

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5091

By Delegates Ferrell, Espinosa, DeVault, Mallow,
Shamblin, Cannon, Mazzocchi, Tully, Crouse, Adkins,
and W. Clark

[Originating in the Committee on the Judiciary;

Reported on January 25, 2024]

1 A BILL to amend and reenact §61-10-34 of the Code of West Virginia, 1931, as amended, relating
2 to the "West Virginia Critical Infrastructure Protection Act"; removing the requirement that a
3 critical infrastructure facility be enclosed by a fence or other physical barrier or be clearly
4 marked with a sign or signs; increasing felony penalties and adding second offense
5 penalties for a person who willfully damages, destroys, vandalizes, defaces, or tampers
6 with equipment in a critical infrastructure facility causing damage in excess of \$2,500;
7 providing for forfeiture of items of personal property which are used, have been used, or are
8 intended for use in perpetration of theft or damage to infrastructure, including all
9 conveyances, including aircraft, vehicles or vessels; and providing that the forfeiture
10 provisions of this bill be governed by the applicable provisions of the West Virginia
11 Contraband Forfeiture Act.

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 such
6 systems and assets would have a debilitating impact on security, national economic security, state
7 economic security, national public health or safety, state public health or safety, or any combination
8 of those matters, whether such systems or assets are in operation or are under any state of
9 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 gas
34 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;

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; or

46 (20) A commercial service airport as defined by the Federal Aviation Administration.

47 (c)(1) Any person who willfully and knowingly trespasses or enters property containing a
48 critical infrastructure facility without permission by the owner of the property or lawful occupant
49 thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not
50 less than \$250 nor more than \$1,000, or confined in jail not less than 30 days nor more than one
51 year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy,
52 vandalize, deface, tamper with equipment, or impede or inhibit operations of the critical
53 infrastructure facility, the person is guilty of a misdemeanor and, upon conviction thereof, shall be
54 fined not less than \$100 nor more than \$1,000, or confined in a jail for not more than one year, or
55 both fined and confined.

56 (2) (A) Any person who willfully damages, destroys, vandalizes, defaces, or tampers with
57 equipment in a critical infrastructure facility causing damage in excess of \$2,500 is guilty of a
58 felony and, upon conviction thereof, shall be fined not less than ~~\$1,000~~ \$25,000 nor more than
59 ~~\$5,000~~ \$100,000, or imprisoned in a state correctional facility for a term of not less than one year
60 nor more than five years, or both fined and imprisoned.

61 (B) Any person convicted of a second offense under the provisions of this subdivision is
62 guilty of a felony and, upon conviction thereof, shall be fined not less than \$100,000 nor more than
63 \$500,000, or imprisoned in a state correctional facility for a term of not less than five years nor
64 more than 10 years, or both fined and imprisoned.

65 (3) Any person who conspires with any person to commit the offense of trespass against a
66 critical infrastructure facility in violation of subdivision (1) of subsection (c) of this section and the
67 trespass actually occurs is guilty of a misdemeanor and, upon conviction thereof, shall be fined in
68 an amount of not less than \$2,500 nor more than \$10,000. Any person who conspires with any
69 person to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical
70 infrastructure facility and the damage, destruction, vandalization, defacing or tampering causes
71 damage in excess of \$2,500 is guilty of a felony and, shall, upon conviction thereof, be fined not
72 less than \$5,000 nor more than \$20,000.

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

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

80 (e) The provisions of ~~this section~~ §61-10-34(c)(1) do not apply to: ~~(1) Any~~ any person or
81 organization:

82 (i) (1) Monitoring or attentive to compliance with public or worker safety laws, or, wage and
83 hour requirements;

84 (ii) (2) Picketing at the workplace that is otherwise lawful and arises out of a bona fide labor
85 dispute, including any controversy concerning wages, salaries, hours, working conditions, or
86 benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions,

87 the managing or maintenance of collective bargaining agreements, and the terms to be included in
88 those agreements; or

89 ~~(iii)~~ (3) Engaging in union organizing or recruitment activities, including attempting to reach
90 workers verbally, in writing with pamphlets and investigation of non-union working conditions, or
91 both.

92 ~~(2)~~ (f) The provisions of this section do not apply to:

93 (1) The right to free speech or assembly, including, but not limited to, protesting and
94 picketing; or

95 ~~(3)~~ (2) A contractor who has a contractual relationship with a critical infrastructure facility
96 and the contractor's employees are acting within their scope of employment performing work at a
97 critical infrastructure facility.

98 (g)(1)(A) All items of personal property which are used, have been used, or are intended for
99 use, used in perpetration of theft or damage to infrastructure shall be subject to forfeiture;

100 (B) This includes all conveyances, including aircraft, vehicles or vessels, except that:

101 (i) A conveyance used by any person as a common carrier in the transaction of business as
102 a common carrier may not be forfeited under this section unless it appears that the person
103 owning the conveyance is a consenting party or privy to a violation of this section;

104 (ii) A conveyance may not be forfeited under the provisions of this article if the person
105 owning the conveyance establishes that he or she neither knew, nor had reason to know, that the
106 conveyance was being employed or was likely to be employed in a violation of this section; and

107 (iii) A bona fide security interest or other valid lien in any conveyance may not be
108 forfeited under the provisions of this article, unless the state proves by a preponderance of the
109 evidence that the holder of the security interest or lien either knew, or had reason to know, that the
110 conveyance was being used or was likely to be used in a violation of this chapter.

111 (2) All procedures relating to the seizure and disposition of property subject to forfeiture
112 under the authority of this section shall be governed by the applicable provisions of the West
113 Virginia Contraband Forfeiture Act, §60A-7-701 et seq. of this code.

NOTE: The purpose of this bill is to add the criminal offense of damaging, destroying, or stealing any amount of copper, with felony penalties, providing for forfeiture of items of personal property which are used, have been used, or are intended for use, used in perpetration of theft or damage to infrastructure; and providing that the forfeiture provisions of this bill be governed by the applicable provisions of the West Virginia Contraband Forfeiture Act.

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