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Indicates New Matter

AMENDED--NOT PRINTED IN THE HOUSE

Amt. No. 4A (COUNCIL\CM\4458C001.GT.CM18)

May 10, 2018

**H. 4458**

Introduced by Reps. Johnson, Hixon, Kirby, Yow, Duckworth, Burns, Blackwell, Dillard, Davis, Forrest, Fry, Hewitt, Crawford, McGinnis, Ott, Bamberg, Erickson, Cobb‑Hunter, Willis, Mace, Hill, Gagnon, West, Hardee, Wheeler, McEachern, Magnuson, Martin and Bowers

S. Printed 5/9/18--S.

Read the first time January 31, 2018.

**A** **BILL**

TO AMEND SECTION 16‑11‑700, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DUMPING OF LITTER ON PRIVATE OR PUBLIC PROPERTY AND ITS PENALTIES, SO AS TO RESTRUCTURE THE OFFENSES TO ENSURE CIGARETTE BUTTS AND CIGARETTE COMPONENT LITTER AND DECEASED ANIMALS ARE INCLUDED IN THE PURVIEW OF THE STATUTE, AND TO RESTRUCTURE THE PENALTIES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑11‑700 of the 1976 Code is amended to read:

“Section 16‑11‑700. (A) A person, from a vehicle or otherwise, may not dump, throw, drop, deposit, discard, or otherwise dispose of litter or other solid waste, as defined by Section 44‑96‑40~~(46)~~(2), (6), (32), (33), (43), (46), (73), and (74), and including cigarette butts and cigarette component litter, upon waters or public or private property ~~or waters~~ in the State for which he is not the legal owner or a person otherwise granted permission by the legal owner including, but not limited to, a highway, park, beach, campground, forest land, recreational area, trailer park, road, street, or alley except:

(1) on property designated by the State for the disposal of litter and other solid waste and the person is authorized to use the property for that purpose; or

(2) into a litter receptacle in a manner that the litter is prevented from being carried away or deposited by the elements upon a part of the private or public property or waters.

(B) Responsibility for the removal of litter from property or receptacles is upon the person convicted pursuant to this section of littering the property or receptacles. If there is no conviction for littering, the responsibility is upon the owner of the property.

(C)~~(1)~~ A person who violates the provisions of this section in an amount ~~less~~ not more than fifteen pounds ~~in weight or twenty‑seven cubic feet in volume~~, including cigarette butts and cigarette components, is guilty of a misdemeanor and, upon conviction, must be fined ~~two~~ not less than twenty‑five dollars and not more than one hundred dollars or imprisoned for not more than thirty days ~~for a first or second conviction, or fined five hundred dollars or imprisoned for not more than thirty days for a third or subsequent conviction~~. In addition to the fine or term of imprisonment, the court also must impose eight hours of litter‑gathering labor ~~for a first conviction, sixteen hours of litter‑gathering labor for a second conviction, and twenty‑four hours of litter‑gathering labor for a third or subsequent conviction,~~ or other form of ~~public~~ community service~~, under the supervision of the court, as the court may order because of physical or other incapacities~~.

~~(2)~~(D) The fine for a deposit of a collection of litter or garbage in an amount not more than fifteen pounds in an area or facility not intended for public deposit of litter or garbage is ~~one thousand dollars~~ not less than fifty dollars and not more than one hundred and fifty dollars. The provisions of this ~~item~~ subsection apply to a deposit of ~~litter or garbage, as defined in Section 44‑67‑30(4),~~ litter or solid waste, as defined by Section 44‑96‑40(2), (6), (32), (33), (43), (46), (73), and (74) including cigarette butts and cigarette components, in an area or facility not intended for public deposit of litter or garbage. This ~~item~~ subsection does not prohibit a private property owner from depositing litter or garbage as a property enhancement if the depositing does not violate applicable local or state health and safety regulations. In addition to a fine and for each offense pursuant to the provisions of this ~~item~~ subsection, the court also shall impose a minimum of ~~five~~ sixteen hours of litter‑gathering labor or other form of ~~public~~ community service~~, under the supervision of the court, as the court may order because of physical or other incapacities~~.

~~(3)~~(1) The court, instead of payment of the monetary fine imposed for a violation of this section, may direct the substitution of additional litter‑gathering labor or other form of ~~public~~ community service~~, under the supervision of the court, as it may order because of physical or other incapacities not to exceed one hour for each five dollars of fine imposed~~.

~~(4)~~(2) In addition to other punishment authorized by this section, in the discretion of the court in which conviction is obtained, the person may be directed by the judge to pick up and remove from any public place or any private property, with prior permission of the legal owner of the property upon which it is established by competent evidence that the person has deposited litter, all litter deposited on the place or property by any person before the date of execution of sentence.

