WEST VIRGINIA CODE CHAPTER 61 ARTICLE 3

WV Legislature

§61-3-1. Burning, etc., of a dwelling or outbuilding; first degree arson; penalty; definitions.

(a) Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any dwelling, whether occupied, unoccupied or vacant, or any outbuilding, whether the property of or herself or of another, shall be guilty of arson in the first degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than two nor more than twenty years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of two years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(b) As used in subsection (a) of this section:

(1) "Dwelling" means any building or structure intended for habitation or lodging, in whole or in part, regularly or occasionally, and shall include, but not be limited to, any house, apartment, hotel, dormitory, hospital, nursing home, jail, prison, mobile home, house trailer, modular home, factory-built home or self-propelled motor home;

(2) "Outbuilding" means any building or structure which adjoins, is part of, belongs to, or is used in connection with a dwelling, and shall include, but not be limited to, any garage, shop, shed, barn or stable.

WV Legislature

§61-3-2. Burning, etc., of other buildings or structures; second degree arson; penalty.

Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any building or structure of any class or character, whether the property of himself or herself or of another, not included or prescribed in the preceding section, shall be guilty of arson in the second degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than ten years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

WV Legislature

§61-3-3. Burning personal property of another of the value of five hundred dollars or more; third degree arson; penalty.

Any person who willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any personal property of any class or character, of the value of not less than $500, and the property of another person, shall be guilty of arson in the third degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than three years. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence.

WV Legislature

§61-3-4. Attempt to commit arson; fourth degree arson; penalty.

(a) Any person who willfully and maliciously attempts to set fire to or burn, or attempts to cause to be burned, or attempts to aid, counsel, procure, persuade, incite, entice or solicit any person to burn, any of the buildings, structures, or personal property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than two years, or fined not to exceed $2,500, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence.

(b) The placing or distributing of any inflammable, explosive or combustible material or substance, or any device in any building, structure or personal property mentioned in the foregoing sections, in an arrangement or preparation with intent to eventually, willfully and maliciously, set fire to or burn, or to cause to be burned, or to aid, counsel, procure, persuade, incite, entice or solicit the setting fire to or burning of any building, structure or personal property mentioned in the foregoing sections shall, for the purposes of this section, constitute an attempt to burn that building, structure or personal property.

WV Legislature

§61-3-5. Burning, or attempting to burn, insured property; penalty.

Any person who willfully and with intent to injure or defraud an insurer sets fire to or burns, or attempts so to do, or causes to be burned, or who aids, counsels, procures, persuades, incites, entices or solicits any person to burn, any building, structure or personal property, of any class or character, whether the property of himself or herself or of another, which shall at the time be insured or which is believed by the person committing an act prohibited by this section to be insured by any person against loss or damage by fire, shall be guilty of a felony and, upon conviction thereof, be sentenced to the penitentiary for a definite term of imprisonment which is not less than one nor more than five years or fined not to exceed $10,000, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

WV Legislature

§61-3-6. Willfully, unlawfully and maliciously setting fire on lands; penalty.

If any person willfully, unlawfully and maliciously sets fire to any woods, fence, grass, straw or other thing capable of spreading fire on lands, he or she shall be guilty of a felony and, upon conviction, shall be sentenced to the penitentiary for a definite term of imprisonment which is not less than one year nor more than five years or fined not to exceed $5,000, or both. He or she shall, moreover, be liable to any person injured thereby, or in consequence thereof, for double the amount of damages sustained by such person. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of one year of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

WV Legislature

§61-3-7. Causing injuries during an arson-related crime; penalties.

(a) Any person who violates the provisions of sections one, two, three, four, five or six of this article, which violation causes bodily injury, but does not result in death, to any person shall be guilty of a felony and, upon conviction thereof, shall be sentenced to the penitentiary for a definite term of imprisonment which is not less than two nor more than ten years, or fined not more than $5,000, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of two years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(b) Any person who violates the provisions of sections one, two, three, four, five or six of this article, which violation causes serious bodily injury which maims, disfigures, or disables any person, but does not result in death, shall be guilty of a felony and, upon conviction thereof, shall be sentenced to the penitentiary for a definite term of imprisonment which is not less than three nor more than fifteen years, or fined not more than $10,000, or both. A person imprisoned pursuant to this section is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

WV Legislature

§61-3-8. Recovery of costs incurred in fighting fires caused by arson.

Any person convicted of any felony enumerated in section one, two, three, four, five or six of this article may be ordered to reimburse any fire department or company for the costs expended to control, extinguish and suppress the arson fire, and all reasonable costs associated therewith, including but not limited to, costs for the personal services rendered by any employees of any fire department or company, and operating costs of equipment and supplies used to control, extinguish or suppress the fire.

WV Legislature

§61-3-9.

Repealed.

Acts, 1935 Reg. Sess., Ch. 105.

WV Legislature

§61-3-10.

Repealed.

Acts, 1935 Reg. Sess., Ch. 105.

WV Legislature

§61-3-11. Burglary; entry of dwelling or outhouse; criminal penalties.

(a) Any person who breaks and enters, or enters without breaking, a dwelling house of another or outbuilding adjoining the dwelling with the intent to commit a violation of the criminal laws of this state is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than 15 years.

(b) The term "dwelling house", as used in subsection (a) of this section, includes, but is not limited to, a mobile home, house trailer, modular home, factory-built home, or self-propelled motor home, used as a dwelling regularly or only from time to time, or any other nonmotorized vehicle primarily designed for human habitation and occupancy and used as a dwelling regularly or only from time to time.

(c) For purposes of this section, a dwelling or adjoining outbuilding is considered to be that of another if the person breaking and entering, or entering without breaking, knows that he or she is prohibited from being there.

WV Legislature

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat, or other vessel; penalties; counts in indictment.

If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, storehouse, warehouse, banking house, or any house or building, other than a dwelling house or outhouse adjoining thereto or occupied therewith, any railroad or traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall, or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one nor more than 10 years. And if any person shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar, or bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than 12 months and be fined not exceeding $100.

An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this section and §61-3-11 of this code.

WV Legislature

§61-3-13. Grand and petit larceny distinguished; penalties.

(a) If a person commits simple larceny of goods or chattels of the value of $1,000 or more, such person is guilty of a felony, designated grand larceny, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than $2,500.

(b) If a person commits simple larceny of goods or chattels of the value of less than $1,000, such person is guilty of a misdemeanor, designated petit larceny, and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined not to exceed $2,500, or both, in the discretion of the court.

WV Legislature

§61-3-14. Larceny of bank notes, checks, writings of value and book accounts; penalty.

If any person steal any bank note, check, or other writing or paper of value, or any book of accounts for or concerning money or goods due to be delivered, he shall be deemed guilty of the larceny thereof, and receive the same punishment, according to the value of the article stolen, that is prescribed for the punishment of larceny of goods or chattels.

WV Legislature

§61-3-15. How value of notes, book accounts and other writings determined.

In a prosecution under the preceding section, the money due on or secured by the writing, paper or book, and remaining unsatisfied, or which in any event might be collected thereon, or the value of the property or money affected thereby, shall be deemed to be the value of the article stolen.

WV Legislature

§61-3-16. Larceny of things savoring of realty.

Things which savor of the realty, and are at the time they are taken part of the freehold, whether they be of the substance or produce thereof, or affixed thereto, shall be deemed goods and chattels, of which larceny may be committed, although there be no interval between the severing and taking away.

WV Legislature

§61-3-17.

Repealed.

Acts, 1994 Reg. Sess., Ch. 108.

WV Legislature

§61-3-18. Receiving or transferring stolen goods.

If any person buys or receives from another person, or aids in concealing, or transfers to a person other than the owner thereof, or possesses any stolen goods or other thing of value, which he or she knows or has reason to believe has been stolen, that person is guilty of the larceny thereof, and may be prosecuted although the principal offender has not been convicted: *Provided*, That possession of stolen goods while acting at the request of law enforcement or in cooperation with law enforcement does not constitute a violation of this section.

WV Legislature

§61-3-19. Bringing into this state, receiving or disposing of property stolen in another state; penalty.

If any person shall bring into this state, or shall receive, convert to his own use, or sell, property of any character, of value, which was stolen in another state, and which he knows or has reason to believe was stolen, he shall be deemed guilty of the larceny thereof in the county in which such property may be found, used, converted or sold, and may be prosecuted for such offense therein, and, upon conviction, shall be punished as provided for the offense of larceny committed within this state.

WV Legislature

§61-3-20. Embezzlement.

If any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, or of any banking institution, or other corporation, or any officer of public trust in this state, or any agent, clerk or servant of any firm or person, or company or association of persons not incorporated, embezzles or fraudulently converts to his own use, bullion, money, bank notes, drafts, security for money, or any effects or property of any other person, which shall have come into his possession, or been placed under his care or management, by virtue of his office, place or employment, he shall be guilty of the larceny thereof. If such guilty person be an officer, agent, clerk or servant of any banking institution, he shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten years. And it shall not be necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank note, draft or security for money which is so taken, converted to his own use or embezzled by him

And whenever any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, shall appropriate or use for his own benefit, or for the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any such county, district, school district or municipal corporation, he shall be held to have embezzled the same and be guilty of the larceny thereof. In the prosecution of any such officer, agent, clerk or servant of this state or of any county, district, school district or municipal corporation charged with appropriation or use for his own benefit or the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any county, district, school district or municipal corporation, it shall not be necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank notes, drafts, security for money or funds appropriated or used for his own benefit or for the benefit of any other person.

WV Legislature

§61-3-20a. Embezzlement by misuse of power of attorney or other fiduciary relationship; penalty.

Any person who holds a fiduciary power of attorney or who has a fiduciary relationship with a person and in so doing wilfully and with intent to defraud embezzles, misappropriates or fraudulently converts for his or her own benefit, or for the benefit of another, the assets or property, real or personal, with which he or she has been entrusted, or misuses or misappropriates funds from the person to whom he or she owes a fiduciary duty or misuses any account, line of credit or credit card of the principal for purposes not contemplated by the terms of the power of attorney instrument or fiduciary relationship, or for purposes not intended by the principal in the execution of the power of attorney or for purposes not intended by the fiduciary relationship, shall be held to have embezzled the same and, upon conviction, shall be deemed guilty of the larceny thereof.

