59 costs assessed pursuant to this section, whether as a term of  
60 probation or not, shall be distributed as other court costs in  
61 accordance with section two, article three, chapter fifty of this  
62 code; section four, article two-a, chapter fourteen of this code;  
63 section four, article twenty-nine, chapter thirty of this code; and  
64 sections two, seven and ten, article five, chapter sixty-two of this  
65 code.

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

*Donny Wells*  
Chairman, House Committee

*[Signature]*  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*[Signature]*  
Clerk of the House of Delegates

*Joseph M. Minard*  
Clerk of the Senate

*[Signature]*  
Speaker of the House of Delegates

*[Signature]*  
President of the Senate

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The within *is approved* this the *26<sup>th</sup>*  
day of *March*, 2014.

*Earl Ray Tomblin*  
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2014

Time 3:30 pm