~~(D)~~(E) A person who violates the provisions of this section in an amount exceeding fifteen pounds ~~in weight or twenty‑seven cubic feet in volume~~, but not exceeding five hundred pounds ~~or one hundred cubic feet,~~ on any public or private property, any portion of the road right of way, fresh‑water lake, river, canal or stream, or tidal or coastal waters of the State must be charged with illegal dumping of litter and is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned for not more than ~~ninety~~ thirty days. In addition, the court shall require the violator to ~~pick up litter~~ complete sixteen hours of litter‑gathering labor or perform other community service ~~commensurate with the offense committed, up to one hundred hours~~. For a second conviction, the person must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned for not more than thirty days. In addition, the court shall require the violator to complete twenty‑four hours of litter‑gathering labor or other community service. For a third or subsequent conviction, the person must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned for not more than thirty days. In addition, the court shall require the violator to complete thirty‑two hours of litter‑gathering labor or other community service.

~~(E)~~(F)(1) A person who violates the provisions of this section in an amount exceeding five hundred pounds ~~in weight or one hundred cubic feet in volume~~ is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned not more than one year, or both. In addition, the court may order the violator to:

(a) remove or render harmless the litter that he dumped in violation of this subsection;

(b) repair or restore property damaged by, or pay damages for damage arising out of, his dumping of litter in violation of this subsection; or

(c) perform community ~~public~~ service relating to the removal of litter dumped in violation of this subsection or relating to the restoration of an area polluted by litter dumped in violation of this subsection.

(2) A court may enjoin a violation of this subsection.

(3) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than five hundred pounds ~~in weight or more than one hundred cubic feet in volume~~ of litter in violation of this subsection is declared contraband and is subject to seizure and summary forfeiture to the State.

(4) If a person sustains damages in connection with a violation of this subsection that gives rise to a felony against the person or his property, a court, in a civil action for those damages, shall order the wrongdoer to pay the injured party threefold the actual damages or two hundred dollars, whichever amount is greater. In addition, the court shall order the wrongdoer to pay the injured party’s court costs and attorney’s fees.

(5) A fine imposed pursuant to this subsection must not be suspended, in whole or in part.

~~(F)~~(G)(1) When the penalty for a violation of this section includes litter‑gathering labor in addition to a fine or imprisonment, the litter‑gathering portion of the penalty is mandatory and must not be suspended; however, the court, upon the request of a person convicted of violating this section, may direct that the person pay an additional monetary penalty instead of the litter‑gathering portion of the penalty that must be equal to the amount of ~~five~~ fifteen dollars an hour of litter‑gathering labor. Probation must not be granted instead of the litter‑gathering requirement, except for a person’s physical or other incapacities.

(2) Funds collected pursuant to this subsection instead of the mandatory litter‑gathering labor must be remitted to the county or municipality where the littering violation took place. The money collected may be used for the litter‑gathering supervision.

~~(G)~~ ~~For purposes of the offenses established by this section, litter includes cigarettes and cigarette filters.~~

(H) A prior violation within the meaning of this section means only a violation of this section which occurred within a period of five years including and immediately preceding the date of the last violation.

(I) Magistrates and municipal courts have jurisdiction to try violations of subsections (A), (B), (C), ~~and~~ (D), (E), and (F) ~~of this section~~.

(J)(1) This section shall not apply to the discarding of deceased fish, game, or wildlife, or the parts or remains thereof, taken as a result of legal hunting or fishing pursuant to Title 50. The exception provided for by this subsection does not apply to deceased animals, animal parts, or remains thereof that are deposited or discarded onto the private lands or waters of another without the owner’s permission.

(2) For the purposes of subsections (E) and (F), illegal dumping is defined as disposing of more than fifteen pounds of any collection of solid waste, litter, or other materials defined in subsection (A), including discarded, deceased animals or deceased animal parts which create a hazard to the public health and welfare, but not defined as a careless, scattered littering of smaller items.

(K)(1) Nothing in this section shall prohibit the authority of a local government to enforce ordinances relating to the upkeep of property pursuant to Section 4‑9‑25 and Section 5‑7‑80.

(2) If a conflict occurs between this Section and the Solid Waste Policy and Management Act as contained in Chapter 96, Title 44, the latter controls.

(L) The Department of Public Safety shall maintain statistical information regarding citations issued pursuant to this section.

(M) Nothing in this section shall be construed as granting any cause of action against the State, any political subdivision, or any employee thereof acting in their official capacity to an individual performing community service under this section who is completing litter pickup without direct oversight, including any claim under Workers’ Compensation. Routine follow up to ensure completion of litter pickup by a county, municipality, or state employee is not considered oversight.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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