

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2328

BY DELEGATES FOSTER AND FAST

[Introduced February 12, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §61-3B-2 and §61-3b-3 of the Code of West Virginia, 1931, as
2 amended, all relating to criminal trespass.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. TRESPASS.

§61-3B-2. Trespass in structure or conveyance.

1 (a) Any person who knowingly enters in, upon, or under a structure or conveyance without
2 being authorized, licensed, or invited, or having been authorized, licensed, or invited is requested
3 to depart by the owner, tenant, or the agent of the owner or tenant, and refuses to do so, is guilty
4 of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.

5 (b) Notwithstanding the provisions of subsection (a) of this section, any person who,
6 without permission, knowingly and willfully enters a structure which has a clear posting that the
7 structure has been condemned by any municipal or county government as unfit for human
8 habitation or use, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more
9 than \$100, or confined in jail not more than six months, or both fined and confined: *Provided*, That
10 for any first violation of this subsection offense of trespass on condemned property, a court may
11 substitute community service or pretrial diversion in lieu of a fine or confinement for trespassing
12 on condemned property.

13 (c) If the offender is armed with a firearm or other dangerous weapon while in the structure
14 or conveyance, with the intent to do bodily injury to a human being in the structure or conveyance
15 at the time the offender knowingly trespasses, the offender, notwithstanding the provisions of §61-
16 7-1 of this code, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less
17 than \$100 ~~nor more than \$500~~ or be confined in jail for not more than one year, or both fined and
18 confined.

§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

3 to which notice against entering or remaining is either given by actual communication to such
4 person 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,
18 he or she is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor
19 more 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
22 of trespass on property other than a structure or conveyance, such offender, notwithstanding §61-
23 7-1 of this code, is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not
24 more than six months, fined not ~~more~~ less than \$100, or both confined and fined.

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

29 (h) Nothing in this section may be construed to prevent lawful assembly and petition for
30 the redress of grievances, during any dispute, including, but not limited to, activities protected by
31 the West Virginia Constitution or the United States Constitution or any statute of this state or the
32 United States.

NOTE: The purpose of this bill is to provide for increased fines for criminal trespass.

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