WV Legislature

§61-3-21. Embezzlement by carrier or other person.

If any carrier or other person to whom money or other property which may be the subject of larceny may be delivered to be carried for hire, or if any other person who may be intrusted with such property, embezzle or fraudulently convert to his own use, or secrete with intent to do so, any such property, either in mass or otherwise, before delivery thereof at the place at which, or to the person to whom, they were to be delivered, he shall be deemed guilty of the larceny thereof.

WV Legislature

§61-3-22. Falsifying accounts; penalty.

If any officer, clerk or agent of this state, or of any county, district, school district or municipal corporation thereof, or of any banking institution or incorporated company, or any clerk or agent of any firm or person or association of persons not incorporated, make, alter or omit to make any entry in any book of account of, or in any account kept by such state, county, district, school district, municipal corporation, banking institution, incorporated company, firm or person, or association of persons, or mutilate, destroy or conceal any such account or book of accounts, with intent in so doing to conceal, the true state of any account, or to defraud the state or any county, district, school district, municipal corporation, banking institution, company, firm or person, or with intent to enable or assist any person to obtain money to which he was not entitled, such officer, clerk or agent shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years.

WV Legislature

§61-3-22a. Possession or use of automated sales suppression devices; penalty.

(a) General. -- When used in this article, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) Definitions. --

(1) "Automated sales suppression device" or “zapper" means a software program, carried on a memory stick or removable compact disc, accessed through an Internet link, or accessed through any other means, that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including, but not limited to, transaction data and transaction reports.

(2) "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling or processing retail sales transaction data in whatever manner.

(3) "Phantom-ware" means a hidden, preinstalled or installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual second till or may eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register.

(4) "Transaction data" includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address and identification number of the vendor and the receipt or invoice number of the transaction.

(5) “Transaction report" means a report documenting, but not limited to, the sales taxes collected, media totals and discount voids at an electronic cash register that is printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register that is stored electronically.

(c) It is unlawful to willfully and knowingly sell, purchase, install, transfer or possess in this state any automated sales suppression device or zapper or phantom-ware.

(d) Any person convicted of a violation of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be confined in a correctional institution for not less than one nor more than five years, or fined not less than $10,000 nor more than $100,000, or both confined and fined.

(e) Any person violating subsection (c) of this section is liable for all taxes and penalties due

WV Legislature

the state as the result of the fraudulent use of an automated sales suppression device, zapper or phantom-ware and shall forfeit all profits associated with the sale or use of an automated sales suppression device or phantom-ware.

(f) An automated sales suppression device or phantom-ware and any cash register or device containing such device or software is contraband and, as such, subject to seizure and destruction by any duly authorized law-enforcement agency in the state, including the Criminal Investigation Division of the State Tax Department.

WV Legislature

§61-3-23. Destroying or concealing will; embezzlement by fiduciary; penalty.

If any person fraudulently destroy or conceal any will or codicil, with intent to prevent the probate thereof, he shall be guilty of a felony, and, upon conviction, be confined in the penitentiary not less than one nor more than five years. If any guardian, personal representative, or other fiduciary, shall wilfully and knowingly fail to make and return an inventory of any personal property (of which an inventory is required by law to be made) which may come to his hands as such, or wilfully and knowingly fail or refuse to produce any such property for appraisement in the manner required by law, or wilfully and knowingly conceal or embezzle any such property, he shall be guilty of the larceny thereof; and the failure of any such guardian, personal representative or other fiduciary to account for and pay over or deliver, when directed by the court, as required by law, any money, bullion, bank notes or other property, determined by the proper officer of court to be due and payable, shall be prima facie evidence that such guardian, personal representative or other fiduciary has embezzled the same.

WV Legislature

§61-3-24. Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.

(a)(1) If a person obtains from another by any false pretense, token or representation, with intent to defraud, any money, goods or other property which may be the subject of larceny; or

(2) If a person obtains on credit from another any money, goods or other property which may be the subject of larceny, by representing that there is money due him or her or to become due him or her, and assigns the claim for such money, in writing, to the person from whom he or she obtains such money, goods or other property, and afterwards collects the money due or to become due, without the consent of the assignee, and with the intent to defraud;

(3) Such person is guilty of larceny. If the value of the money, goods or other property is $1,000 or more, such person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined not more than $2,500. If the value of the money, goods or other property is less than $1,000, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than $2,500, or both.

(b) If a person obtains by any false pretense, token or representation, with intent to defraud, the signature of another to a writing, the false making of which would be forgery, the person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years, or, in the discretion of the court, be confined in jail not more than one year and fined not more than $2,500.

(c)(1) If a person removes any of his or her property out of any county with the intent to prevent the same from being levied upon by any execution; or

(2) If a person secretes, assigns or conveys, or otherwise disposes of any of his or her property with the intent to defraud any creditor or to prevent the property from being made liable for payment of debts; or

(3) If a person receives the property of another with the intent to defraud any creditor or to prevent the property from being made liable for the payment of debts;

(4) The person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $2,500 and be confined in jail not more than one year.

(d) If a person, firm or corporation obtains labor, services or any other such thing of value from another by any false pretense, token or representation, with intent to defraud, the person, firm or corporation is guilty of theft of services. If the value of the labor, services or any other such thing of value is $1,000 or more, the person, firm or corporation is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than

WV Legislature

one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined not more than $2,500. If the value of the labor, services or any other such thing of value is less than $1,000, the person, firm or corporation is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than $2,500, or both, in the discretion of the court.

(e) Theft of services includes the obtaining of a stop payment order on a check, draft or order for payment of money owed for services performed in good faith and in substantial compliance with a written or oral contract for services, with the fraudulent intent to permanently deprive the provider of such labor, services or other such thing of value of the payment represented by such check, draft or order. Notwithstanding the penalties set forth elsewhere in this section, any person, firm or corporation violating the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two times the face value of the check, draft or order.

(f) Prosecution for an offense under this section does not bar or otherwise affect adversely any right or liability to damages, forfeiture or other civil remedy arising from any or all elements of the criminal offense.

WV Legislature

§61-3-24a. Attempted or fraudulent use, forgery, traffic of credit cards; possession and transfer of credit cards and credit card making equipment; false or fraudulent use of telephonic services; penalties.

(a) As used in this section:

(1) “Counterfeit credit card” means the following:

(A) Any credit card or a representation, depiction, facsimile, aspect or component thereof that is counterfeit, fictitious, altered, forged, lost, stolen, incomplete or obtained in violation of this section, or as part of a scheme to defraud; or

(B) Any invoice, voucher, sales draft or other reflection or manifestation of such a card.

(2) “Credit card making equipment” means any equipment, machine, plate mechanism, impression or any other contrivance which can be used to produce a credit card, a counterfeit credit card, or any aspect or component of either.

(3) “Traffic” means:

(A) To sell, transfer, distribute, dispense or otherwise dispose of any property; or

(B) To buy, receive, possess, obtain control of or use property with the intent to sell, transfer, distribute, dispense or otherwise dispose of such property.

(4) “Notice” means either information given in person or information given in writing to the person to whom the number, card or device was issued. The sending of a notice in writing by registered or certified mail in the United States mail, duly stamped and addressed to such person at his last known address, is prima facie evidence that such notice was duly received. A cardholder's knowledge of the revocation of his or her credit card may be reasonably inferred by evidence that notice of such revocation was mailed to him or her, at least four days prior to his or her use or attempted use of the credit card, by first class mail at his or her last known address.

(b)(1) It is unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious or counterfeit credit card, telephone number, credit number or other credit device, or by the use of any credit card, telephone number, credit number or other credit device of another beyond or without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number or other credit device in any case where such card, number or device has been revoked and notice of such revocation has been given to the person to whom issued.

(2) It is unlawful for any person knowingly to obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over

WV Legislature

telephone or telegraph facilities with intent to avoid payment of charges therefor.

(3) Any person who violates any provision of this subsection, if the credit, goods, property, service or transmission is of the value of $1,000 or more, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than ten years or, in the discretion of the court, be confined in jail not more than one year and be fined not more than $2,500; and if of less value, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than $2,500, or both.

(c) A person is guilty of forgery of a credit card when he or she makes, manufactures, presents, embosses, alters or utters a credit card with intent to defraud any person, issuer of credit or organization providing money, goods, services, or anything else of value in exchange for payment by credit card and he or she is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and fined not less than fifty nor more than $2,500.

(d) Any person who traffics in or attempts to traffic in ten or more counterfeit credit cards or credit card account numbers of another in any six-month period is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and fined not less than $50 nor more than $2,500.

(e) A person who receives, possesses, transfers, buys, sells, controls or has custody of any credit card making equipment with intent that the equipment be used in the production of counterfeit credit cards is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and fined not less than $1,000 nor more than $5,000.

(f) A person who knowingly receives, possesses, acquires, controls or has custody of a counterfeit credit card is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not exceeding six months or fined not more than $500, or both.

WV Legislature

§61-3-24b. Making, selling, possessing, transferring or advertising for sale a device or plans for a device designed to obtain or use telephone or telegraph service or facilities by false or fraudulent means; penalty.

It shall be unlawful for any person knowingly to make, sell, offer or advertise for sale, possess, or give or otherwise transfer to another any instrument, apparatus, equipment, or device or plans or instructions for making or assembling any instrument, apparatus, equipment, or device which has been designed, adapted, used, or employed with the intent or for the purpose of (1) obtaining telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities without the payment of charges therefor, or (2) concealing or assisting another to conceal from any supplier of telephone or telegraph service or from any person charged with the responsibility of enforcing this section, the existence or place of origin or of destination of any message, signal, or other communication by telephone or telegraph, or over telephone or telegraph facilities.

