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SENATE BILL NO. 761

Senate Amendments in [] — January 22, 1997

A *BILL to amend and reenact §§ 10.1-1418.1 and 10.1-1418.2 of the Code of Virginia, relating to improper disposal of solid waste; penalty.*

Patrons—Hawkins, Bolling, Couric, Lucas, Reynolds, Schrock, Ticer, Waddell, Whipple and Woods;
Delegates: Abbitt, Bloxom, Bryant, Clement, Cox, Landes, May, Murphy, Nixon, Plum, Putney, Reid
and Sherwood

Referred to the Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1418.1 and 10.1-1418.2 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1418.1. Improper disposal of solid waste; civil penalties.

A. It shall be the duty of all persons to dispose of their solid waste in a legal manner.

B. Any owner of real estate in this Commonwealth, including the Commonwealth or any political subdivision thereof, upon whose property a person improperly disposes of solid waste without the landowner's permission, shall be entitled to bring a civil action for such improper disposal of solid waste. When litter is improperly disposed upon land owned by the Commonwealth, any resident of the Commonwealth shall have standing to bring a civil action for such improper disposal of solid waste. When litter is improperly disposed of upon land owned by any political subdivision of this Commonwealth, any resident of that political subdivision shall have standing to bring a civil action for such improper disposal of solid waste. *When any person improperly disposes of solid waste upon land within the jurisdiction of any political subdivision, that political subdivision shall have standing to bring a civil action for such improper disposal of solid waste. [Entities whose wastes are subject to regulation under a federal or state regulatory permit program shall not be subject to any civil or criminal proceedings brought by a political subdivision pursuant to this section for improper disposal of waste where such disposal is subject to the issuance of a notice of violation or other enforcement action under such regulatory program.]*

BC. In any civil action brought pursuant to the provisions of this section, when the plaintiff establishes by a preponderance of the evidence that (i) the solid waste or any portion thereof had been in possession of the defendant prior to being improperly disposed of on any of the properties referred to in subsection A of this section and (ii) no permission had been given to the defendant to place the solid waste on such property, there shall be a rebuttable presumption that the defendant improperly disposed of the solid waste. *When the solid waste has been ejected from a motor vehicle, the owner or operator of such motor vehicle shall [in any civil action] be presumed to be the person ejecting such matter. However, such presumption shall be rebuttable by competent evidence.*

CD. Whenever a court finds that a person has improperly disposed of solid waste pursuant to the provisions of this section, the court shall assess a civil penalty of up to ~~\$200~~ \$5,000 against such defendant. All civil penalties assessed pursuant to this section shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title, except as provided in subsection DE.

DE. Any civil penalty assessed pursuant to this section in a civil action brought by a political subdivision ~~for improper disposal of solid waste upon land owned by the political subdivisions~~ shall be paid into the treasury of the political subdivision, except where the violator of this section is the political subdivision or its agent.

F. *Any person who violates the provisions of this section shall be guilty of a class 1 misdemeanor.*

G. *A court may award any person or political subdivision bringing suit pursuant to this section the cost of suit and reasonable attorney's fees.*

§ 10.1-1418.2. Improper disposal of tires; exemption; penalty.

A. It shall be unlawful for any person knowingly to store, dump, litter, dispose of, speculatively accumulate or otherwise place more than ~~500~~100 waste tires on public or private property in the Commonwealth, without first having obtained a permit as required by § 10.1-1408.1. For the purposes of this section, "speculatively accumulated waste tires" means any waste tires that are accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Waste tires are not being accumulated speculatively when they can be used, reused, or reclaimed; they have a feasible means of use, reuse, or reclamation available; and at least seventy-five percent of the waste tires accumulated are being removed from the site annually.

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60 B. No person shall knowingly, or knowingly allow others to, store, dump, litter, dispose of,
61 speculatively accumulate or otherwise place on his property more than ~~500~~100 waste tires, without first
62 having obtained a permit as required by § 10.1-1408.1.

63 C. Any person who violates any provision of this section shall be guilty of a Class 6 ~~felony~~
64 misdemeanor. *However, any person who improperly disposes of, or knowingly allows to be improperly*
65 *disposed of on his property, 500 or more waste tires shall be guilty of a Class 6 felony.*

66 D. Salvage yards licensed by the Department of Motor Vehicles shall be exempt from this section;
67 provided, that the waste tires do not pose a hazard or a nuisance.

68 [*E. As used in this section, the terms "store" and "otherwise place" shall not be construed as*
69 *meaning the holding of fewer than 500 tires for bona fide uses related to the growing, harvesting or*
70 *processing of agricultural or forest products.]*

71 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
72 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
73 **is \$0.**