

1 **H. B. 4234**

2
3 (By Delegate Howell (By Request))

4 [Introduced January 20, 2014; referred to the
5 Committee on the Judiciary then Finance.]

6 **FISCAL**
7 **NOTE**

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10 A BILL to amend and reenact §61-3B-2 and §61-3B-3 of the Code of
11 West Virginia, 1931, as amended, all relating to adding jail
12 time to penalties for certain types of criminal trespass.

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

14 That §61-3B-2 and §61-3B-3 of the Code of West Virginia, 1931,
15 as amended, be amended and reenacted, all to read as follows:

16 **ARTICLE 3B. TRESPASS.**

17 **§61-3B-2. Trespass in structure or conveyance.**

18 Any person who knowingly enters in, upon or under a structure
19 or conveyance without being authorized, licensed or invited, or
20 having been authorized, licensed or invited is requested to depart
21 by the owner, tenant or the agent of such owner or tenant, and
22 refuses to do so, shall be guilty of a misdemeanor, and, upon
23 conviction thereof, shall be fined not more than \$100, or confined

1 in jail not more than ten days, or both fined and confined.

2 If the offender is armed with a firearm or other dangerous
3 weapon while in the structure or conveyance, with the unlawful and
4 felonious intent to do bodily injury to a human being in said
5 structure or conveyance at the time the offender knowingly
6 trespasses, such offender shall, notwithstanding the provisions of
7 section one, article seven, chapter sixty-one of this code, be
8 guilty of a misdemeanor, and, upon conviction thereof, shall be
9 fined not less than \$100 nor more than \$500, or ~~be~~ confined in ~~the~~
10 ~~county~~ jail for a period not to exceed twelve months, or both ~~such~~
11 ~~fine and imprisonment~~ fined or confined.

12 **§61-3B-3. Trespass on property other than structure or conveyance.**

13 (a) It is an unlawful trespass for any person to knowingly,
14 and without being authorized, licensed or invited, to enter or
15 remain on any property, other than a structure or conveyance, as to
16 which notice against entering or remaining is either given by
17 actual communication to such person or by posting, fencing or
18 cultivation.

19 (b) First offense conviction. -- Upon a first trespassing
20 conviction pursuant to subsection (a):

21 The person is guilty of a misdemeanor and, shall be fined not
22 less than \$100 nor more than \$500, or confined in jail not more
23 than ten days, or both fined and confined.

24 (c) Second offense conviction. -- Upon a second trespassing

1 conviction pursuant to subsection (a):

2 The person is guilty of a misdemeanor and, shall be fined not
3 less than \$500 nor more than \$1,000, or confined in jail not more
4 than ten days, or both fined and confined.

5 (d) Third offense conviction. -- Upon a third and subsequent
6 trespassing conviction pursuant to subsection (a):

7 The person is guilty of a misdemeanor and, shall be fined not
8 less than \$1,000 nor more than \$1,500, or confined in jail not more
9 than ten days, or both fined and confined.

10 (e) If the offender defies an order to leave, personally
11 communicated to him or her by the owner, tenant or agent of such
12 owner or tenant, or if the offender opens any door, fence or gate,
13 and thereby exposes animals, crops or other property to waste,
14 destruction or freedom, or causes any damage to property by such
15 trespassing on property other than a structure or conveyance, he or
16 she shall be guilty of a misdemeanor and, upon conviction thereof,
17 shall be fined not less than \$100 nor more than \$500 or ~~imprisoned~~
18 confined in ~~the county~~ jail for a period not to exceed six months,
19 or both ~~such fine and imprisonment~~ fined and confined.

20 (c) If the offender is armed with a firearm or other dangerous
21 weapon with the unlawful and felonious intent to do bodily injury
22 to a human being during his or her commission of the offense of
23 trespass on property other than a structure or conveyance, such
24 offender shall, notwithstanding section one, article seven, chapter

1 sixty-one of this code, be guilty of a misdemeanor and, upon
2 conviction thereof, shall be confined in ~~the county~~ jail for a term
3 not to exceed six months, or fined not more than \$100, or both ~~such~~
4 ~~fine and imprisonment~~ fined and confined.

5 (d) Notwithstanding and in addition to any other penalties
6 provided by law, any person who performs or causes damage to
7 property in the course of a willful trespass shall be liable to the
8 property owner in the amount of twice the amount of ~~such~~ the
9 damage. However, this article shall not apply in a labor dispute.

NOTE: The purpose of this bill is to include jail time in the possible penalties for certain types of trespass.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.