Any person who violates any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding twelve months, or by fine not exceeding $500, or by both such fine and imprisonment at the discretion of the court. Any such instrument, apparatus, equipment, or device, or plans or instructions therefor, may be seized by court order or under the warrant of a justice; and, upon the conviction of any person owning same or having any interest therein for a violation of any provision of this section, which conviction has become final, such instrument, apparatus, equipment, device, plans or instructions shall be destroyed as contraband by the sheriff of the county in which such person was convicted.

WV Legislature

§61-3-24c. Intercepting or monitoring customer telephone calls; penalty.

(a) It is unlawful for any person, firm or corporation to intercept or monitor, or to attempt to intercept or monitor, the transmission of a message, signal or other communication by telephone between an employee or similar agent of such person, firm or corporation and a customer of such person, firm or corporation unless such person, firm or corporation does all of the following:

(1) Notifies each employee or agent subject to interception or monitoring that their telephone messages are subject to interception or monitoring.

(2) Provides telephone instruments for employee's personal use which are not subject to intercepting or monitoring.

Any person, firm or corporation violating the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $50 nor more than $200, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(b) Nothing contained in this section shall require marking of telephone instruments nor require consent to interception or monitoring, in the case of a wiretap or other form of monitoring which is engaged in for the sole purpose of law enforcement and which is lawful in all other respects.

(c) The Public Service Commission shall not issue any rule or regulation requiring or suggesting the monitoring of any message, signal or other communication by telephone to or from any telephone utility customer so as to obtain the content or substance of any such communication.

WV Legislature

§61-3-24d. Fraudulent schemes; cumulation of amounts where common scheme exists; penalties.

(a) Any person who willfully deprives another of any money, goods, property or services by means of fraudulent pretenses, representations or promises shall be guilty of the larceny thereof.

(b) In determining the value of the money, goods, property or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where such money, goods, property or services were fraudulently obtained as part of a common scheme or plan.

(c) A violation of law may be prosecuted under this section notwithstanding any other provision of this code.

WV Legislature

§61-3-24e. Omission to subscribe for workers' compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

(1) Failure to subscribe:

(A) Responsible person. Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a person who is responsible for and who is required by specific assignment, duty or legal duty, which is either expressed or inherent in laws which require the employer's principals to be informed and to know the facts and laws affecting the business organization and to make internal policy and decisions which ensure that the individual and organization comply with the general laws and provisions of chapter twenty-three of this code, knowingly and willfully fails to subscribe for and maintain workers' compensation insurance shall be guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than ten years, or in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than $2,500.

(B) Any corporation, association or partnership who, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to subscribe for and maintain workers' compensation insurance shall be guilty of a felony and, upon conviction, shall be fined not less than $2,500 nor more than $10,000.

(2) Failure to pay:

(A) Any person who individually or as owner, partner, president, other officer or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person as defined in this section, knowingly and willfully fails to make premium tax payments to the Workers' Compensation Fund or premiums to a private carrier as required by chapter twenty-three of this code, shall be guilty of the larceny of the premium owed and, if the amount is $1,000 or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than $2,500. If the amount is less than $1,000, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed $2,500, or both, in the discretion of the court.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to make premium tax payments to the Workers' Compensation Fund or premiums to a private carrier as required by chapter twenty-three of this code shall be guilty of the larceny of the premium owed, and, if the amount is $1,000 or more, such corporation, association, company or partnership shall be guilty of a felony and, upon conviction thereof, shall be fined not less than $2,500 nor

www.Legislature

more than $10,000. If the amount is less than $1,000, such corporation, association, company or partnership shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $2,500.

(C) Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person, as defined in this section, knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the payment of workers' compensation premium taxes to the Workers' Compensation Fund, or premiums to a private carrier as required by chapter twenty-three of this code, shall be guilty of the larceny of the premium owed and, if the amount is $1,000 or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than $2,500. If the amount is less than $1,000, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed $2,500, or both, in the discretion of the court.

(D) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the payment of workers' compensation premium taxes to the Workers' Compensation Fund, or premiums to a private carrier as required by chapter twenty-three of this code shall be guilty of the larceny of the premium owed, and, if the amount is $1,000 or more, such corporation, association, company or partnership shall be guilty of a felony and, upon conviction thereof, shall be fined not less than $2,500 nor more than $10,000. If the amount is less than $1,000, such corporation, association, company or partnership shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $2,500.

(3) Failure to file premium tax reports:

(A) Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person as defined in this section, knowingly and willfully fails to file a premium tax report with the Workers' Compensation Fund or a premium report to a private carrier as required by chapter twenty-three of this code, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years, or in the discretion of the court, be confined in a county or regional jail for a term not to exceed one year and shall be fined not more than $2,500.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file a premium tax report with the Workers' Compensation Fund or a premium report to a private carrier as required

WV Legislature

by chapter twenty-three of this code, shall be guilty of a felony and, upon conviction thereof, shall be fined not less than $2,500 nor more than $10,000.

(4) Failure to file other reports:

(A) Any person, individually or as owner, partner, president or other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association who, as a responsible person as defined in this section, knowingly and willfully fails to file any report, other than a premium tax report, required by such chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed $2,500, or both, in the discretion of the court.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file any report, other than a premium tax report, with the Workers' Compensation Fund or Insurance Commissioner as required by chapter twenty-three of this code, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $2,500.

(5) False testimony or statements:

Any person, individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association who, as a responsible person as defined in this section, knowingly and willfully makes a false report or statement under oath, affidavit, certification or by any other means respecting any information required to be provided under chapter twenty-three of this code shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than $1,000 nor more than $10,000, or both, in the discretion of the court. In addition to any other penalty imposed, the court shall order any defendant convicted under this section to make full restitution of all moneys paid by or due to the Workers' Compensation Fund, Insurance Commissioner or private carrier as the result of a violation of this section. The restitution ordered shall constitute a judgment against the defendant and in favor of the State of West Virginia Workers' Compensation Commission, Insurance Commissioner or private carrier.

(6) Asset forfeiture:

(A) The court, in imposing sentence on a person or entity convicted of an offense under this section, shall order the person or entity to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission, Insurance Commissioner or private carrier of the offense. Any person or entity convicted under this section shall pay the costs of asset forfeiture.

(B) For purposes of subdivision (A) of this subsection, the term "payment of the costs of asset

WV Legislature

forfeiture" means:

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention, forfeiture or of any other necessary expenses incident to the seizure, detention, forfeiture, or disposal of such property, including payment for:

(I) Contract services;

(II) The employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

(III) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph;

(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the Workers' Compensation Fund to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in state real estate law as necessary;

(iii) Payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

(7) Venue:

Venue for prosecution of any violation of this section shall be either the county in which the defendant's principal business operations are located or in Kanawha County where the Workers' Compensation Fund is located.

WV Legislature

§61-3-24f. Wrongfully seeking workers' compensation; false testimony or statements; penalties; venue.

(1) Any person who shall knowingly and with fraudulent intent secure or attempt to secure compensation from the Workers' Compensation Fund, a private carrier or from a self-insured employer:

(A) That is larger in amount than that to which he or she is entitled; or

(B) That is longer in term than that to which he or she is entitled; or

(C) To which he or she is not entitled, shall be guilty of a larceny and, if the amount is $1,000 or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than $2,500. If the amount is less than $1,000, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed $2,500, or both, in the discretion of the court.

(2) Any person who shall knowingly and willfully make a false report or statement under oath, affidavit, certification or by any other means respecting any information required to be provided under chapter twenty-three of this code shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than $1,000 nor more than $10,000, or both, in the discretion of the court.

(3) In addition to any other penalty imposed, the court shall order any person convicted under this section to make full restitution of all moneys paid by the Workers' Compensation Fund, private carrier or self-insured employer as the result of a violation of this section. The restitution ordered shall constitute a judgment against the defendant and in favor of the State of West Virginia Workers' Compensation Commission, private carrier or self-insured employer.

(4) If the person so convicted is receiving compensation from such fund, private carrier or employer, he or she shall, from and after such conviction, cease to receive such compensation as a result of any alleged injury or disease.

(5) Venue for prosecution of any violation of this section shall either be the county in which the claimant resides, the county in which the claimant is employed or working, or in Kanawha County where the Workers' Compensation Fund is located.

WVLegislature

§61-3-24g. Workers' compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; notice; prohibition against providing future services; penalties; asset forfeiture; venue.

(1) Any person who knowingly and willfully executes, or attempts to execute, a scheme or artifice:

(A) To defraud the Workers' Compensation Fund, private carrier or a self-insured employer in connection with the delivery of or payment for workers' compensation health care benefits, items or services;

(B) To obtain, by means of false or fraudulent pretenses, representations, or promises any of the money or property owned by or under the custody or control of the Workers' Compensation Fund, private carrier or a self-insured employer in connection with the delivery of or payment for workers' compensation health care benefits, items or services; or

(C) To make any charge or charges against any injured employee or any other person, firm or corporation which would result in a total charge for the treatment or service rendered in excess of the maximum amount set forth in the Workers' Compensation Commission's schedule of maximum reasonable amounts to be paid for the treatment or services issued pursuant to subsection (a), section three article four, chapter twenty-three of this code is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than $2,500.

(2) Any person who, in any matter involving a health care program related to workers' compensation insurance, knowingly and willfully:

(A) Falsifies, conceals or covers up by any trick, scheme or device a material fact; or

(B) Makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than $1,000 nor more than $10,000, or both, in the discretion of the court.

(3) Any person who willfully embezzles, steals or otherwise unlawfully converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property or other assets of a health care program related to the provision of workers' compensation insurance, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than $10,000, or both, in the discretion of the court.

WV Legislature

(4) Any health care provider who fails, in violation of subsection (5) of this section to post a notice, in the form required by the Workers' Compensation Commission, in the provider's public waiting area that the provider cannot accept any patient whose treatment or other services or supplies would ordinarily be paid for from the Workers' Compensation Fund, private carrier or by a self-insured employer unless the patient consents, in writing, prior to the provision of the treatment or other services or supplies, to make payment for that treatment or other services or supplies himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be fined $1,000.

