

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4615

BY DELEGATES J. KELLY, ANDERSON, D. KELLY,
WESTFALL, AZINGER, SYPOLT, JENNINGS, ATKINSON AND
BARNHART

[Passed March 7, 2020; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §61-10-34, relating to establishing the West Virginia Critical Infrastructure
3 Protection Act; defining terms; creating criminal offenses of trespass upon property
4 containing a critical infrastructure facility, trespassing upon property containing a critical
5 infrastructure facility with intent to interrupt the lawful operations of the facility, and for
6 trespass with the intent to willfully cause damage to a critical infrastructure facility; defining
7 elements of offenses; establishing criminal offense of conspiracy to commit various
8 trespass; establishing criminal penalties; creating exceptions and defenses; providing for
9 civil liability; and providing nothing in this section will be construed to prevent lawful
10 assembly and petition for redress of grievances.

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, if completely enclosed by a
11 fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked

12 with a sign or signs that are posted on the property that are reasonably likely to come to the
13 attention of intruders and indicate that entry is forbidden without site authorization:

14 (1) A petroleum or alumina refinery;

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

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

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

20 (5) A natural gas compressor station;

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

22 (7) Wireline and wireless telecommunications infrastructure;

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

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

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

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

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

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

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

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

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

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

42 (18) Health care facilities;

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

46 (20) A commercial service airport as defined by the Federal Aviation Administration.

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

56 (2) Any person who willfully damages, destroys, vandalizes, defaces, or tampers with
57 equipment in a critical infrastructure facility causing damage in excess of \$2,500 is guilty of a
58 felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, or
59 imprisoned in a state correctional facility for a term of not less than one year nor more than five
60 years, or both fined and imprisoned.

61 (3) Any person who conspires with any person to commit the offense of trespass against
62 a critical infrastructure facility in violation of subdivision (1) of subsection (c) of this section and
63 the trespass actually occurs is guilty of a misdemeanor and, upon conviction thereof, shall be

64 fined in an amount of not less than \$2,500 nor more than \$10,000. Any person who conspires
65 with any person to willfully damage, destroy, vandalize, deface, or tamper with equipment in a
66 critical infrastructure facility and the damage, destruction, vandalization, defacing or tampering
67 causes damage in excess of \$2,500 is guilty of a felony and, shall, upon conviction thereof, be
68 fined not less than \$5,000 nor more than \$20,000.

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

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

76 (e) The provisions of this section do not apply to:

77 (1) Any person or organization:

78 (i) monitoring or attentive to compliance with public or worker safety laws, or, wage and
79 hour requirements;

80 (ii) picketing at the workplace that is otherwise lawful and arises out of a bona fide labor
81 dispute, including any controversy concerning wages, salaries, hours, working conditions, or
82 benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions,
83 the managing or maintenance of collective bargaining agreements, and the terms to be included
84 in those agreements;

85 (iii) engaging in union organizing or recruitment activities, including attempting to reach
86 workers verbally, in writing with pamphlets and investigation of non-union working conditions, or
87 both.

88 (2) The right to free speech or assembly, including, but not limited to, protesting and
89 picketing.

90 (3) A contractor who has a contractual relationship with a critical infrastructure facility and
91 the contractor's employees are acting within their scope of employment performing work at a
92 critical infrastructure facility.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor