

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 5091**

BY DELEGATES FERRELL, ESPINOSA, DEVAULT, MALLOW,  
SHAMBLIN, CANNON, MAZZOCCHI, TULLY, CROUSE,  
ADKINS, AND W. CLARK

[Passed March 7, 2024; in effect ninety days from  
passage.]



1 AN ACT to amend and reenact §61-10-34 of the Code of West Virginia, 1931, as amended,  
2 relating to the "West Virginia Critical Infrastructure Protection Act"; defining terms;  
3 removing the requirement that a critical infrastructure facility be enclosed; including  
4 hardware, software, digital property, nuclear reactors, and nuclear components in  
5 definition of critical infrastructure facility; clarifying that digital and physical equipment is  
6 protected; including damage inflicted by cyber-attack or digital interference as punishable  
7 conduct; increasing criminal penalties; creating second offense penalties for a person who  
8 willfully damages, destroys, vandalizes, defaces, or tampers with equipment in a critical  
9 infrastructure facility causing damage in excess of \$2,500; providing person who buys or  
10 receives certain property stolen from a critical infrastructure facility is guilty of larceny;  
11 providing exception to larceny for persons acting at the request of law enforcement or in  
12 cooperation with law enforcement; providing liability for compensatory and punitive  
13 damages in certain circumstances; providing for forfeiture of items of personal property in  
14 certain circumstances; and providing that forfeiture be governed by the applicable  
15 provisions of the West Virginia Contraband Forfeiture Act.

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

**ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**

**§61-10-34. Critical Infrastructure Protection Act; prohibiting certain acts, including  
trespass and conspiracy to trespass against property designated a critical  
infrastructure facility; criminal penalties; and civil action.**

1 (a) This section may be referred to as the "West Virginia Critical Infrastructure Protection  
2 Act".

3 (b) For purposes of this section:

4 "Critical Infrastructure" means systems and assets, whether physical or virtual, so vital to  
5 the United States of America or the State of West Virginia that the incapacity or destruction of  
6 such systems and assets would have a debilitating impact on security, national economic security,

7 state economic security, national public health or safety, state public health or safety, or any  
8 combination of those matters, whether such systems or assets are in operation or are under any  
9 state of construction.

10 "Critical infrastructure facility" means one of the following:

11 (1) A petroleum or alumina refinery;

12 (2) An electrical power generating facility, substation, switching station, electrical control  
13 center or electric power lines, and associated equipment infrastructure;

14 (3) A chemical, polymer, or rubber manufacturing facility;

15 (4) A water intake structure, water treatment facility, wastewater treatment plant, or pump  
16 station;

17 (5) A natural gas compressor station;

18 (6) A liquid natural gas terminal or storage facility;

19 (7) Wireline and wireless telecommunications infrastructure;

20 (8) A port, railroad switching yard, trucking terminal, or other freight transportation facility;

21 (9) A gas processing plant, including a plant used in the processing, treatment, or  
22 fractionation of natural gas or natural gas liquids;

23 (10) A transmission facility used by a federally licensed radio or television station;

24 (11) A steelmaking facility that uses an electric arc furnace to make steel;

25 (12) A facility identified and regulated by the United States Department of Homeland  
26 Security Chemical Facility Anti-Terrorism Standards (CFATS) program;

27 (13) A dam that is regulated by the state or federal government;

28 (14) A natural gas distribution utility facility including, but not limited to, pipeline  
29 interconnections, a city gate or town border station, metering station, below- or above-ground  
30 pipeline or piping and truck loading or offloading facility, a natural gas storage facility, a natural  
31 gas transmission facility, or a natural gas utility distribution facility;

32 (15) A crude oil or refined products storage and distribution facility including, but not limited  
33 to, valve sites, pipeline interconnections, pump station, metering station, below- or above-ground  
34 pipeline or piping, and truck loading or offloading facility;

35 (16) Military facilities, including national guard facilities and equipment storage areas  
36 where non-military personnel are prohibited;

37 (17) Department of Highways facilities and locations near or on roads or highways where  
38 the public is prohibited;

39 (18) Health care facilities;

40 (19) Any above-ground portion of an oil, gas, hazardous liquid, or chemical pipeline, tank,  
41 or other storage facility that is enclosed by a fence, other physical barrier, or is clearly marked  
42 with signs prohibiting trespassing that are obviously designed to exclude intruders;

43 (20) A commercial service airport as defined by the Federal Aviation Administration;

44 (21) Any nuclear reactor and its associated components including, but not limited to,  
45 components related to modular or microreactors, cooling technologies, sensors, instrumentation,  
46 or storage involved in training or research opportunities; or

47 (22) The hardware, software, or other digital property of any critical infrastructure facility  
48 listed in this subsection.

49 (c)(1) Any person who willfully and knowingly trespasses or enters property containing a  
50 critical infrastructure facility without permission by the owner of the property or lawful occupant  
51 thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not  
52 less than \$250 nor more than \$1,000, or confined in jail not less than 30 days nor more than one  
53 year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy,  
54 vandalize, deface, tamper with the physical or digital equipment, or impede or inhibit operations  
55 of the critical infrastructure facility, the person is guilty of a misdemeanor and, upon conviction  
56 thereof, shall be fined not less than \$100 nor more than \$1,000, or confined in a jail for not more  
57 than one year, or both fined and confined.

