

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 299

By Senators Hunt, Azinger, Barrett, Chapman, Deeds,
Hamilton, Jeffries, Karnes, Martin, Maynard, Nelson,
Oliverio, Phillips, Queen, Roberts, Rucker, Smith,
Stover, Stuart, Takubo, Weld, Woelfel, Woodrum,
Swope, Clements, and Plymale

[Originating in the Committee on the Judiciary;
reported on February 03, 2023]

1 A BILL to amend and reenact §61-3B-3, §61-3B-6 and §61-3B-7 of the Code of West Virginia,
2 1931, as amended; and to amend said code by adding thereto a new section, designated
3 §61-3B-8, all relating generally to trespass; making double damages applicable to all
4 violations of the article; authorizing sentencing court to assess cleanup expenses;
5 authorizing courts presiding in cases for misdemeanor violations of the article to defer
6 entry of judgment and dismiss the charges if payment of ordered damages is made within
7 six months after conviction.

Be it enacted by the Legislature of West Virginia:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT

ARTICLE 3B. TRESPASS

§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~~ the owner or tenant, or if the offender opens any door, fence, or
16 gate, and thereby exposes animals, crops, or other property to waste, destruction, or freedom, or
17 causes any damage to property by such trespassing on property other than a structure or
18 conveyance, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
19 less than \$100 nor more than \$500, confined in jail for not more than six months, or both fined and
20 confined.

21 (f) If the offender is armed with a firearm or other dangerous weapon with the unlawful and
22 felonious intent to do bodily injury to a human being during his or her commission of the offense of
23 trespass on property other than a structure or conveyance, ~~such~~ the offender, notwithstanding
24 §61-7-1 of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in
25 jail for not more than six months, fined not more than \$100, or both confined 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.~~

1 **§61-3B-6. Mine trespass; penalties.**

1 (a) A person who willfully enters an underground coal mine, whether active workings,
2 inactive workings, or abandoned workings, without permission, is guilty of a felony and, upon
3 conviction thereof, shall be imprisoned in a correctional facility not less than one year and nor
4 more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000: *Provided*, That
5 for any conviction pursuant to this subsection, any inactive or abandoned underground workings
6 must be either: (1) Sealed; or (2) clearly identified by signage at some conspicuous place near the
7 entrance of the mine that includes a notice that the unauthorized entry into the mine is a felony
8 criminal offense.

9 (b) A person who willfully enters a surface coal mine, whether active workings, inactive
10 workings, or abandoned workings, without permission, and with the intent to commit a felony or

11 any larceny, is guilty of a misdemeanor and, upon conviction thereof, ~~shall be~~ is confined in jail not
12 less than one week and not more than one month and shall be fined not less than \$1,000 nor more
13 than \$5,000. For a second conviction, pursuant to this subsection, the person shall be guilty of a
14 felony and shall be ~~confined~~ imprisoned in a correctional facility not less than one year and not
15 more than five years and shall be fined not less than \$5,000 nor more than \$10,000. For a third or
16 subsequent conviction, pursuant to this subsection, the person shall be guilty of a felony and shall
17 be imprisoned in a correctional facility not less than five years and not more than 10 years and
18 shall be fined not less than \$10,000, nor more than \$25,000.

19 (c) If a person violates subsections (a) or (b) of this section, and during any rescue efforts
20 for ~~any such~~ that person, there occurs an injury that causes substantial physical pain, illness, or
21 any impairment of physical condition to any person other than himself or herself, then that person
22 is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than
23 one week and not more than one year and shall be fined not less than \$1,000 nor more than
24 \$5,000: *Provided*, That ~~such~~ the jail term shall include actual confinement of not less than seven
25 days.

26 (d) If a person violates subsections (a) or (b) of this section, and during any rescue efforts
27 for ~~any such~~ that person, there occurs an injury that creates a substantial risk of death, causes
28 serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or
29 impairment of the function of any bodily organ to any person other than himself or herself, then that
30 person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional
31 facility for not less than two nor more than 10 years and shall be fined not less than \$5,000 nor
32 more than \$10,000.

33 (e) If a person violates subsections (a) or (b) of this section, and during any rescue efforts
34 of such person, the death of any other person occurs, then that person is guilty of a felony and,
35 upon conviction thereof, shall be imprisoned in a correctional facility for not less than three nor
36 more than 15 years and shall be fined not less than \$10,000 nor more than \$25,000.

37 ~~(f) Notwithstanding and in addition to any other penalties provided by law, any person who~~
38 ~~performs or causes damage to property in the course of a willful trespass in violation of this section~~
39 ~~is liable to the property owner in the amount of twice the amount of such damage.~~

40 ~~(g)~~(f) The terms “mine”, “active workings”, “inactive workings”, and “abandoned workings”
41 have the same meaning ascribed to such terms them as set forth in §22A-1-2 of this code.

42 ~~(h)~~(g) Nothing in this section shall be construed to prevent lawful assembly and petition for
43 the lawful redress of grievances, during any dispute, including, but not limited to, activities
44 protected by the West Virginia Constitution, or the United States Constitution, or any statute of this
45 state or the United States.

§61-3B-7. Animal or crop facilities trespass; penalties; injunctive relief.

1 (a) As used in this section:

2 (1) “Animal” means poultry, livestock, domestic animals, and captive cervids owned and
3 possessed by persons licensed pursuant to §19-2H-1 *et seq.* of this code. The term does not
4 include an animal used for illegal gaming.

5 (2) “Animal or crop facility” means a facility that is used in the production, management,
6 sale, or processing of animals or crops. The term includes, but is not limited to:

7 (A) A building, greenhouse, structure, laboratory, pasture, field, paddock, pond,
8 impoundment, or premises where animals or crops are located;

9 (B) A managed bee colony;

10 (C) A livestock market;

11 (D) A facility used for the preparation of, or processing of, animals, crops, or value-added
12 foods for sale; and

13 (E) A facility used to carry out any agritourism activity, as that term is defined and used in
14 §19-36-1 *et seq.* of this code.

15 (3) “Crop” means a shrub, vine, tree, seedling, shoot, slip, or other plant capable of
16 producing food, fiber, medicine, nursery stock, floral products, or aesthetic beauty.

17 (b) Any person who willfully trespasses on the property of another which constitutes an
18 animal or crop facility with the intent to commit larceny, destroy property, or disrupt the operation of
19 the facility is guilty of willful trespass upon an animal or crop facility.

20 (c) Any person who conspires with one or more persons to violate subsection (b) of this
21 section and commits an overt act in furtherance thereof is guilty of conspiracy to willfully trespass
22 upon an animal or crop facility.

23 (d) Any person who violates subsection (b) of this section is guilty of a misdemeanor and,
24 upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 or confined in jail
25 not more than 30 days, or both fined and confined.

26 (e) Notwithstanding the provisions of subsection (d) of this section, any person convicted
27 of a second or subsequent violation of subsection (b) or a violation of subsection (c) of this section
28 is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than
29 \$10,000 or imprisoned in a state correctional facility for not less than one nor more than five years,
30 or both fined and imprisoned.

31 ~~(f) Notwithstanding and in addition to any other penalties provided by law, any person who~~
32 ~~performs, or causes damage to property in the course of, a willful trespass in violation of this~~
33 ~~section is liable to the owner or operator of the animal or crop facility in the amount of twice any~~
34 ~~damage caused.~~

35 ~~(g)~~(f) The owner or operator of an animal or crop facility may bring an action for injunctive
36 relief against a person who engages in, or threatens to engage in, conduct that constitutes a
37 violation of this section:

38 (1) The action may be brought in the circuit court of any county in which any part of the
39 conduct or threatened conduct occurs or is threatened to occur.

40 (2) The circuit court may grant any appropriate injunctive relief to prevent or abate the
41 conduct or threatened conduct, including a temporary restraining order, preliminary injunction, or
42 permanent injunction.

43 (3) The circuit court may issue injunctive relief without the owner or operator of an animal
44 or crop facility giving security for its issuance.

1 **§61-3B-8. Liability for damages; deferred judgment; dismissal.**

2 (a) Any person convicted of a criminal offense in this article is liable to the victim in an
3 amount equal to twice the monetary value of any damage or waste he or she caused to the
4 property which includes cost of cleanup.

5 (b) Notwithstanding any provision of this code to the contrary, a court presiding over a
6 misdemeanor violation of this article may defer entry of the judgment of conviction for a period not
7 to exceed six months and if the damages authorized by subsection (a) of this section are paid
8 within that time period, dismiss the charge.