

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled
Committee Substitute
for
Senate Bill 35

SENATOR CLEMENTS, *original sponsor*

[Passed February 13, 2020; in effect 90 days from passage]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2020 MAR -2 P 4: 54

FILED

SB 35

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1 AN ACT to amend and reenact §22-15A-4 of the Code of West Virginia, 1931, as amended,
2 relating to limiting the civil penalty for persons convicted of littering to not less than \$200
3 nor more than \$2,000.

Be it enacted by the Legislature of West Virginia:

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

**§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) A person may not place, deposit, dump, throw, or cause to be placed, deposited,
2 dumped, or thrown any litter as defined in §22-15A-2 of this code, in or upon any public or private
3 highway, road, street, or alley; any private property; any public property; or the waters of the state
4 or within 100 feet of the waters of this state, except in a proper litter or other solid waste receptacle.

5 (2) A person may not place, deposit, dump, throw, or cause to be placed, deposited,
6 dumped, or thrown any litter from a motor vehicle or other conveyance or perform any act which
7 constitutes a violation of the motor vehicle laws contained in §17C-14-14 of this code.

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

12 (4) Any person who violates the provisions of this section by placing, depositing, dumping,
13 or throwing or causing to be placed, deposited, dumped, or thrown any litter on his or her private
14 property in an amount not exceeding 50 pounds in weight is not subject to the criminal provisions
15 of this section.

16 (5) Any person who violates the provisions of this section by placing, depositing, dumping,
17 or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for
18 commercial purposes, in an amount not exceeding 100 pounds in weight or 27 cubic feet in size,
19 is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than \$100
20 nor more than \$2,500, or in the discretion of the court, sentenced to perform community service
21 by cleaning up litter from any public highway, road, street, alley, or any other public park or public
22 property, or waters of the state, as designated by the court, for not less than eight nor more than
23 100 hours, or both. If any person is convicted of the misdemeanor by placing, depositing,
24 dumping, or throwing litter in the waters of the state, that person shall be fined not less than \$500
25 nor more than \$3,000, or in the discretion of the court sentenced to perform community service
26 by cleaning up litter from any waters of the state, as designated by the court, for not less than 20
27 hours nor more than 120 hours, or both.

28 (6) Any person who violates the provisions of this section by placing, depositing, dumping,
29 or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for
30 commercial purposes, in an amount greater than 100 pounds in weight or 27 cubic feet in size,
31 but less than 500 pounds in weight or 216 cubic feet in size is guilty of a misdemeanor. Upon
32 conviction, he or she is subject to a fine of not less than \$2,500 nor more than \$5,000, or in the
33 discretion of the court, may be sentenced to perform community service by cleaning up litter from
34 any public highway, road, street, alley, or any other public park or public property, or waters of
35 the state, as designated by the court, for not less than 16 hours nor more than 200 hours, or both.
36 If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter
37 in the waters of the state, that person shall be fined not less than \$3,000 nor more than \$5,500,
38 or in the discretion of the court sentenced to perform community service by cleaning up litter from
39 any waters of the state, as designated by the court, for not less than 20 hours nor more than 220
40 hours, or both.

41 (7) Any person who violates the provisions of this section by placing, depositing, dumping,
42 or throwing or causing to be placed, deposited, dumped, or thrown any litter in an amount greater
43 than 500 pounds in weight or 216 cubic feet in size or any amount which had been collected for
44 commercial purposes is guilty of a misdemeanor. Upon conviction, the person shall be fined not
45 less than \$2,500 nor more than \$25,000 or confinement in jail for not more than one year, or both.
46 If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter
47 in the waters of the state, that person shall be fined not less than \$3,000 nor more than \$11,000,
48 or confinement in jail for not more than one year, or both. In addition, he or she may be guilty of
49 creating or contributing to an open dump as defined in §22-15-2 of this code and subject to the
50 enforcement provisions of §22-15-15 of this code.

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

53 (9) The sentence of litter clean up shall be verified by environmental inspectors from the
54 Department of Environmental Protection. Any defendant receiving the sentence of litter clean up
55 shall provide, within a time to be set by the court, written acknowledgment from an environmental
56 inspector that the sentence has been completed and the litter has been disposed of lawfully.

