Committee Substitute
for
House Bill 4615

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[Introduced January 30, 2020; Referred to the
Committee on the Judiciary.]
A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-10-34, relating to establishing the West Virginia Critical Infrastructure Protection Act; defining terms; creating a criminal offense of trespass upon property containing a critical infrastructure facility, upon property containing a critical infrastructure facility with intent to interrupt the lawful operations of the facility, and for causing willful damage to a critical infrastructure facility; establishing criminal offense of conspiracy to commit trespass; establishing criminal penalties; providing for civil liability; and providing nothing in this section will be construed to prevent lawful 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.

(a) This section may be referred to as the “West Virginia Critical Infrastructure Protection Act”.

(b) For purposes of this section:

“Critical Infrastructure” means systems and assets, whether physical or virtual, so vital to the United States of America or the State of West Virginia that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, state economic security, national public health or safety, state public health or safety, or any combination of those matters, whether such systems or assets are in operation or are under any state of construction.

“Critical infrastructure facility” means one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked
with a sign or signs that are posted on the property that are reasonably likely to come to the
attention of intruders and indicate that entry is forbidden without site authorization:

(1) A petroleum or alumina refinery,

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

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

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

(5) A natural gas compressor station,

(6) A liquid natural gas terminal or storage facility,

(7) Wireline and wireless telecommunications infrastructure,

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

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

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

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

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

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

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

(15) A crude oil or refined products storage and distribution facility including, but not limited
to, valve sites, pipeline interconnections, pump station, metering station, below- or above-ground
pipeline or piping and truck loading or offloading facility.
(16) Military facilities, including national guard facilities and equipment storage areas
where non-military personnel are prohibited.

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

(18) Health care facilities, or

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

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

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

(3) Any person or organization who conspires with any person or organization to commit
the offense of trespass against a critical infrastructure facility in violation of subdivision (1) of
subsection (c) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be
fined in an amount of not less than $2,500 nor more than $10,000. Any person or organization
who conspires with any person or organization to willfully damage, destroy, vandalize, deface or
tamper with equipment in a critical infrastructure facility is guilty of a felony and, shall, upon conviction thereof, be fined not less than $5,000 nor more than $20,000.

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

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

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

(1) Any person or organization:

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

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

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

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

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