58           (2) (A) Any person who willfully damages, destroys, vandalizes, defaces, or tampers with  
59 the physical or digital equipment in a critical infrastructure facility causing damage, including  
60 damage inflicted by cyber-attack or digital interference in excess of \$2,500 is guilty of a felony  
61 and, upon conviction thereof, shall be fined not less than \$3,000 nor more than \$10,000, or  
62 imprisoned in a state correctional facility for a term of not less than one year nor more than five  
63 years, or both fined and imprisoned.

64           (B) Any person convicted of a second offense under the provisions of this subdivision is  
65 guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than  
66 \$15,000, or imprisoned in a state correctional facility for a term of not less than two years nor  
67 more than 10 years, or both fined and imprisoned.

68           (3) Any person who conspires with any person to commit the offense of trespass against  
69 a critical infrastructure facility in violation of subdivision (1) of subsection (c) of this section and  
70 the trespass actually occurs is guilty of a misdemeanor and, upon conviction thereof, shall be  
71 fined in an amount of not less than \$250 nor more than \$1,000. Any person who conspires with  
72 any person to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical  
73 infrastructure facility and the damage, destruction, vandalization, defacing, or tampering causes  
74 damage, including damage inflicted by cyber-attack or digital interference in excess of \$2,500 is  
75 guilty of a felony and, shall, upon conviction thereof, be fined not less than \$3,000 nor more than  
76 \$10,000.

77           (d)(1) Any person who is arrested for or convicted of an offense under this section may be  
78 held civilly liable for any damages to personal or real property while trespassing, in addition to the  
79 penalties imposed by this section.

80           (2) Any person or entity that compensates, provides consideration to, or remunerates a  
81 person for trespassing as described in subdivision (1) of subsection (c) of this section may also  
82 be held liable for damages to personal or real property committed by the person compensated or  
83 remunerated for trespassing.

84 (e) A person who buys or receives from another person, aids in concealing, transfers to a  
85 person other than the owner thereof, or possesses any stolen goods or other thing of value from  
86 a critical infrastructure facility, which he or she knows or has reason to believe has been stolen  
87 from a critical infrastructure facility, is guilty of larceny, and may be prosecuted although the  
88 principal offender has not been convicted: *Provided*, That possession of stolen goods from a  
89 critical infrastructure facility while acting at the request of law enforcement or in cooperation with  
90 law enforcement does not constitute a violation of this section. Any person convicted of an  
91 offense under this subsection, in addition the criminal penalties imposed for larceny, is liable to  
92 the critical infrastructure facility owner for compensatory damages and, in addition, for punitive  
93 damages in an amount not less than three times the amount of the compensatory damages.

94 (f) The provisions of §61-10-34(c)(1) of this code do not apply to any person or  
95 organization:

96 (1) Monitoring or attentive to compliance with public or worker safety laws, or, wage and  
97 hour requirements;

98 (2) Picketing at the workplace that is otherwise lawful and arises out of a bona fide labor  
99 dispute, including any controversy concerning wages, salaries, hours, working conditions, or  
100 benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions,  
101 the managing or maintenance of collective bargaining agreements, and the terms to be included  
102 in those agreements; or

103 (3) Engaging in union organizing or recruitment activities, including attempting to reach  
104 workers verbally, in writing with pamphlets, and investigation of non-union working conditions, or  
105 both.

106 (g) The provisions of this section do not apply to:

107 (1) The right to free speech or assembly including, but not limited to, protesting and  
108 picketing; or

109           (2) A contractor who has a contractual relationship with a critical infrastructure facility and  
110 the contractor's employees are acting within their scope of employment performing work at a  
111 critical infrastructure facility.

112           (h)(1) All items of personal property which are used, have been used, or are intended for  
113 use in perpetration of theft or damage to infrastructure are subject to forfeiture.

114           (2) The items of personal property subject to forfeiture include all conveyances, including  
115 aircraft, vehicles, or vessels, except that:

116           (A) A conveyance used by any person as a common carrier in the transaction of business  
117 as a common carrier may not be forfeited under this section unless it appears that the person  
118 owning the conveyance is a consenting party or privy to a violation of this section;

119           (B) A conveyance may not be forfeited under the provisions of this article, unless the  
120 state proves by a preponderance of the evidence that the person owning the conveyance knew,  
121 or had reason to know, that the conveyance was being employed or was likely to be employed  
122 in a violation of this section; and

123           (C) A bona fide security interest or other valid lien in any conveyance may not be  
124 forfeited under the provisions of this article, unless the state proves by a preponderance of the  
125 evidence that the holder of the security interest or lien either knew, or had reason to know, that  
126 the conveyance was being used or was likely to be used in a violation of this section.

127           (3) All procedures relating to the seizure and disposition of property subject to forfeiture  
128 under the authority of this section are governed by the applicable provisions of the West Virginia  
129 Contraband Forfeiture Act, §60A-7-701 *et seq.* of this code.



The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect ninety days from passage.

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

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The within is ..... this the.....  
Day of ....., 2024.

.....  
*Governor*