ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 2148

(By Delegate(s) Gearheart, Hamrick, R. Smith, E. Nelson, Howell, Arvon, Butler, Azinger, Espinosa, Frich and Kessinger)

Passed March 12, 2015

In effect ninety days from passage.
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H. B. 2148

(By Delegate(s) Gearheart, Hamrick, R. Smith, E. Nelson, Howell, Arvon, Butler, Azinger, Espinosa, Frich and Kessinger)

[Passed March 12, 2015; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17C-5D-1, §17C-5D-2, §17C-5D-3, and §17C-5D-4; and to amend and reenact §60-6-9 of said code, all relating to creating a misdemeanor offense for open containers of alcoholic beverages in certain areas of vehicles; providing comity with federal law governing open containers of alcoholic beverages in vehicles; providing penalties; defining terms; providing exceptions; and specifying procedure upon arrest.
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 article, designated §17C-5D-1, §17C-5D-2, §17C-5D-3, and §17C-5D-4; and that §60-6-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5D. OPEN CONTAINER LAWS.

§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.

§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.
8 (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.

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

14 (1) Contains any amount of alcoholic beverage; and

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

16 (B) Has had its contents partially removed.

17 (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:

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

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

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

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

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

30 (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.

§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.

§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.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence; penalties.

(a) A person may not:

1. Appear in a public place in an intoxicated condition;
2. Drink alcoholic liquor in a public place;
3. Tender a drink of alcoholic liquor to another person in a public place;
4. Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the commissioner, without having first obtained written authority from the commissioner therefor; or
(5) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: Provided, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer, he or she may, after issuance of the a citation, transport the individual to the individual’s present residence or arrange for the transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined by section seventeen, article eleven, chapter twenty-seven of this code; or (4) if the individual is incapacitated and, in the law-enforcement officer’s judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer, the law-enforcement officer serves as the chief complaining witness. The judicial officer shall determine if there is probative evidence that the individual may be guilty of the charge of public
intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken:

(1) If the individual is no longer incapacitated, he or she may be released;

(2) If the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or

(3) If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of article five or six-a, chapter twenty-seven of this code.

(d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: Provided, That the law-enforcement officer may use reasonable force to prevent harm to himself or herself, the individual arrested or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options:

(1) Upon first offense, a fine of not less than $5 nor more than $100. If the individual, prior to conviction, agrees to
(2) Upon conviction for a second offense, a fine of not less than $5 nor more than $100 and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health — mental retardation center;

(3) Upon third and subsequent convictions, a fine of not less than $5 nor more than $100 and not less than five nor more than sixty days in jail or a fine of not less than $5 nor more than $100 and completion of not less than five hours of alcoholism counseling at the nearest community mental health — mental retardation center: Provided, That three convictions for public intoxication within the preceding six months is considered evidence of alcoholism. For the educational counseling programs described in this subsection the community mental health — mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to articles five and six-a, chapter twenty-seven of this code.

(g) Any person who violates subdivision (2), subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5 nor more than $100; and upon a second or subsequent conviction thereof, shall be fined
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106 not less than $5 nor more than $100, or confined in jail not more
107 than sixty days, or both.

108 (h) Any person who violates subdivision (3), subsection (a)
109 of this section is guilty of a misdemeanor and, upon conviction
110 thereof, shall be fined not less than $5 nor more than $100, or
111 confined in jail not more than sixty days, or both.

112 (i) Any person who violates subdivision (4) or (5),
113 subsection (a) of this section is guilty of a misdemeanor and,
114 upon his or her first conviction, shall be fined not less than $100
115 nor more than $500; and upon conviction of second or
116 subsequent offense, he or she is guilty of a felony and, shall be
117 confined in a state correctional facility for a period of not less
118 than one year nor more than three years.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 25th day of March, 2015.

Governor