(5) Any person convicted under the provisions of this section shall, after such conviction, be barred from providing future services or supplies to injured employees for the purposes of Workers' Compensation and shall cease to receive payment for services or supplies. In addition to any other penalty imposed, the court shall order any defendant convicted under this section to make full restitution of all moneys paid by or due to the Workers' Compensation Fund, private carrier or self-insured employer as the result of a violation of this section. The restitution ordered shall constitute a judgment against the defendant and in favor of the State of West Virginia Workers' Compensation Commission, Insurance Commissioner, private carrier or self-insured employer.

(6)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense. Any person convicted under this section shall pay the costs of asset forfeiture.

(B) For purposes of subdivision (A) of this subsection, the term "payment of the costs of asset forfeiture" means:

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention or forfeiture, or of any other necessary expenses incident to the seizure, detention, forfeiture or disposal of the property, including payment for:

(I) Contract services;

(II) The employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of the properties in an effort to maximize the return from the properties; and

(III) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph;

(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the Workers' Compensation Fund to determine the validity of the lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in state real estate law as necessary;

WV Legislature

(iii) Payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

(7) Venue for prosecution of any violation of this section shall be either the county in which the defendant's principal business operations are located or in Kanawha County where the Workers' Compensation Fund is located.

WV Legislature

§61-3-24h. Providing false documentation to workers' compensation, to the Insurance Commissioner or a private carrier of workers' compensation insurance; altering documents or certificates from workers' compensation; penalties; venue.

(1) Any person, firm, partnership, company, corporation association or medical provider who submits false documentation to workers' compensation, the Insurance Commissioner or a private carrier of workers' compensation insurance with the intent to defraud the Workers' Compensation Commission, the Insurance Commissioner or a private carrier of workers' compensation insurance shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined an amount not to exceed $2,500, or both, in the discretion of the court.

(2) Any person, firm, partnership, company, corporation, association or medical provider who alters, falsifies, defaces, changes or modifies any certificate or other document which would indicate good standing with the Workers' Compensation Commission, Insurance Commissioner or private carrier concerning workers' compensation insurance coverage or endorsement by workers' compensation for medical services shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined an amount not to exceed $2,500, or both, in the discretion of the court.

(3) Venue for prosecution of any violation of this section shall be either the county in which the claimant resides, a defendant's principal business operations are located, or in Kanawha County where the Workers' Compensation Fund is located.

WV Legislature

§61-3-25. Casting away, destroying or interfering with floating craft or material; penalty.

If any person wilfully cast away or otherwise destroy any vessel within any county with intent to injure or defraud any owner thereof, or any owner of any property on board the same, or insurer of such a vessel or property, or any part thereof, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary of this state not less than one nor more than five years; or, if any person take, carry away, remove, injure, destroy, break, cut, detach, untie, loosen, impair, weaken, or otherwise interfere with any rope, line, fastening, connecting or other appliance used to tie, moor, attach or fasten to a bank of any stream, any floating craft, lumber, timber or material, the property of another, with intent to injure, defraud or damage such other person, or to cause such floating craft, lumber, timber or material to become adrift, or to float away, without the consent of the owner thereof, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary of this state not less than one nor more than five years.

WV Legislature

§61-3-26. Interference with or destruction of buoys, signal lights or other aids to navigation; penalty.

If any person or persons shall wilfully or maliciously interfere with, injure or destroy any buoy, lamp, lantern, signal light or other aid to navigation erected or maintained by the government of this state, or of the United States, in this state, every person so offending shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine not exceeding $500, or by imprisonment in the jail of the county not exceeding six months, or both, according to the aggravation of the offense, in the discretion of the court.

WV Legislature

§61-3-27. Malicious killing of animals by poison or otherwise; penalty.

If a person maliciously administers poison to, or exposes poison with the intent that it should be taken by, any horse, cow or other animal of another person, or if any person maliciously maims, kills, or causes the death of any horse, cow or other animal of another person, of the value of $100 or more, the person is guilty of a felony, and, upon conviction, shall be imprisoned in the penitentiary not less than one year nor more than ten years; and, if the horse, cow or other animal is of less value than $100, the person is guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than three months and fined not more than $500: Provided, That this section shall not be construed to include dogs.

WV Legislature

§61-3-28. Offenses against railroad property and persons on railroad property; definitions.

(a) As used in this section:

(1) "Bodily injury" means substantial physical pain, illness or any impairment of physical injury.

(2) "Railroad" means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and

(ii) High-speed ground transportation systems that connect metropolitan areas but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

(3) "Railroad carrier" means a person providing railroad transportation; railroad carrier including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier including a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device. "Railroad property" does not include administrative buildings, administrative offices, or administrative office equipment;

(4) "Right-of-way" means the track or roadbed owned, leased, or operated by a railroad carrier which is located on either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs;

(5) "Yard" means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains, and where railroad cars, locomotives and other rolling stock are kept when not in use or when awaiting repairs.

(b) Whoever willfully damages or attempts to damage railroad property or willfully endangers or attempts to endanger the safety of another, by:

(1) Taking, removing, altering, or otherwise vandalizing a railroad sign, placard or marker;

(2) Throwing or dropping an object capable of causing significant damage to railroad property at or on a locomotive, railroad car or train;

(3) Shooting a firearm or other dangerous weapon at a locomotive, railroad car or train;

(4) Removing appurtenances from, damaging, or otherwise impairing the operation of any

WV Legislature

railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, on a railroad owned, leased, or operated by any railroad carrier, and without consent of the railroad carrier involved;

(5) Interfering or tampering with, or obstructing in any way, or threatening to interfere with, tamper with or obstruct in any way any railcar or locomotive, switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier without consent of the railroad carrier involved; or

(6) Taking, stealing, removing, changing, adding to, altering, or in any manner interfering with any part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier in this state without consent of the railroad carrier is guilty of a felony.

If railroad property damage does not exceed $1,000 and no bodily injury occurs to another as a result of any of the aforesaid acts, upon conviction thereof, the person shall be fined not less than $500 nor more than $5,000, confined in a regional jail for not more than one year, or both. If bodily injury occurs to another not acting with or in connection with the perpetrator as a result of any of the aforesaid acts or if railroad property damage exceeds $1,000, upon conviction thereof, the person shall be fined not less $1,000 nor more than $10,000, committed to the custody of the Commission of Corrections for not less than one nor more than ten years, or both.

(d) The provisions of this section do not apply to any person employed by a railroad who is performing the duties assigned by the railroad or who is otherwise performing within the scope of his or her employment.

WV Legislature

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

(a) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,000, or confined in jail not more than one year, or both fined and confined.

(b) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby creates a substantial risk of serious bodily injury to another or results in the interruption of service to the public is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in a state correctional facility not less than one nor more than three years, or both fined and imprisoned.

(c) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby causes serious bodily injury to another is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $50,000, or imprisoned in a state correctional facility not less than one nor more than five years, or both fined and imprisoned.

(d) Any person who knowingly and willfully damages or destroys any commercial or industrial real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating, storing or collecting electricity, natural gas, oil, coal, timber, timber processing, water, wastewater, stormwater, telecommunications or cable service and thereby hinders, impairs or disrupts, directly or indirectly, the normal operation of any equipment, device, system or service put in place, in whole or in part, to protect, promote or facilitate the health or safety of any person is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(e) For purposes of restitution under article eleven-a of this article, a railroad company, public utility, business, or owner of property that is damaged, destroyed or disrupted may be

deemed a victim and entitled to restitution, should the court so order, from any person convicted of an offense under this section.

(f) Nothing in this section limits or restricts the ability of an entity referred to in subsection (a), (b), (c) or (d) of this section or a property owner or other person who has been damaged or injured as a result of a violation of this section from seeking recovery for damages arising from violation of this section.

WV Legislature

§61-3-30. Removal, injury to or destruction of property, monuments designating land boundaries and of certain no trespassing signs; penalties.

(a) If any person unlawfully, but not feloniously, takes and carries away, or destroys, injures or defaces any property, real or personal, of another, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500, or confined in the county or regional jail not more than one year, or both fined and imprisoned.

(b) Any person who unlawfully, willfully and intentionally destroys, injures or defaces the real or personal property of one or more other persons or entities during the same act, series of acts or course of conduct causing a loss in the value of the property in an amount of $2,500 or more, is guilty of the felony offense of destruction of property and, upon conviction thereof, shall be fined not more than $2,500 or imprisoned in the state correctional facility for not less than one year nor more than ten years, or in the discretion of the court, confined in the county or regional jail not more than one year, or both fined and imprisoned.

(c) If any person breaks down, destroys, injures, defaces or removes any monument erected for the purpose of designating the boundaries of a municipality, tract or lot of land, or any tree marked for that purpose, or any sign or notice upon private property designating no trespassing upon the property, except signs or notices posted in accordance with the provisions and purposes of sections seven, eight and ten, article two, chapter twenty of this code, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $20 nor more than $200, or confined in the county or regional jail not less than one nor more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction of all offenses arising under the provisions of this section. The provisions of this paragraph do not apply to the owner, or his or her agent, of the lands on which such signs or notices are posted.

WV Legislature

§61-3-31. Damage to or destruction of property by bailee for hire or loan; penalty; damages recoverable in civil action.

If any bailee for hire or loan of any property shall wilfully, or with gross negligence, damage or destroy the property of any person, while the same is in the custody or possession of such bailee, he shall be deemed guilty of a misdemeanor, and, upon conviction shall be fined not exceeding $100, or be imprisoned in the county jail for a term not exceeding thirty days, in the discretion of the court, and shall be liable to the owner or owners of such property for the value thereof, or the injury done to the same, in a civil action.

WV Legislature

§61-3-32. Removal out of county of property securing claim; penalties; fraudulent disposition of personal property in possession by virtue of lease; notice to return; failure to return; penalty; right to immediate possession.

(a) Any debtor under any security instrument conveying personal property, who retains possession of such personal property, and who, without the consent of the owner of the claim secured by such security instrument, and with intent to defraud, removes or causes to be removed any of the property securing such claim out of the county where it is situated at the time it became security for such claim or out of a county to which it was removed by virtue of a former consent of the owner of the claim under this section, or, with intent to defraud, secretes or sells the same, or converts the same to his own use, shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than $500, or imprisoned not more than six months, or both, in the discretion of the court.

