

SB 761

FILED

2009 MAY -8 PM 4:55

OFFICE WEST VIRGINIA
OF STATE

WEST VIRGINIA LEGISLATURE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2009



ENROLLED

Senate Bill No. 761

(BY SENATORS JENKINS, BROWNING, CHAFIN, FOSTER,
KESSLER, LAIRD, MINARD, OLIVERIO, PALUMBO,
SNYDER, STOLLINGS, WILLIAMS, YOST,
BARNES, CARUTH, DEEM AND HALL)

[Passed April 10, 2009; in effect ninety days from passage.]

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SECRETARY OF STATE

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(BY SENATORS JENKINS, BROWNING, CHAFIN, FOSTER, KESSLER, LAIRD,
MINARD, OLIVERIO, PALUMBO, SNYDER, STOLLINGS, WILLIAMS, YOST,
BARNES, CARUTH, DEEM AND HALL)

[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §61-3-12 and §61-3-29 of the Code of West Virginia, 1931, as amended, relating to crimes committed on or against commercial, railroad or public utility property; extending criminal penalties for prohibited entry upon commercial property enclosed by a fence or similar physical barrier or upon certain structures used for utility transmission or distribution; clarifying the offense of breaking and entering or entering without breaking onto public utility property that is enclosed or fenced, with the intent to commit a felony or larceny; establishing the felony offense of knowingly and willfully damaging and destroying utility or railroad property, resulting in the creation of a substantial risk of serious bodily injury to another; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3-12 and §61-3-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.

1 If any person shall, at any time, break and enter, or
2 shall enter without breaking, any office, shop, under-
3 ground coal mine, storehouse, warehouse, banking house
4 or any house or building, other than a dwelling house or
5 outhouse adjoining thereto or occupied therewith, any
6 railroad or traction car, propelled by steam, electricity or
7 otherwise, any steamboat or other boat or vessel, or any
8 commercial, industrial or public utility property enclosed
9 by a fence, wall or other structure erected with the intent
10 of the property owner of protecting or securing the area
11 within and its contents from unauthorized persons, within
12 the jurisdiction of any county in this state, with intent to
13 commit a felony or any larceny, he or she shall be deemed
14 guilty of a felony and, upon conviction, shall be confined
15 in a state correctional facility not less than one nor more
16 than ten years. And if any person shall, at any time, break
17 and enter, or shall enter without breaking, any automo-
18 bile, motorcar or bus, with like intent, within the jurisdic-
19 tion of any county in this state, he or she shall be guilty of
20 a misdemeanor and, upon conviction, shall be confined in
21 jail not less than two nor more than twelve months and be
22 fined not exceeding \$100.

23 An indictment for burglary may contain one or more
24 counts for breaking and entering, or for entering without
25 breaking, the house or building mentioned in the count for
26 burglary under the provisions of this section and section
27 eleven of this article.

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

1 (a) Any person who knowingly and willfully damages or
2 destroys any real or personal property owned by a railroad
3 company, or public utility company, or any real or per-
4 sonal property used for producing, generating, transmit-
5 ting, distributing, treating or collecting electricity, natural
6 gas, coal, water, wastewater, stormwater, telecommunica-
7 tions or cable service, is guilty of a misdemeanor and,
8 upon conviction thereof, shall be fined not more than
9 \$2,000, or confined in jail not more than one year, or both
10 fined and confined.

11 (b) Any person who knowingly and willfully: (1) Dam-
12 ages or destroys any real or personal property owned by a
13 railroad company, or public utility company, or any real
14 or personal property used for producing, generating,
15 transmitting, distributing, treating or collecting electric-
16 ity, natural gas, coal, water, wastewater, stormwater,
17 telecommunications or cable service; and (2) creates a
18 substantial risk of serious bodily injury to another or
19 results in the interruption of service to the public is guilty
20 of a felony and, upon conviction thereof, shall be fined not
21 more than \$5,000, or confined in a state correctional
22 facility not less than one nor more than three years, or
23 both fined and imprisoned.

24 (c) Any person who knowingly and willfully: (1) Dam-
25 ages or destroys any real or personal property owned by a
26 railroad company, or public utility company, or any real
27 or personal property used for producing, generating,
28 transmitting, distributing, treating or collecting electric-

29 ity, natural gas, coal, water, wastewater, stormwater,
30 telecommunications or cable service; and (2) causes serious
31 bodily injury to another is guilty of a felony and, upon
32 conviction thereof, shall be fined not less than \$5,000 nor
33 more than \$50,000, or confined in a state correctional
34 facility not less than one nor more than five years, or both
35 fined and imprisoned.

36 (d) Nothing in this section may be construed to limit or
37 restrict the ability of an entity referred to in subsection (a),
38 (b) or (c) of this section or a property owner or other
39 person who has been damaged or injured as a result of a
40 violation of this section from seeking recovery for damages
41 arising from violation of this section.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *5th*
Day of *May*, 2009.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 7 2009

Time 11:00am