

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3366

By Delegates W. Hall, Shamblin, and Rohrbach

[Introduced February 10, 2023; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §61-3B-3, §61-3-13, and §61-3-30 the Code of West Virginia, 1931,
2 as amended, and to amend said code by adding thereto a new section, designated §61-10-
3 34; all relating to creating the Property Protection Act; providing a short title; providing a
4 definition; prescribing penalties for various offenses on property; providing exceptions;
5 providing for forfeiture of certain items used in perpetrating such crimes; and updating the
6 criminal code to reflect the changes in penalties.

Be it enacted by the Legislature of West Virginia:

**§61-10-34. Property Protection Act; prohibiting certain acts, including trespass and
conspiracy to trespass against property; criminal penalties; and civil action.**

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

2 (b) For purposes of this section:

3 "Property" means property owned or leased by the state of West Virginia or private
4 property.

5 (c)(1) Any person who willfully and knowingly trespasses or enters property without
6 permission is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of
7 not less than \$250 nor more than \$1,000, or confined in jail not less than 30 days nor more than
8 one year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy,
9 vandalize, deface, tamper with equipment, or impede or inhibit operations of any state facility on
10 that property, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
11 less than \$100 nor more than \$1,000, or confined in a jail for not more than one year, or both fined
12 and confined.

13 (2) (A) Any person who willfully damages, destroys, vandalizes, defaces, or tampers with
14 equipment on property causing damage more than \$2,500 is guilty of a felony and, upon
15 conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, or imprisoned in a
16 state correctional facility for a term of not less than one year nor more than three years, or both
17 fined and imprisoned.

18 (B) Any person convicted of a second offense under the provisions of this subdivision is
19 guilty of a felony and, upon conviction thereof, shall be fined not less than \$25,000 nor more than
20 \$50,000, or imprisoned in a state correctional facility for a term of not less than three years nor
21 more than five years, or both fined and imprisoned.

22 (3) Any person who conspires with any person to commit the offense of trespass against
23 property in violation of subdivision (1) of subsection (c) of this section and the trespass actually
24 occurs is guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount of not
25 less than \$2,500 nor more than \$10,000. Any person who conspires with any person to willfully
26 damage, destroy, vandalize, deface, or tamper with equipment on property and the damage,
27 destruction, vandalization, defacing or tampering causes damage in excess of \$2,500 is guilty of a
28 felony and, shall, upon conviction thereof, be fined not less than \$5,000 nor more than \$20,000.

29 (4) Any person who commits larceny of any type on property, including both petit larceny
30 where the goods stolen amount to less than \$250 and grand larceny where the goods stolen
31 amount to more than \$1000, upon conviction thereof, shall be imprisoned in the penitentiary for not
32 less than two nor more than ten years, or, in the discretion of the court, be confined in jail not more
33 than two years and shall be fined not more than \$5,000.

34 (d)(1) Any person who is arrested for or convicted of an offense under this section may be
35 held civilly liable for any damages to personal or real property while trespassing, in addition to the
36 penalties imposed by this section. Damages may be doubled or trebled to determine the dollar
37 amount of restitution expected from the convicted.

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

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

43 (1) Any person or organization:

44 (i) Monitoring or attentive to compliance with public or worker safety laws, or, wage and
45 hour requirements;

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

51 (iii) Engaging in union organizing or recruitment activities, including attempting to reach
52 workers verbally, in writing with pamphlets and investigation of non-union working conditions, or
53 both.

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

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

59 (f)(1) (A) All items of personal property which are used, have been used, or are intended for
60 use, used in perpetration of theft or damage on property shall be subject to forfeiture

61 (B) This includes all conveyances, including aircraft, vehicles or vessels, except that:

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

65 (ii) A conveyance shall not be forfeited under the provisions of this article if the person
66 owning the conveyance establishes that he or she neither knew, nor had reason to know, that the
67 conveyance was being employed or was likely to be employed in a violation of this section; and

68 (iii) A bona fide security interest or other valid lien in any conveyance shall not be forfeited
69 under the provisions of this article, unless the state proves by a preponderance of the evidence

70 that the holder of the security interest or lien either knew, or had reason to know, that the
71 conveyance was being used or was likely to be used in a violation of this chapter;

72 (2) All procedures relating to the seizure and disposition of property subject to forfeiture
73 under the authority of this section shall be governed by the applicable provisions of the West
74 Virginia Contraband Forfeiture Act, §60A-7-701, et. seq.