(b) Any person in possession or control of any personal property by virtue of or subject to a written lease who, with intent to defraud and without written consent of the owner, disposes of such property by sale or transfer, or, after receiving a written notice to return the property or otherwise make the property available to the lessor, secretes or converts such property to his own use and in so doing places the property in a location other than the locations described in the written lease, or removes or causes to be removed such property from the state shall be deemed guilty of the larceny of such property.

In any prosecution under the provisions of this subsection, written notice may be mailed by certified mail, addressed to the consumer at the address of the consumer stated in the lease, and served on the consumer within ten days of the expiration of the lease, which notice shall state that the lease has expired and that consumer has ten days from receipt of such notice to return the leased property. Proof that the consumer failed to return the property within ten days of receiving such notice shall in any prosecution under this subsection constitute prima facie evidence that the consumer intended to defraud the owner.

Whenever the consumer is a resident of the county in which the lease was contracted, the dealer, after written notice to the consumer within ten days after the expiration of the lease, has the right to immediate possession of the leased property, without formal process to secure return and possession of the leased property, if this can be done without breach of the peace. The dealer is not liable to the consumer for any damages for any action taken that is reasonable, necessary and incidental to the reclaiming or taking possession of the leased property.

WV Legislature

§61-3-33. Entry upon inclosed lands; penalty; liability for damages.

If any person shall, without the consent of the owner or occupier thereof, enter upon the inclosed lands of another and do any damage, or shall, without such consent, pull down in whole or in part, or injure, any fence of another, or without permission open and leave open the gate or drawbar of another, or enter upon the inclosed lands of another after being forbidden so to do, or enter thereon and curse, or insult, or annoy, the owner thereof or any person rightfully there, he shall be guilty of a misdemeanor, and, upon conviction, be fined not less than five nor more than $100; and, in default of the payment of the fine, the offender may, in the discretion of the judge or justice, be committed to jail for not less than five days. He shall, moreover, be liable to the party injured for the damages sustained by such injury; and it shall be no defense to any prosecution or suit under this section, that such fence was not a lawful fence.

WV Legislature

§61-3-34. Taking or injuring garden or field crops; penalties.

If a person enters the orchard, field, garden or market garden of another person, without the consent of the owner or occupier thereof, and does any damage to the fruit, vegetables, grain or grass growing or being thereon, or takes, carries away, injures or destroys any of the grain, fruit, grass or vegetables growing or being thereon, the person is guilty of a misdemeanor, and, upon conviction, shall be fined not more than $500, or confined in jail not exceeding six months, or both. If a person commits any of the acts mentioned herein, and if it is charged in the indictment or information and proved that the property injured or destroyed, or taken or carried away, is of a greater value than $1,000, the person is guilty of a felony, and, upon conviction, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and fined not less than fifty nor more than $2,500.

WV Legislature

§61-3-35. Digging cultivated ginseng; penalty.

(a) It shall be unlawful for any person to dig cultivated ginseng or prospect for the same, on the lands of another without written consent of the owner or owners thereof first obtained. The property must be properly posted with “No Trespassing” signs, “Private Property” signs, or other signs that explain to a person to stay off the property. The signs must be of reasonable size to be read by an average person and must be posted at reasonable intervals of at least two hundred feet around the property.

(b) Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000, and, for each subsequent offense, shall be fined not less than $1,000.

WV Legislature

§61-3-36. Anchoring or beaching shanty boats on lands of another; penalties.

If any person, being the owner or occupier of any shanty boat, or boat of like kind, who anchors, ties or beaches such boat upon the real estate of another for a longer period than twelve hours, except in case of distress, without the permission of the owner or agent of the owner of such real estate, upon which such boat is anchored, tied or beached, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than $50, or confined in the county jail not more than thirty days, in the discretion of the court. And each twelve hours that such owner or occupier, after having been notified to remove, allows such boat to remain at such place, or anchored, tied or beached upon the premises of such owner, shall be treated as a separate offense. And any such person having been notified to remove such boat, who shall, within thirty days thereafter, gain anchor, tie or beach any boat upon the real estate of such owner, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding $50 and imprisoned in the county jail not exceeding thirty days. Any justice of the peace in any county of the state where such offense or offenses shall be committed shall have jurisdiction thereof.

WV Legislature

§61-3-37. False statement as to financial condition of person, firm or corporation; penalty.

Any person who shall knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself or any other person, firm or corporation, in whom or in which he is interested, or for whom or for which he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or indorsement of a bill of exchange, or promissory note, for the benefit either of himself or of such person, firm or corporation; or who, knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself or such person, firm or corporation in which he is interested, or for whom he is acting, procures, upon the faith thereof, for the benefit either of himself or of such person, firm or corporation, either or any of the things of benefit mentioned herein; or who, knowing that a statement in writing has been made, respecting the financial condition or means or ability to pay of himself or such person, firm or corporation in which he is interested, or for whom he is acting, represents on a later day, either orally or in writing, that such statement theretofore made, if then again made on such day, would be then true, when in fact such statement, if then made, would be false, and procures upon the faith thereof, for the benefit either of himself or of such other person, firm or corporation, either or any of the things of benefit mentioned herein, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by confinement in jail for not more than one year, or by a fine of not more than $1,000, or both fine and imprisonment, in the discretion of the court.

WV Legislature

§61-3-38. Publication of false advertisements; penalty.

Any person, firm, corporation or association, or their agents or employees, who, with intent to sell, or in anywise dispose of, merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet or letter, or over any radio station, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue and deceptive, shall be guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine of not less than $10 nor more than $100, and such violation, by an agent or employee, shall be deemed an offense as well by the principal or employer, and they may be indicted for the same, either jointly or severally.

WV Legislature

§61-3-39. Obtaining property in return for worthless check; penalty.

It is unlawful for any person, firm or corporation to obtain any money, services, goods or other property or thing of value by means of a check, draft or order for the payment of money or its equivalent upon any bank or other depository, knowing at the time of the making, drawing, issuing, uttering or delivering of the check, draft or order that there is not sufficient funds on deposit in or credit with such bank or other depository with which to pay the same upon presentation. The making, drawing, issuing, uttering or delivery of any such check, draft or order, for or on behalf of any corporation, or its name, by any officer or agent of such corporation, shall subject such officer or agent to the penalties of this section to the same extent as though such check, draft or order was his own personal act, when such agent or officer knows that such corporation does not have sufficient funds on deposit in or credit with such bank or depository from which such check, draft or order can legally be paid upon presentment.

This section shall not apply to any such check, draft or order when the payee or holder knows or has been expressly notified prior to the acceptance of same or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment as aforesaid, nor shall this section apply to any postdated check, draft or order.

No prosecution shall be confined to the provisions of this section by virtue of the fact that worthless checks, drafts or orders may be employed in the commission of some other criminal act.

A person who violates the provisions of this section, if the amount of the check, draft or order is less than $500, is guilty of a misdemeanor, and, upon conviction thereof, the person shall be fined not more than $200, or confined in jail not more than six months, or both. A person who violates the provisions of this section, if the amount of the check, draft or order is $500 or more, is guilty of a felony, and, upon conviction thereof, the person shall be fined not more than $500, or imprisoned in the penitentiary not less than one year nor more than ten years, or both.

www.legislature.

§61-3-39a. Making, issuing, etc., worthless checks on a preexisting debt; penalty.

(a) It is unlawful for any person, firm or corporation to make, draw, issue, utter or deliver any check, draft or order for the payment of money or its equivalent on a preexisting debt upon any bank or other depository, knowing or having reason to know there is not sufficient funds on deposit in or credit with the bank or other depository with which to pay the check, draft or order upon presentation. The making, drawing, issuing, uttering or delivering of any check, draft or order on a preexisting debt, for or on behalf of any corporation, or its name, by any officer or agent of the corporation, shall subject the officer or agent to the penalty of this section to the same extent as though the check, draft or order was his or her own personal act.

(b) This section shall not apply to any check, draft or order when the payee or holder knows or has been expressly notified prior to the acceptance of same or has reason to believe that the drawer did not have on deposit or to his or her credit with the drawee sufficient funds to insure payment as aforesaid, nor shall this section apply to any postdated check, draft or order. This section shall not apply when the insufficiency of funds or credit is caused by any adjustment to the drawer's account by the bank or other depository without notice to the drawer or is caused by the dishonoring of any check, draft or order deposited in the account unless there is knowledge or reason to believe that the check, draft or order would be dishonored.

(c) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200; and upon a third or subsequent conviction thereof, shall be fined not more than $200, or confined in the county or regional jail not more than ten days, or both.

WV Legislature

§61-3-39b. Payment as defense.

Payment of a dishonored check, draft or order, made to the magistrate clerk within ten days after the notice mailed to the defendant pursuant to section thirty-nine-g of this article, constitutes a complete defense or ground for dismissal of charges brought under section thirty-nine or section thirty-nine-a of this article.

WV Legislature

§61-3-39c. Reason for dishonor; duty of drawee.

It shall be the duty of the drawee of any check, draft or order, before refusing to pay the same to the holder thereof upon presentation, to cause to be written, printed or stamped in plain language thereon or attached thereto, the reason for drawee's dishonor or refusal to pay same. In all prosecutions under section thirty-nine or thirty-nine-a of this article, the introduction in evidence of any unpaid and dishonored check, draft or other written order, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid:

(a) Shall be prima facie evidence of the making or uttering of said check, draft or other written order, and the due presentation to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reasons written, stamped or attached by the drawee on such dishonored checks, drafts or orders; and

(b) Shall be prima facie evidence, as against the maker or drawer thereof, of the withdrawing from deposit with the drawee named in the check, draft or other written order, of the funds on deposit with such drawee necessary to insure payment of said check, draft or other written order upon presentation within a reasonable time after negotiation; and

(c) Shall be prima facie evidence of the drawing, making, uttering or delivering of a check, draft or written order with the knowledge of insufficient funds in or credit with such drawee.

