

Senate Bill No. 488

(By Senators Stollings, Kirkendoll, Green, D. Hall, Kessler (Mr. President), Unger and Williams)

[Introduced March 8, 2013; referred to the Committee on Energy, Industry and Mining; and then to the Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-3F-1, §61-3F-2, §61-3F-3, §61-3F-4 and §61-3F-5, all relating to property crimes committed against coal mines and other industrial facilities; making legislative findings; defining terms; providing for additional criminal penalties for trespass at a coal mine or industrial facility; providing for criminal penalties and restitution for the removal, destruction, injury or defacement of real or personal property belonging to a coal mine or industrial facility; and providing that prosecution for other crimes is not precluded.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §61-3F-1, §61-3F-2,
2 §61-3F-3, §61-3F-4 and §61-3F-5, all to read as follows:

3

4 **ARTICLE 3F. OFFENSES INVOLVING COAL MINES AND INDUSTRIAL**
5 **FACILITIES.**

6 **§61-3F-1. Legislative findings.**

7 The Legislature finds that:

8 (1) Coal mines and other industrial facilities are targeted
9 for a variety of property crimes.

10 (2) These property crimes cause imminent danger to the health
11 and safety of the public, a coal mine or industrial facility's
12 employees, first responders, law-enforcement officers and utility
13 workers.

14 (3) These property crimes imperil the lives of those who
15 depend on the products and services provided by the coal mines and
16 other industrial facilities, including communications transmission,
17 electricity transmission and natural resource extraction.

18 (4) These crimes against property cause hardship for those who
19 operate coal mines and other industrial facilities through lost
20 production or transmission time, repair and/or replacement costs,
21 increased security expenses and other financial burdens not
22 normally associated with operating in the State of West Virginia.

23 **§61-3F-2. Definitions.**

1 As used in this article:

2 (1) "Approved access" means access granted to a coal mine or
3 other industrial facility.

4 (2) "Coal mine" means any mine, preparation plant, loading
5 facility, storage facility, building, complex of buildings, bonded
6 property and associated facilities and apparatus used by the owner
7 of the coal or another for the performance of the act or process of
8 exploring, developing, severing, extracting, reducing to
9 possession, washing, processing, loading for shipment and shipment
10 for sale of any coal or coal product including any reclamation,
11 waste disposal or environmental activities associated with coal
12 production and includes the surface structures or equipment
13 connected or associated therewith which contribute directly or
14 indirectly to the mining, preparation or handling of coal, or
15 construction thereof.

16 (3) "Imminent danger" means any condition that could hinder or
17 disrupt the normal operation of equipment, systems, or services
18 provided for the health and safety of the public, employees of
19 metal owners, first responders, law enforcement, or utility workers
20 or that cause an interruption in communications services or
21 electric utility services.

22 (4) "Industrial facility" means:

23 (A) Any facility that is required to submit a risk management

1 plan to the United States Environmental Protection Agency pursuant
2 to regulations promulgated under Section 112(r) of the Clean Air
3 Act of 1990, 42 U.S.C. §7412(r), including the property where the
4 facility is located and any buildings located on the property,
5 including storage facilities; or

6 (B) A facility that is a factory, mill, plant or refinery,
7 other than a coal facility, including the property upon which a
8 factory, mill, plant or refinery is located and any buildings
9 located on the property, including storage facilities.

10 (5) "Metal property" means metals as defined in this section
11 as ferrous or nonferrous.

12 (6) "Person" means any individual, partnership, corporation,
13 joint venture, trust, association or any other legal entity.

14 (7) "Real or personal property" means and includes at a
15 minimum:

16 (A) Telecommunications, cable communications or electric power
17 transmission pedestal or pole owned or operated by a
18 telecommunications, cable or electric power company or cooperative,
19 or electric power supplier or railroad.

20 (B) Telecommunications, cable communications or electric power
21 grounding or any other equipment or materials used in the delivery
22 of electricity, wire, fiber insulator, power supply transformer,
23 ground wire or other apparatus, equipment or fixture used in the

1 transmission of telecommunications, cable communications or
2 electric power owned or operated by a telecommunications, cable or
3 electric power company or cooperative or electric power supplier or
4 railroad.

5 (C) Equipment used in the transmission or wireless
6 communications or related to wireless communications.

7 (D) Equipment used at any facility of over the air broadcast
8 companies.

9 (E) Railroad materials and lading, including, but not limited
10 to, any rail telecommunications, cable communications, power and
11 signal equipment and wires, road or rail crossing signals,
12 equipment and wires, metal property lading being transported by a
13 railroad, and any railroad tracks and other operating materials,
14 including switch component, spike, angle bar, tie plate or bolt of
15 the type used in constructing railroads.

16 (F) A copper, aluminum, or aluminum-copper condensing or
17 evaporating coil, including its tubing or rods, from a heating or
18 air conditioning unit, excluding scrap from window air conditioning
19 units and automobile condenser coils, unless any one of the
20 following criteria are satisfied:

21 (i) The condenser coils are being sold by a licensed
22 contractor, HVAC contractor, plumber, or electrician and a current
23 and valid license is provided and copied or scanned by the

1 secondary metals recycler at the time of sale.

2 (ii) The condenser coils are being sold by a person with
3 verifiable documentation, indicating that the condenser coils are
4 the result of a replacement of an air conditioner unit or condenser
5 coils performed by a licensed contractor.

6 (G) Utility access covers, manhole covers, or storm drain
7 covers, unless the seller is a company that deals in the
8 manufacture or sale of the aforementioned products.

9 **§61-3F-3. Entry of a coal mine or other industrial facility;**
10 **penalties.**

11 Notwithstanding the provision of section three, article
12 three-b of this chapter any person who knowingly and without
13 approved access, invitation or license enters or remains on a coal
14 mine or other industrial facility is guilty of a misdemeanor and,
15 upon conviction, shall be fined not less than \$500 nor more than
16 \$1,000 and may be required to perform twenty hours in a community
17 corrections program for the first and each subsequent offense. In
18 the event a community corrections program is not available a
19 comparable remedy may be assigned.

20 **§61-3F-4. Removal, injury to and destruction of property;**
21 **penalties.**

22 If any person removes, destroys, injures or defaces or causes

1 to be removed, destroyed, injured or defaced any real or personal
2 property belonging to a coal mine or other industrial facility, he
3 or she is guilty of a felony and, upon conviction, shall be
4 confined to a correctional facility not less than one nor more than
5 three years and fined not less than \$5,000 nor more than \$10,000,
6 plus the value of full replacement or repair of the property. Upon
7 release from confinement the person is required to perform a
8 minimum of one hundred hours in a community corrections program. If
9 no community corrections program is available a comparable remedy
10 may be assigned.

11 **§61-3F-5. Prosecution under other statutes not prohibited.**

12 This article does not prevent or preclude prosecution pursuant
13 to any other provision of this code.

NOTE: The purpose of this bill is to provide for protection against property crimes committed against coal mines and other industrial facilities. The bill makes legislative findings. The bill defines terms. The bill provides for additional criminal penalties for trespass at a coal mine or industrial facility. The bill provides for criminal penalties and restitution for the removal, destruction, injury or defacement of real or personal property belonging to a coal mine or industrial facility. The bill provides that prosecution for other crimes is not precluded.

This article is new; therefore, strike-throughs and underscoring have been omitted.