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

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

5 (b) First offense conviction. — Upon a first trespassing conviction pursuant to subsection
6 (a) of this section, the person is guilty of a misdemeanor and shall be fined not less than \$100 nor
7 more than \$500.

8 (c) Second offense conviction. — Upon a second trespassing conviction pursuant to
9 subsection (a) of this section, the person is guilty of a misdemeanor and shall be fined not less
10 than \$500 nor more than \$1,000.

11 (d) Third offense conviction. — Upon a third and subsequent trespassing conviction
12 pursuant to subsection (a) of this section, the person is guilty of a misdemeanor and shall be fined
13 not less than \$1,000 nor more than \$1,500.

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

20 (f) If the offender is armed with a firearm or other dangerous weapon with the unlawful and

21 felonious intent to do bodily injury to a human being during his or her commission of the offense of
22 trespass on property other than a structure or conveyance, such offender, notwithstanding section
23 one, article seven, chapter sixty-one of this code, is guilty of a misdemeanor and, upon conviction,
24 shall be confined in jail for not more than six months, fined not more than \$100, or both confined
25 and fined.

26 (g) Notwithstanding and in addition to any other penalties provided by law, any person who
27 performs or causes damage to property in the course of a willful trespass shall be liable to the
28 property owner in the amount of twice the amount of such damage. However, this article shall not
29 apply in a labor dispute.

30 (h) Where the trespass occurs on "property" as defined in §61-10-34 of this code, the
31 penalties for this crime will be those contained in §61-10-34 of this code.

§61-3-13. Grand and petit larceny distinguished; penalties.

1 (a) If a person commits simple larceny of goods or chattels of the value of \$1,000 or more,
2 such person is guilty of a felony, designated grand larceny, and, upon conviction thereof, shall be
3 imprisoned in the penitentiary not less than one nor more than ten years, or, in the discretion of the
4 court, be confined in jail not more than one year and shall be fined not more than \$2,500.

5 (b) If a person commits simple larceny of goods or chattels of the value of less than \$1,000,
6 such person is guilty of a misdemeanor, designated petit larceny, and, upon conviction thereof,
7 shall be confined in jail for a term not to exceed one year or fined not to exceed \$2,500, or both, in
8 the discretion of the court.

9 (c) Where the larceny occurs on or concerning "property" as defined in §61-10-34 of this
10 code, the penalties for this crime will be those contained in §61-10-34 of this code.

**§61-3-30. Removal, injury to or destruction of property, monuments designating land
boundaries and of certain no trespassing signs; penalties.**

1 (a) If any person unlawfully, but not feloniously, takes and carries away, or destroys, injures
2 or defaces any property, real or personal, of another, he or she is guilty of a misdemeanor and,

3 upon conviction thereof, shall be fined not more than \$500, or confined in the county or regional jail
4 not more than one year, or both fined and imprisoned.

5 (b) Any person who unlawfully, willfully and intentionally destroys, injures or defaces the
6 real or personal property of one or more other persons or entities during the same act, series of
7 acts or course of conduct causing a loss in the value of the property in an amount of \$2,500 or
8 more, is guilty of the felony offense of destruction of property and, upon conviction thereof, shall be
9 fined not more than \$2,500 or imprisoned in the state correctional facility for not less than one year
10 nor more than ten years, or in the discretion of the court, confined in the county or regional jail not
11 more than one year, or both fined and imprisoned.

12 (c) If any person breaks down, destroys, injures, defaces or removes any monument
13 erected for the purpose of designating the boundaries of a municipality, tract or lot of land, or any
14 tree marked for that purpose, or any sign or notice upon private property designating no
15 trespassing upon the property, except signs or notices posted in accordance with the provisions
16 and purposes of sections seven, eight and ten, article two, chapter twenty of this code, he or she is
17 guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$20 nor more
18 than \$200, or confined in the county or regional jail not less than one nor more than six months, or
19 both fined and imprisoned. Magistrates have concurrent jurisdiction of all offenses arising under
20 the provisions of this section. The provisions of this paragraph do not apply to the owner, or his or
21 her agent, of the lands on which such signs or notices are posted.

22 (d) Where the trespass occurs on "property" as defined in §61-10-34 of this code, the
23 penalties for this crime will be those contained in §61-10-34 of this code.

NOTE: The purpose of this bill is to increase the penalties associated with certain crimes when they occur on property.

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