WV Legislature

§61-3-39d. Prima facie evidence of knowledge; identity; penalty for providing false information.

(a) In any prosecution under section thirty-nine of this article, the making, drawing, uttering or delivery of a check, draft or order, the payment of which is refused by the drawee because of lack of funds or credit, shall be prima facie evidence that the drawer has knowledge at the time of making, drawing, issuing, uttering or delivering such check, draft or order that there is not sufficient funds or credit to pay the same, unless the check, draft or order is paid along with any charges or costs authorized by this article.

(b) In any prosecution under section thirty-nine-a of this article, it shall constitute prima facie evidence of the identity of the drawer of a check, draft order if at the time of acceptance of such check, draft or order there is obtained the following information: Name and residence, business or mailing address and either a valid motor vehicle operator's number or the drawer's home or work phone number or place of employment. Such information may be recorded on the check, draft or order itself or may be retained on file by the payee and referred to on the check, draft or order by identifying number or other similar means.

(c) Any person who shall provide false information when information is requested prior to accepting a check, draft or order either at the time such check, draft or order is presented or for the purpose of obtaining a check cashing identification card or similar check cashing privilege shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $200, or imprisoned not more than thirty days, or both fined and imprisoned.

WV Legislature

§61-3-39e. Notice of dishonor by payee; service charge.

The payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit may send notice thereof to the drawer of the check, draft or order. The payee or holder of any dishonored check may impose a fee of up to $25 a worthless check. This fee may not be imposed or collected after a complaint for warrant has been delivered to magistrate court. No payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit shall incur any civil or criminal liability for the sending of a notice substantially in the form provided herein, other provisions of law notwithstanding. The form of the notice shall be substantially as follows:

"You are hereby notified that a check, number ....., issued by you on (date of check), drawn upon (name of bank), and payable to ....., has been dishonored. Pursuant to West Virginia law, you have ten days from the date of this notice to tender payment of the full amount of the check plus a fee of $..... (not to exceed $25 a worthless check) to the undersigned at ..... You are further notified that in the event the above amount is timely paid in full you will not be subject to legal proceedings, civil or criminal.

Dated ....., 20.....

.....

(Signed)."

The provisions of this section do not authorize the making of any other written or oral threats of prosecution to enforce or enhance the collection or honoring of the dishonored check, draft or order.

The holder or payee of any check, draft or order shall relinquish the check, draft or order to the maker upon tender of the full amount due at any time before a complaint for warrant has been presented to magistrate court. In the event complaint for warrant has been presented to magistrate court, payment may be made only through the court and any holder or payee unlawfully accepting payment after that time shall be liable for all costs which may be imposed by the magistrate court in the matter, including all costs which may have accrued by the time the magistrate court is notified of the payment.

WV Legislature

§61-3-39f. Manner of filing complaint for warrant; form.

(A) Notwithstanding the provisions of section one, article one, chapter sixty-two of this code, a complaint for warrant for violations of section thirty-nine or section thirty-nine-a of this article need not be made upon oath before a magistrate but may be made upon oath before any magistrate court clerk or other court officer authorized to administer oaths or before a notary public in any county of the state and may be delivered by mail or otherwise to the magistrate court of the county wherein venue lies: Provided, That nothing in this section changes the authority and responsibility of the prosecuting attorney to prosecute any person or persons for violations of section thirty-nine or section thirty-nine-a of this article.

(B) A complaint for warrant for violations of section thirty-nine-a of this article shall be deemed sufficient if it is in form substantially as follows:

"State of West Virginia

County of ....., to wit:

....., upon oath complains that:

(a) Within one year past, on the ..... day of ....., 20...., in the county stated above, ... (?the maker") unlawfully issued and delivered to ..... a check, draft or order with the following words and figures:

..... 20 .... No.....

.....

(Name of Bank)

Pay to the Order of ..... $..... Dollars

For..... when the maker did not have funds on deposit in or credit with this bank with which to pay the check, draft or order upon presentation against the peace and dignity of the State of West Virginia. The complainant therefore prays a warrant issue and that the maker be apprehended and held to answer the warrant and dealt with in relation thereto according to the law.

(b) At the time the check, draft or order was delivered and before it was accepted there was either on the check or on a record in the possession of the complainant the following information regarding the identity of the maker:

(1) Name.....

(2) Residence address.....

WV Legislature

(3) Business address.....

(4) Mailing address.....

(5) Motor vehicle operator's number.....

(6) Home phone.....

(7) Work phone.....

(8) Place of employment.....

That since the time the check, draft or order was delivered the complainant has ascertained to the best of his or her knowledge and belief the following facts concerning the maker:

Full name .....

Home address .....

Home phone no..... Business phone no.....

Place of employment .....

Race ..... Sex ..... Height .....

Date of birth .....

DayMonthYear

....., Complainant

.....

AddressPhone No.

(c) The complainant's bank or financial institution has imposed on or collected from the complainant a service charge in the amount of $..... in connection with the check, draft or order described above.

Taken, subscribed and sworn to before me, this ..... day of ....., 20.....

.....

.....

(Title)

WV Legislature

My commission expires the …….. day of ……., 20…..”

(C) The failure to supply information indicated in parts (b) or (c) of the foregoing complaint for warrant shall not affect the sufficiency of the complaint.

WV Legislature

§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

After receipt of a complaint for warrant for a violation of section thirty-nine or thirty-nine-a of this article the magistrate court shall proceed with the issuance of the warrant as is provided by law: Provided, That no warrant may issue for an offense under section thirty-nine or thirty-nine-a of this article which, upon conviction, would be punishable as a misdemeanor, unless the payee or holder of the check, draft or order which has been dishonored has sent notice thereof to the drawer of the check, draft or order in accordance with the provisions of section thirty-nine-e of this article, or unless notice has been sent by the magistrate as hereinafter provided. Proof that the notice was sent by the payee or holder may be evidenced by presentation of a return receipt indicating that the notice was mailed to the drawer by certified mail, or, in the event the mailed notice was not received or was refused by the drawer, by presentation of the mailed notice itself. The magistrate court shall receive and hold the check, draft or order.

Upon receipt of a complaint for a misdemeanor warrant unaccompanied by proof that notice was sent by the payee or holder, the magistrate court shall immediately prepare and mail to the drawer of the check, draft or order a notice in form substantially as follows. The magistrate court shall impose any service charge reflected in the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order and additional court costs in the amount of $25. This notice shall be mailed to the drawer by United States mail, first class and postpaid, at the address provided at the time of presenting the check, draft or order. Service of this notice is complete upon mailing. The notice shall be in form substantially as follows:

“You are hereby notified that a complaint for a warrant for your arrest has been filed with this office to the following effect and purpose by ..... who upon oath complains that on the ..... day of ....., 20...., you did unlawfully issue and deliver unto him a certain check, draft or order in the amount of ..... drawn on ..... (name of bank or financial institution) ..... where you did not have funds on deposit in or credit with the bank or financial institution with which to pay the check, draft or order upon presentation and pray that a warrant issue and that you be apprehended wherever you may be found by an officer authorized to make an arrest and dealt with in accordance with the laws of the State of West Virginia.

?A warrant for arrest will be issued on or after the ..... day of ....., 20.....

?You can nullify the effect of this complaint and avoid arrest by paying to the magistrate court clerk at ..... the amount due on the check, draft or order; service charges imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order in the amount of .....; and the costs of this proceeding in the amount of $25 on or before the ..... day of ....., 20....., at which time you will be given a receipt with which you can obtain the check, draft or order from the magistrate court. The complainant is forbidden by law to accept payment after the complaint

WV Legislature

is filed.

Magistrate Court of ..... County

.....

Date: .....”

This notice shall give the drawer of any such check, draft or order ten days within which to make payment to magistrate court. In the event the drawer pays the total amount set forth in the notice to the magistrate court within the ten-day period, no warrant may issue. The payment may be made to the magistrate court in person or by mail by cash, certified check, bank draft or money order and, in the event the payment is made by mail, the magistrate court clerk shall immediately mail to the maker of the check, draft or order the receipt required by this section. In the event the total amount is not so paid the court shall proceed with the issuance of the warrant as is provided by law.

Upon receipt of payment of the total amount the magistrate court clerk shall issue to the drawer a receipt sufficiently describing the check, draft or order with which receipt the drawer is entitled to receive the dishonored check, draft or order from the magistrate court holding it. The magistrate court clerk shall forward the amount of the check, draft or order, together with any service charge reflected on the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order, to the payee or holder thereof, along with a description of the check, draft or order sufficient to enable the person filing the complaint to identify it and the transaction involved. Costs collected shall be dealt with as is provided by law for other criminal proceedings.

The drawer of a check, draft or order against whom a warrant has been issued may at any time prior to trial pay to the court the amount of the check, draft or order; any service charge reflected in the complaint as having been imposed on the payee or holder by the payee's or holder's bank or financial institution in connection with the check, draft or order; and the court costs which would be assessed if the person were found guilty of the offense charged. These costs shall be imposed in accordance with the provisions of section two, article three, chapter fifty of this code.

WV Legislature

§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

(a) In any prosecution under section thirty-nine or thirty-nine-a of this article, the costs that may otherwise be imposed against the drawer of any check, draft or order shall be imposed on the person initiating the prosecution if:

(1) Payment of the check, draft or order is accepted by the payee or holder thereof after the filing of a complaint for warrant and the charge is subsequently withdrawn or dismissed at the request of the complainant: Provided, That the provisions of this subdivision do not apply where a charge is dismissed and restitution is paid as a condition of a plea agreement. The defendant shall be assessed costs for the prosecution of each charge of which he or she stands convicted and the fee for court costs assessed pursuant to section thirty-nine-g of this article for each charge dismissed as a result of the plea agreement;

(2) The payee or holder had reason to believe that the check, draft or order would be dishonored;

(3) The check, draft or order was postdated; or

(4) The matter is dismissed for failure to prosecute.