57 (10) Any person who has been found by the court to have willfully failed to comply with
58 the terms of a litter clean-up sentence imposed by the court pursuant to this section is subject to,
59 at the discretion of the court, double the amount of the original fines and community service
60 penalties originally ordered by the court.

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

63 (12) A magistrate or municipal court judge may not dismiss an action brought under the
64 provisions of this section without notification to the prosecuting attorney of that county of his or
65 her intention to do so and affording the prosecuting attorney an opportunity to be heard.

66 (13) No portion of this section restricts an owner, renter, or lessee in the lawful use of his
67 or her own private property or rented or leased property or prohibits the disposal of any industrial
68 and other wastes into waters of this state in a manner consistent with the provisions of §22-11-1
69 *et seq.* of this code. But if any owner, renter, or lessee, private or otherwise, knowingly permits
70 any of these materials or substances to be placed, deposited, dumped, or thrown in a location
71 that high water or normal drainage conditions will cause these materials or substances to wash
72 into any waters of the state, it is prima facie evidence that the owner, renter, or lessee intended
73 to violate the provisions of this section: *Provided*, That if a landowner, renter, or lessee, private or
74 otherwise, reports any placing, depositing, dumping, or throwing of these substances or materials
75 upon his or her property to the prosecuting attorney, county commission, the Division of Natural
76 Resources, or the Department of Environmental Protection, the landowner, renter, or lessee will
77 be presumed to not have knowingly permitted the placing, depositing, dumping, or throwing of the
78 materials or substances.

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

83 (c) (1) Every person who is convicted of or pleads guilty to disposing of litter in violation of
84 subsection (a) of this section shall pay a civil penalty of not less than \$200 nor more than \$2,000
85 as costs for clean up, investigation, and prosecution of the case, in addition to any other court
86 costs that the court is otherwise required by law to impose upon a convicted person.

87 (2) The clerk of the circuit court, magistrate court, or municipal court in which these
88 additional costs are imposed shall, on or before the last day of each month, transmit 50 percent
89 of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State
90 Treasury to the credit of a special revenue fund known as the Litter Control Fund which was
91 transferred to the Department of Environmental Protection. Expenditures for purposes set forth in

92 this section are not authorized from collections but are to be made only in accordance with
93 appropriation and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon
94 fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are
95 found from time to time to exceed the funds needed for the purposes set forth in this article may
96 be transferred to other accounts or funds and designated for other purposes by appropriation of
97 the Legislature.

98 (d) The remaining 50 percent of each civil penalty collected pursuant to this section shall
99 be transmitted to the county or regional solid waste authority in the county where the litter violation
100 occurred. Moneys shall be expended by the county or regional solid waste authority for the
101 purpose of litter prevention, clean up, and enforcement. The county commission shall cooperate
102 with the county or regional solid waste authority serving the respective county to develop a
103 coordinated litter control program pursuant to §22C-4-8 of this code.

104 (e) The Commissioner of the Division of Motor Vehicles, upon registering a motor vehicle
105 or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case
106 may be, a summary of this section and §17C-14-14 of this code.

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

111 (g) Any state agency or political subdivision that owns, operates, or otherwise controls any
112 public area designated by the secretary by rule promulgated pursuant to §22-15A-3(a)(8) of this
113 code shall procure and place litter receptacles at its own expense upon its premises and shall
114 remove and dispose of litter collected in the litter receptacles. After receiving two written warnings
115 from any law-enforcement officer or officers to comply with this subsection or the rules of the
116 secretary, any state agency or political subdivision that fails to place and maintain the litter

117 receptacles upon its premises in violation of this subsection or the rules of the secretary shall be
118 fined \$30 per day of the violation.

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

Mark Herring
.....
Chairman, Senate Committee

Moore Cato
.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

FILED
2020 MAR -2 P 4:54
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Joe Lamm
.....
Clerk of the Senate

Steve Harvin
.....
Clerk of the House of Delegates

Walter B. Combs
.....
President of the Senate

Les Hensley
.....
Speaker of the House of Delegates

The within *is approved* this the *2nd*
Day of *March* 2020.

James Owens
.....
Governor

PRESENTED TO THE GOVERNOR

FEB 25 2020

Time 10:23am