

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2567

By Delegates Ross, Linville, Dean, W. Hall, Dillon,

Foggin, Coop-Gonzalez and Kump

[Originating in the Committee on the Judiciary;

Reported on February 15, 2023]

1 A BILL to amend and reenact §61-3B-2 and §61-3B-3 of the Code of West Virginia, 1931, as
2 amended, relating to creating a misdemeanor criminal penalty for unlawful trespass into
3 the home of another person; creating a felony criminal penalty for second or subsequent
4 offenses of unlawful trespass into the home of another person; creating affirmative
5 defenses to prosecution; providing a definition; and increasing criminal penalties for
6 certain trespass crimes from misdemeanors to felonies.

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 of
4 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 intentionally, but not burglariously, enters in a dwelling house of another person and who
7 knowingly lacks the authority or license to do so, or who knowingly lacks the consent of the owner,
8 tenant, or the agent of the owner or tenant, is guilty of a misdemeanor and, upon conviction thereof
9 shall be confined in a jail for not more than six months, shall be fined not less than \$100 nor more
10 than \$500, or both confined and fined: *Provided*, That for a second or subsequent offense for a
11 person with a prior conviction under the provisions of this subsection, the person is guilty of a
12 felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than one
13 year and nor more than five years, shall be fined not less than \$1,000 nor more than \$5,000, or
14 both imprisoned and fined. It is an affirmative defense to prosecution under this subsection that the
15 accused reasonably believed he or she was authorized or licensed to enter the dwelling house or
16 that the owner, tenant, or the agent of the owner or tenant would have consented to him or her
17 entering the dwelling house.

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

26 ~~(c)~~(d) If the offender is armed with a firearm or other dangerous weapon while in the
27 structure or conveyance, with the intent to do bodily injury to a human being in the structure or
28 conveyance at the time the offender knowingly trespasses, the offender, notwithstanding the
29 provisions of §61-7-1 of this code, is guilty of a misdemeanor, and, upon conviction thereof, shall
30 be fined not less than \$100 nor more than \$500, or be confined in jail for not more than one year, or
31 ~~both fined and confined~~ felony and, upon conviction thereof shall be imprisoned in a correctional
32 facility not less than one year nor more than 10 years and shall be fined not less than \$5,000 nor
33 more than \$10,000.

34 (e) For purposes of this section, “dwelling house” includes, but is not limited to, a mobile
35 home, house trailer, modular home, factory-built home, or self-propelled motor home, used as a
36 dwelling regularly or only from time to time, or any other nonmotorized vehicle primarily designed
37 for human habitation and occupancy and used as a dwelling regularly or only from time to time.

§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 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, he
18 or she is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor more
19 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 of
22 trespass on property other than a structure or conveyance, such offender, notwithstanding section
23 one, article seven, chapter sixty-one of this code, is guilty of a ~~misdemeanor and, upon conviction,~~
24 ~~shall be confined in jail for not more than six months, fined not more than \$100, or both confined~~
25 ~~and fined~~ felony and, upon conviction thereof shall be imprisoned in a correctional facility not less
26 than one year nor more than 10 years and shall be fined not less than \$5,000 nor more than
27 \$10,000.

28 (g) Notwithstanding and in addition to any other penalties provided by law, any person who
29 performs or causes damage to property in the course of a willful trespass shall be liable to the

30 property owner in the amount of twice the amount of such damage. However, this article shall not
31 apply in a labor dispute.