(b) Costs collected by magistrate court for issuance of notice as authorized by section thirty-nine-g of this article may not be paid into the special county fund created by the provisions of section four, article three, chapter fifty of this code but shall be accounted for separately and retained by the county in a fund designated the Worthless Check Fund until the sheriff issues warrants in furtherance of the allowable expenses specifically provided for by this section. Such costs may not be included in any calculation of the amount of funds to be retained by the county under the provisions of section four, article three, chapter fifty of this code.

(c) A county may, after agreement with the court administrator's office of the Supreme Court of Appeals, appropriate and spend from the Worthless Check Fund herein established such sums as are necessary to pay or defray the expenses of providing a deputy sheriff to serve warrants for worthless check offenses and to pay or defray the expenses of providing additional deputy clerks in the office of the magistrate court clerk. After payment of these expenses, or after a determination that these services are not necessary, a county may appropriate and spend from the fund the sums necessary to defray:

(1) The expenses of providing bailiff and service of process services by the sheriff;

(2) The cost of acquiring or renting magistrate court offices and providing utilities and telephones and telephone service to such offices;

(3) The cost of complying with section thirty-nine-i of this article; and

(4) The expenses of other services are provided to magistrate courts by the county.

WV Legislature

§61-3-39i. Preparation of list of worthless check warrants.

Beginning on July 1, 1983, the magistrate court clerk of every county shall, between the first and fifth day of each month thereafter, prepare a cumulative list of all check warrants issued by the magistrates of the county during the preceding twelve calendar months and after the effective date of this section: Provided, That upon completion of each cumulative list, the list which was completed for the next preceding month and any copy thereof shall be destroyed by the magistrate court clerk. The persons charged in such warrants shall be listed alphabetically. Such list shall also contain the total number of warrants issued against each named person for the period covered by the report, the number assigned to each warrant, and the date each such warrant was issued. A copy of such cumulative list of worthless check warrants shall be forthwith forwarded to each magistrate in the county and to the prosecuting attorney thereof. Upon the request of magistrates or prosecutors in other counties of this state, such lists shall be regularly forwarded to them.

WV Legislature

§61-3-39j. Use of worthless check list upon receipt of complaint for warrant.

On and after July 1, 1983, when a complaint for worthless check warrant is received by a magistrate court, the person receiving the complaint shall consult the current list of worthless check warrants for the county and any current lists of other counties in his possession to determine whether the defendant named in the complaint for warrant is also named on the list or lists as a person who has had worthless check warrants issued against him during the period covered by the lists. If the list or lists consulted indicate that the person named in the complaint has had not more than one worthless check warrant issued against him within the time period covered by the lists, the person receiving the complaint for warrant shall proceed to have a warrant issued or a notice served, as may be appropriate, in accordance with the provisions of section thirty-nine-g of this article. If the list or lists consulted indicate that the person named in the complaint has had two or more worthless check warrants issued against him within the time period covered by the lists, the person receiving the complaint for warrant shall not cause a warrant to be issued, but shall instead forthwith prepare a "Notice of Multiple Worthless Check Warrants," which shall be in a form substantially as follows:

"NOTICE OF MULTIPLE WORTHLESS CHECK WARRANTS

THIS NOTICE IS TO BE ISSUED ONLY WHEN AN INDIVIDUAL HAS HAD TWO OR MORE WORTHLESS CHECK WARRANTS ISSUED IN THE PRECEDING TWELVE MONTHS

To: prosecuting attorney of ..... County From: Magistrate Court of ..... County

This is to notify you that ..... who resides at ..... has issued worthless checks during the preceding twelve months for which warrants have been issued.

In accordance with the provisions of section thirty-nine-i, article three, chapter sixty-one of the Code of West Virginia you have ten days to advise this court on how to proceed in this matter."

A list of the worthless check warrants shall be attached to said notice, along with information concerning the check which is the subject of the pending complaint for worthless check warrant. Warrant numbers, check numbers, dates of checks, amounts of checks, payees, and drawee financial institutions for the checks listed shall be set forth.

Immediately upon preparation of the said notice, a copy thereof shall be forwarded to the prosecuting attorney of each county upon whose list of worthless check warrants the defendant's name appears.

WV Legislature

§61-3-39k. Duties of prosecuting attorney upon receipt of notice of multiple worthless check warrants; magistrate court clerk to advise complainant.

(a) Within ten days after receiving a notice of multiple worthless check warrants forwarded in accordance with the provisions of the preceding section, a prosecuting attorney shall review the information contained therein, may consult additional current lists of worthless check warrants and make other investigation, and shall make a written recommendation to the magistrate court which forwarded the notice:

(1) That a warrant should be issued or a notice should be forwarded, as may be appropriate, in accordance with the provisions of section thirty-nine-g of this article, or

(2) That a warrant should be issued for an offense defined under section twenty-four of this article, or

(3) That no action should be taken by the magistrate court pending a presentation to the appropriate grand jury of a bill seeking an indictment for an offense defined under section twenty-four of this article.

(b) Upon receipt of the recommendation of the prosecuting attorney, the magistrate court clerk of the magistrate court holding the pending complaint for worthless check warrant shall forward a copy of the prosecuting attorney's recommendation to the complainant, shall inform the complainant that the prosecuting attorney's recommendation is advisory only, and shall request the complainant to advise the court in what manner he desires to proceed.

WV Legislature

§61-3-39l

Repealed

Acts, 2019 Reg. Sess., Ch. 48.

WV Legislature

§61-3-39m. Creation and operation of a program for worthless check offenders; acceptance of person in program.

(a) A prosecuting attorney may create within his or her office a worthless check restitution program for persons who have violated sections thirty-nine or thirty-nine-a of this article. This program may be conducted by the prosecuting attorney in conjunction with a law-enforcement agency or by a private entity under contract with the prosecuting attorney.

(b) The prosecuting attorney may adopt standards to determine the appropriateness of an individual case for the program. In developing these standards, the prosecuting attorney should consider the following factors:

(1) The amount of the check, draft or order made, drawn, issued, uttered or delivered;

(2) The person's criminal record;

(3) The number of times the person has participated in the program; and

(4) The number of warrants or cases pending against the person for violations of sections thirty-nine or thirty-nine-a of this article.

(c) Except as provided in section thirty-nine-o of this article, nothing in this section shall preclude the prosecuting attorney from prosecuting violations of sections thirty-nine or thirty-nine-a of this article.

(d) Nothing in this section may be construed or interpreted to mandate funding for any worthless check restitution program created in a prosecuting attorney's office or to require any appropriation by the Legislature.

(e) Notwithstanding any other provision of law to the contrary, no case is appropriate for referral to the program unless notice has been provided pursuant to section thirty-nine-e or thirty-nine-g of this article.

WV Legislature

§61-3-39n. Notice to persons accepted to the worthless check restitution program.

(a) Upon approval of an individual case for referral to the worthless check restitution program, a representative of the program shall send a notice by registered or certified mail to the person named in the complaint or warrant.

(b) This notice must contain:

(1) The date and amount of the check, draft or order;

(2) The name of the payee or holder;

(3) The date by which the individual must contact the designated representative of the worthless check restitution program;

(4) A demand for full restitution of the face amount of the check, draft or order and any fees reflected in the complaint or warrant as having been imposed on the payee or holder by the payee's or holder's bank or financial institution; and

(5) A statement that failure to pay restitution and fees may result in criminal prosecution.

WV Legislature

§61-3-39o. Agreement to suspend prosecution of a person accepted into the restitution program.

(a) The prosecuting attorney may enter into an agreement with a participant of the worthless check restitution program to suspend prosecution for a period to be determined by the prosecuting attorney.

(b) To remain eligible for the worthless check restitution program, the participant shall:

(1) Contact a representative of the program before the date required by the notice sent pursuant to section thirty-nine-n of this article;

(2) Agree to comply with all the program terms;

(3) Complete a class conducted by the prosecuting attorney, his or her designee, or a private entity under contract with the prosecuting attorney, which offers offender education and instruction;

(4) Pay a fee in the amount of $10 to be deposited in the "worthless check fund" established pursuant to the provisions of section thirty-nine-h of this article;

(5) Pay the fee required to participate in the class;

(6) Pay full victim restitution; and

(7) Pay all fees for participation in the program, unless those fees are waived.

(c) The prosecuting attorney shall agree not to file criminal charges if the participant in the program completes the conditions of the agreement.

WV Legislature

§61-3-39p. Fees for participation in the worthless check restitution program.

(a) The prosecuting attorney, his or her designee, or a private entity under contract with the prosecuting attorney may collect a fee not to exceed $100 from any person participating in the worthless check restitution program: Provided, That the prosecuting attorney shall waive the fee if he or she determines that the person is indigent and unable to pay the fee.

(b) All fees collected pursuant to subsection (a) of this section by the prosecutor shall be remitted to the sheriff. The sheriff shall establish a special fund in the county treasury, designated the worthless check restitution program fund, in which the sheriff shall deposit all fees remitted by the prosecutor. The county commission shall appropriate money from the fund for the administration of the worthless check restitution program. The county commission shall also appropriate any excess money from the fund to supplement the annual operation expense appropriation of the office of the prosecuting attorney, if the prosecuting attorney certifies in writing to the county commission that a surplus exists in the fund at the end of the fiscal year.

WV Legislature

§61-3-39q. Statements by individuals referred to or participating in the worthless check restitution program.

Any statement made by a person referred to the worthless check restitution program in connection with the determination of his or her eligibility for participation in the program and any statement made or information given by that person while participating in the program is inadmissible in any civil or criminal action or proceeding.

WV Legislature

§61-3-40. Fraudulently obtaining food or lodging; penalty.

