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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 3153

(By Delegates Boggs, Craig and R. M. Thompson)



Passed April 9, 2005

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 3153

(BY DELEGATES BOGGS, CRAIG AND R. M. THOMPSON)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend §61-3-28 of the Code of West Virginia, 1931, as amended; and to amend §61-3-41 of said code, all relating to creation of criminal offenses for damaging, stealing or injury to railroad property; defining terms; creating an offense for reckless disregard for railroad property; creating an offense for intentionally damaging railroad property; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-3-41 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-28. Offenses against railroad property and persons on railroad property; definitions.

1 (a) As used in this section:

2 (1) "Bodily injury" means substantial physical pain, illness
3 or any impairment of physical injury.

4 (2) "Railroad" means any form of nonhighway ground
5 transportation that runs on rails or electromagnetic guideways,
6 including:

7 (i) Commuter or other short-haul railroad passenger service
8 in a metropolitan or suburban area; and

9 (ii) High-speed ground transportation systems that connect
10 metropolitan areas but does not include rapid transit operations
11 in an urban area that are not connected to the general railroad
12 system of transportation;

13 (3) "Railroad carrier" means a person providing railroad
14 transportation; railroad carrier including a right-of-way, track,
15 bridge, yard, shop, station, tunnel, viaduct, trestle, depot,
16 warehouse, terminal, railroad signal system, train control
17 system, centralized dispatching system, or any other structure,
18 appurtenance, or equipment owned, leased, or used in the
19 operation of any railroad carrier including a train, locomotive,
20 engine, railroad car, work equipment, rolling stock, or safety
21 device. "Railroad property" does not include administrative
22 buildings, administrative offices, or administrative office
23 equipment;

24 (4) "Right-of-way" means the track or roadbed owned,
25 leased, or operated by a railroad carrier which is located on
26 either side of its tracks and which is readily recognizable to a
27 reasonable person as being railroad property or is reasonably
28 identified as such by fencing or appropriate signs;

29 (5) "Yard" means a system of parallel tracks, crossovers,
30 and switches where railroad cars are switched and made up into
31 trains, and where railroad cars, locomotives and other rolling
32 stock are kept when not in use or when awaiting repairs.

33 (b) Whoever willfully damages or attempts to damage
34 railroad property or willfully endangers or attempts to endanger
35 the safety of another, by:

36 (1) Taking, removing, altering, or otherwise vandalizing a
37 railroad sign, placard or marker;

38 (2) Throwing or dropping an object capable of causing
39 significant damage to railroad property at or on a locomotive,
40 railroad car or train;

41 (3) Shooting a firearm or other dangerous weapon at a
42 locomotive, railroad car or train;

43 (4) Removing appurtenances from, damaging, or otherwise
44 impairing the operation of any railroad signal system, including
45 a train control system, centralized dispatching system, or
46 highway-railroad grade crossing warning signal, on a railroad
47 owned, leased, or operated by any railroad carrier, and without
48 consent of the railroad carrier involved;

49 (5) Interfering or tampering with, or obstructing in any way,
50 any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle,
51 culvert, embankment, structure, or appliance pertaining to or
52 connected with any railroad carrier without consent of the
53 railroad carrier involved; or

54 (6) Taking, stealing, removing, changing, adding to,
55 altering, or in any manner interfering with any part of the
56 operating mechanism of any locomotive, engine, tender, coach,
57 car, caboose, or motor car used or capable of being used by any
58 railroad carrier in this state without consent of the railroad
59 carrier is guilty of a felony.

60 If railroad property damage does not exceed one thousand
61 dollars and no bodily injury occurs to another as a result of any
62 of the aforesaid acts, upon conviction thereof, the person shall

63 be fined not more than five thousand dollars, confined in a
64 regional jail for not more than one year, or both. If bodily injury
65 occurs to another not acting with or in connection with the
66 perpetrator as a result of any of the aforesaid acts or if railroad
67 property damage exceeds one thousand dollars, upon conviction
68 thereof, the person shall be fined not more than ten thousand
69 dollars, committed to the custody of the Commission of
70 Corrections for not less than one nor more than ten years, or
71 both.

