

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4615

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

[Introduced January 30, 2020; Referred to the
Committee on the Judiciary.]

1 A BILL 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 a criminal offense of trespass upon property
4 containing a critical infrastructure facility, upon property containing a critical infrastructure
5 facility with intent to interrupt the lawful operations of the facility, and for causing willful
6 damage to a critical infrastructure facility; establishing criminal offense of conspiracy to
7 commit trespass; establishing criminal penalties; providing for civil liability; and providing
8 nothing in this section will be construed to prevent lawful assembly and petition for redress
9 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, or

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.

46 (c)(1) Any person who willfully and knowingly trespasses or enters property containing a
47 critical infrastructure facility without permission by the owner of the property or lawful occupant
48 thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not
49 less than \$250 nor more than \$1,000, or confined in jail not less than 30 days nor more than one
50 year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy,
51 vandalize, deface, tamper with equipment, or impede or inhibit operations of the critical
52 infrastructure facility, the person is guilty of a felony and, upon conviction thereof, shall be fined
53 not less than \$500 nor more than \$3,000, or imprisoned in a state correctional facility for not less
54 than one nor more than three years, or both fined and imprisoned.

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

59 (3) Any person or organization who conspires with any person or organization to commit
60 the offense of trespass against a critical infrastructure facility in violation of subdivision (1) of
61 subsection (c) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be
62 fined in an amount of not less than \$2,500 nor more than \$10,000. Any person or organization
63 who conspires with any person or organization to willfully damage, destroy, vandalize, deface or

64 tamper with equipment in a critical infrastructure facility is guilty of a felony and, shall, upon
65 conviction thereof, be fined not less than \$5,000 nor more than \$20,000.

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

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

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

74 (1) Any person or organization:

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

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

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

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

87 (3) To a contractor who has a contractual relationship with a critical infrastructure facility
88 and the contractor's employees are acting within their scope of employment performing work at a
89 critical infrastructure facility.

NOTE: The purpose of this bill is to codify criminal penalties for persons convicted of willfully trespassing or entering property containing a critical infrastructure facility without permission by the owner of the property, and holds a person liable for any damages to personal or real property while trespassing. The bill also prescribes criminal penalties for organizations conspiring with persons who willfully trespass and/or damage critical infrastructure sites and holds conspiring organizations responsible for any damages to personal or real property while trespassing.

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