

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

House Bill 4724

(BY DELEGATES FOLK, OVERINGTON, ZATEZALO,

MANCHIN, MOORE, SOBONYA, KESSINGER, FOSTER,

SUMMERS, AZINGER AND MCGEEHAN)

[Passed March 12, 2016; in effect ninety days from passage.]

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1 AN ACT to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating
2 to adding a requirement for the likelihood of imminent lawless action of a violent nature
3 that could cause bodily harm to the prerequisites for the crime of intimidation and
4 retaliation.

Be it enacted by the Legislature of West Virginia:

1 That §61-5-27 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

**§61-5-27. Intimidation of and retaliation against public officers and employees, jurors and
witnesses; fraudulent official proceedings and legal processes against public
officials and employees; penalties.**

1 (a) *Definitions.* — As used in this section:

2 (1) "Fraudulent" means not legally issued or sanctioned under the laws of this state or of
3 the United States, including forged, false and materially misstated;

4 (2) "Legal process" means an action, appeal, document instrument or other writing issued,
5 filed or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a
6 judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person,
7 incarcerate a person or direct a person to appear, perform or refrain from performing a specified
8 act. "Legal process" includes, but is not limited to, a complaint, decree, demand, indictment,
9 injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena,
10 summons, warrant or writ;

11 (3) "Official proceeding" means a proceeding involving a legal process or other process of
12 a tribunal of this state or of the United States;

13 (4) "Person" means an individual, group, association, corporation or any other entity;

14 (5) "Public official or employee" means an elected or appointed official or employee, of a
15 state or federal court, commission, department, agency, political subdivision or any governmental
16 instrumentality;

(6) "Recorder" means a clerk or other employee in charge of recording instruments in a court, commission or other tribunal of this state or of the United States; and

(7) "Tribunal" means a court or other judicial or quasi-judicial entity, or an administrative, legislative or executive body, or that of a political subdivision, created or authorized under the constitution or laws of this state or of the United States.

(b) *Intimidation; harassment.* — It is unlawful for a person to use intimidation, physical force, harassment or a fraudulent legal process or official proceeding, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) Impede or obstruct a public official or employee from performing his or her official duties;

(2) Impede or obstruct a juror or witness from performing his or her official duties in an official proceeding;

(3) Influence, delay or prevent the testimony of any person in an official proceeding; or

(4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document or other object from an official proceeding; (B) alter, destroy, mutilate or conceal a record, document or other object impairing its integrity or availability for use in an official proceeding; (C) evade an official proceeding summoning a person to appear as a witness or produce a record, document or other object for an official proceeding; or (D) be absent from an official proceeding to which such person has been summoned.

(c) *Retaliation.* — It is unlawful for a person to cause injury or loss to person or property, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) Retaliate against a public official or employee for the performance or nonperformance of an official duty;

(2) Retaliate against a juror or witness for performing his or her official duties in an official proceeding; or

(3) Retaliate against any other person for attending, testifying or participating in an official proceeding, or for the production of any record, document or other object produced by a person in an official proceeding.

(d) Subsection (b) offense. — A person who is convicted of an offense under subsection (b) is guilty of a misdemeanor and shall be confined in jail for not more than one year or fined not more than \$1,000, or both.

(e) Subsection (c) or subsequent offense. — A person convicted of an offense under subsection (c) or a second offense under subsection (b) is guilty of a felony and, shall be confined in a correctional facility not less than one nor more than ten years or fined not more than \$2,000, or both.

(f) Civil cause of action. — A person who violates this section is liable in a civil action to any person harmed by the violation for injury or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs and other expenses incurred as a result of prosecuting a civil action commenced under this subsection, which is not the exclusive remedy of a person who suffers injury or loss to person or property as a result of a violation of this section.

(g) Civil sanctions. — In addition to the criminal and civil penalties set forth in this section, any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of this section shall be dismissed by the tribunal and the person may be ordered to reimburse the aggravated person for reasonable attorney's fees, court costs and other expenses incurred in defending or dismissing such action.

(1) *Refusal to record.* — A recorder may refuse to record a clearly fraudulent lien or other legal process against a public official or employee or his or her property. The recorder does not have a duty to inspect or investigate whether a lien or other legal process is fraudulent nor is the recorder liable for refusing to record a lien or other legal process that the recorder believes is in violation of this section.

(2) If a fraudulent lien or other legal process against a public official or employee or his or her property is recorded then:

(A) *Request to release lien.* — The public official or employee may send a written request by certified mail to the person who filed the fraudulent lien or legal process, requesting the person to release or dismiss the lien or legal process. If such lien or legal process is not properly released or dismissed within twenty-one days, then it shall be inferred that the person intended to harass the public official or employee in violation of subsection (b) of this section and shall be subject to the criminal penalties in subsection (d) of this section and any other remedies provided in this section; or

(B) *Notice of fraudulent lien.* — A government attorney on behalf of the public official or employee may record a notice of fraudulent lien or legal process with the recorder who accepted the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process and cause it to be removed from the records. No filing fee shall be charged for the filing of the notice.


(h) A person's lack of belief in the jurisdiction or authority of this state or of the United States is no defense to prosecution of a civil or criminal action under this section.

(i)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate public officials or employees.

(2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate right to freely assemble, express opinions or designate group affiliation.

92 (3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate
93 access to a tribunal of this state or prevents a person from instituting or responding to a lawful
94 action.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman, House Committee

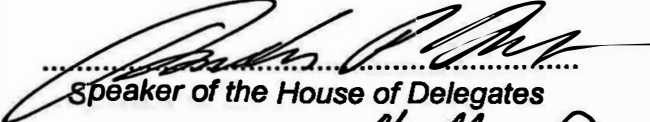

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.


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Clerk of the House of Delegates


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Clerk of the Senate


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Speaker of the House of Delegates


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President of the Senate

The within is approved this the 29th
day of March, 2016.


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Governor

PRESENTED TO THE GOVERNOR

FEB 24 2013

Time 3:44 pm