72 (d) The provisions of this section do not apply to any
73 person employed by a railroad who is performing the duties
74 assigned by the railroad or who is otherwise performing within
75 the scope of his or her employment.

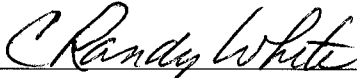
**§61-3-41. Employees conservators of the peace; special railroad
policemen; penalties.**

1 The conductor of every passenger car and flag person and
2 brake person employed on such car, as well as the conductor of
3 every train of railroad or traction cars, shall have all the powers
4 of a conservator of the peace while in charge of such car or
5 train.

6 Any railroad company owning, or leasing and operating, or
7 using any railroad or traction line or system lying wholly or
8 partially within this state, whether such railroad be operated by
9 steam or electric power, may apply to the governor to appoint
10 such citizen or citizens of this state as such railroad company
11 may designate, to act as special police officers for such railroad
12 or traction company, with the consent of such citizen or
13 citizens; and the governor may, upon such application, appoint
14 and commission such person or persons, or so many of them as
15 he may deem proper, as such special police officers. Every
16 police officer so appointed shall appear before some person
17 authorized to administer oaths and take and subscribe the oath

18 prescribed in the fifth section of the fourth article of the
19 constitution, and shall file such oath with the clerk of the county
20 commission, or other tribunal in lieu thereof, of the county in
21 which he shall reside. He or she shall also file certified copies
22 of such oath in the office of the secretary of state, and in the
23 office of the clerk of the county commission, or other tribunal
24 established in lieu thereof, of each county through which such
25 railroad or any portion thereof may extend. Every police officer
26 appointed under the provisions of this section shall be a
27 conservator of the peace within each county in which any part
28 of such railroad may be situated, and in which such oath or a
29 certified copy thereof shall have been filed with the clerk of the
30 county commission or other tribunal established in lieu thereof;
31 and, in addition thereto, he shall possess and may exercise all
32 the powers and authority, and shall be entitled to all the rights,
33 privileges and immunities within such counties, as are now or
34 hereafter may be vested in or conferred upon a deputy sheriff of
35 such county. Any appointment made by the governor under the
36 provisions of this section may be revoked by him or her for
37 good cause shown, and such police officers may be removed
38 from office for official misconduct, incompetence, habitual
39 drunkenness, neglect of duty or gross immorality, in the same
40 manner in which regularly elected or appointed county officers
41 may be removed from office. Whenever any such railroad
42 company shall desire to dispense with the services of any police
43 officer, it may file a notice to that effect, under its corporate
44 seal, attested by its secretary, in each of the several offices in
45 which such oath or certified copy thereof shall have been filed;
46 and, thereupon, the powers of the police officer shall cease and
47 determine. Police officers may wear such uniform and badge of
48 authority, or either, as the railroad company, upon whose
49 application they were appointed, may designate, and such
50 railroad company shall pay them for all services rendered
51 pursuant to his or her appointment.

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



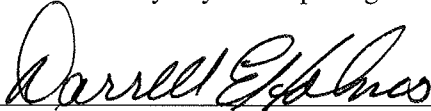
Chairman Senate Committee



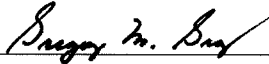
Chairman House Committee

Originating in the House.

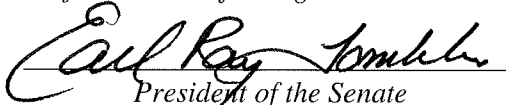
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Clerk of the Senate



Clerk of the House of Delegates

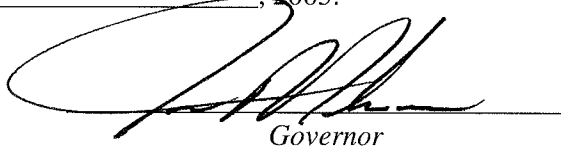


President of the Senate



Speaker of the House of Delegates

The within is approved this the 2nd
day of May, 2005.



Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 4:35 pm