Every person who shall, at any hotel, inn, eating, lodging or boardinghouse, or restaurant, receive or cause to be furnished any food or accommodation, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or boardinghouse, or restaurant, and any person who shall obtain credit at any hotel, inn, eating, lodging or boardinghouse, or restaurant, by the use of any false pretense or device, or by depositing in such hotel, inn, eating, lodging or boardinghouse, or restaurant, any baggage or property of less value than the amount of such credit, or of the bill by such person incurred, with such fraudulent intent, and any person who, after obtaining credit or accommodation at any hotel, inn, eating, lodging or boardinghouse, or restaurant, shall abscond from such hotel, inn, eating, lodging or boardinghouse, or restaurant, or shall remove or attempt to remove therefrom any baggage or personal property of any kind subject to the lien provided for in section five, article eleven, chapter thirty-eight of this code, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or boardinghouse, or restaurant, without first having paid, satisfied or arranged all claims or bills for lodging, entertainment or accommodation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $25 nor more than $200, and may, in the discretion of the court or justice trying the case, be confined in the county jail for a term of not less than ten nor more than thirty days. A justice of the peace for the county wherein the offense was committed shall have concurrent jurisdiction of such offense with the circuit or other courts of such county.

WV Legislature

§61-3-41. Employees conservators of the peace; special railroad policemen; penalties.

The conductor of every passenger car and flag person and brake person employed on such car, as well as the conductor of every train of railroad or traction cars, shall have all the powers of a conservator of the peace while in charge of such car or train.

Any railroad company owning, or leasing and operating, or using any railroad or traction line or system lying wholly or partially within this state, whether such railroad be operated by steam or electric power, may apply to the Governor to appoint such citizen or citizens of this state as such railroad company may designate, to act as special police officers for such railroad or traction company, with the consent of such citizen or citizens; and the Governor may, upon such application, appoint and commission such person or persons, or so many of them as he may deem proper, as such special police officers. Every police officer so appointed shall appear before some person authorized to administer oaths and take and subscribe the oath prescribed in the fifth section of the fourth article of the Constitution, and shall file such oath with the clerk of the county commission, or other tribunal in lieu thereof, of the county in which he shall reside. He or she shall also file certified copies of such oath in the office of the Secretary of State, and in the office of the clerk of the county commission, or other tribunal established in lieu thereof, of each county through which such railroad or any portion thereof may extend. Every police officer appointed under the provisions of this section shall be a conservator of the peace within each county in which any part of such railroad may be situated, and in which such oath or a certified copy thereof shall have been filed with the clerk of the county commission or other tribunal established in lieu thereof; and, in addition thereto, he shall possess and may exercise all the powers and authority, and shall be entitled to all the rights, privileges and immunities within such counties, as are now or hereafter may be vested in or conferred upon a deputy sheriff of such county. Any appointment made by the Governor under the provisions of this section may be revoked by him or her for good cause shown, and such police officers may be removed from office for official misconduct, incompetence, habitual drunkenness, neglect of duty or gross immorality, in the same manner in which regularly elected or appointed county officers may be removed from office. Whenever any such railroad company shall desire to dispense with the services of any police officer, it may file a notice to that effect, under its corporate seal, attested by its secretary, in each of the several offices in which such oath or certified copy thereof shall have been filed; and, thereupon, the powers of the police officer shall cease and determine. Police officers may wear such uniform and badge of authority, or either, as the railroad company, upon whose application they were appointed, may designate, and such railroad company shall pay them for all services rendered pursuant to his or her appointment.

WV Legislature

§61-3-42. Intoxication of person in charge of locomotive engine or car; penalties.

If any person, while in charge of a locomotive engine, whether the same be driven by steam, electricity or other motive power, running upon the railroad or traction lines of any corporation, or while acting as conductor or brakeman of any car or train of cars on such railroad or traction line, be intoxicated, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding $500 and imprisoned in the county jail not less than two nor more than twelve months; and for the second offense he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than three years.

WV Legislature

§61-3-43. Jumping on or off car or train in motion; driving vehicle upon track or bridge except at crossings; penalty.

If any person, not a passenger or employee, shall be found trespassing upon any railroad or traction car or train of any railroad in this state, by jumping on or off any car or train in motion, on its arrival at or departure from any station or depot of such railroad, or on the passage of any such car or train over any part of such railroad; or shall drive any horse or any horse-drawn or motor-driven vehicle across or upon any railroad track or bridge, except at public, private or farm crossings, such person so offending shall be deemed a disorderly person and guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding $25, or by imprisonment in the county jail not exceeding thirty days, or both. Justices of the peace shall have concurrent jurisdiction to try all offenders under this section.

WV Legislature

§61-3-44. Procuring gas, water or electricity, by device, with intent to defraud; penalty.

Every person who, with intent to injure or defraud, procures, makes, or causes to be made, any pipe, tube, wire, or other conductor of gas, water or electric energy, and connects the same, or causes it to be connected, with any main, service pipe or other pipe for conducting or supplying gas, or water, or any wires or other conductor of electric energy, in such manner as to supply gas, water or electric energy to any lamp, motor, burner, orifice, or any other device, by or at which gas, water or electric energy is consumed, around or without passing through the meter provided for measuring and registering the quantity of gas, water or electric energy consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas, water or electric meter, or obstructs its action, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not exceeding twelve months, or fined not exceeding $1,000, or both, in the discretion of the court.

WV Legislature

§61-3-45. Tampering with pipes, tubes, wires or electrical conductors; penalty.

Every person who, with intent to injure or defraud, connects, or causes to be connected, any pipe, tube, wire, electrical conductor or other instrument with any main, service pipe, or other pipe or conduit or flume for conducting water, or with any main, service pipe, or other pipe or conduit for conducting oil, natural gas, or with any main, service wire or other electric conductor used for the purpose of conducting electric energy for light, heat or motive services, for the purpose of taking therefrom water, oil, natural gas, telecommunications service, or electric energy, without the knowledge of the owner thereof and with intent to evade payment therefor, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not exceeding twelve months, or fined not exceeding $2,000, or both, in the discretion of the court.

WV Legislature

§61-3-45a. Unlawful opening of pipes, pipelines, tanks, etc.; penalties.

Every person who, with intent to injure, or for the purpose of destroying, injuring, impairing, breaking, damaging or unlawfully opening, or of taking, stealing, and carrying away, or of permitting or causing to escape on the ground or into the air, any of the contents thereof, shall open, or cause to be opened, in any manner, any pipe or pipes or line of pipe or pipes or any tank, receptacle or container connected therewith, containing or used and useful in transporting or storing petroleum, crude or refined, gasoline, gas (natural, casinghead or manufactured), or any of the by-products of petroleum or gas, either liquid or gaseous, belonging to another, without such other's consent, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by confinement in the county jail not less than two nor more than twelve months, and in addition thereto, in the discretion of the court, may be fined not exceeding $300. Every person, upon conviction for the second or any subsequent offense under this section shall be guilty of a felony and, shall be confined in the penitentiary of this state not less than one nor more than three years. Justices of the peace shall have concurrent jurisdiction with the circuit, criminal or intermediate courts to enforce the misdemeanor penalties prescribed by this section.

WV Legislature

§61-3-46. Use of slugs, false coins, etc., in coin-box telephone; penalty.

Any person who shall operate, or cause to be operated, or attempt to operate any coin-box telephone designed to receive lawful coin of the United States of America, in connection with the use or enjoyment of any telephone service, by means of a slug or any false, counterfeited, mutilated, sweated or foreign coin, or by any means, method, trick or device whatsoever, not lawfully authorized by the owner, lessee or licensee of such coin-box telephone shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding twelve months, or by a fine not exceeding $500, or both at the discretion of the court.

WV Legislature

§61-3-47. Dams or obstructions in watercourses; penalty.

No person may fell any timber and permit the same to remain in any navigable or floatable stream of this state when to do so obstructs the passage of boats, rafts, staves, ties or timber of any kind.

Except as may be provided in chapter twenty or twenty-two of this code, no person may construct or maintain any dam or other structure in any stream or watercourse, which in any way prevents or obstructs the free and easy passage of fish up or down such stream or watercourse, without first providing as a part of such dam or other structure a suitable fish ladder, way or flume, so constructed as to allow fish easily to ascend or descend the same; which ladder, way or flume shall be constructed only upon plans, in a manner, and at a place, satisfactory to the Division of Natural Resources: Provided, That if the director of the Division of Natural Resources determines that there is no substantial fish life in such stream or watercourse, or that the installation of a fish ladder, way or flume would not facilitate the free and easy passage of fish up or down a stream or watercourse, or that an industrial development project requires the construction of such dam or other structure and the installation of an operational fish ladder, way or flume is impracticable, the director may, in writing, permit the construction or maintenance of a dam or other structure in a stream or watercourse without providing a suitable fish ladder, way or flume; and in all navigable and floatable streams provisions shall be made in such dam or structure for the passage of boats and other crafts, logs and other materials: Provided, however, That this section does not relieve such person from liability for damage to any riparian owner on account of the construction or maintenance of such dam.

Any person who violates any of the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding $1,000, or imprisoned in the county jail not exceeding one year, or both fined and imprisoned, and, whether a conviction is had under this section or not, such violation is a nuisance, which may be abated at the suit of any citizen or taxpayer, the county commission of the county, or, as to fish ladders, at the suit of the director of the Division of Natural Resources, and, if the same endangers county roads, the county commission may abate such nuisance peaceably without such suit.

WVLegislature

§61-3-48. Offenses involving damage to shrubbery, flowers, trees and timber; limitation of section; penalties.

(a) It is unlawful to break, cut, take or carry away, or in any manner to damage any of the shrubbery or flowers, including everything under the title of flora, whether wild or cultivated, growing within one hundred yards on either side of any public road in this state, without the permission in writing of the owner or tenant of the land upon which the shrubbery or flowers, including everything under the title of flora, are growing.

(b) It is unlawful for any person to enter upon the lands or premises of another without written permission of the owner of the lands or premises, in order to break, cut, take or carry away or in any manner to damage or cause to be broken, cut, taken or carried away or in any manner damaged, any trees or timber on the land.

(c) It is unlawful for any person willfully or knowingly to have in his possession, or to haul along any public road in this state, any trees, shrubbery or flowers, including everything under the title of flora, which are protected by this section, unless the person so having in his possession or hauling the trees, shrubbery or flowers, and any other plant, has permission in writing so to do from the owner or tenant of the land from which they have been taken.

(d) At the request of a law-enforcement officer, a person engaged in any act which would constitute an offense under the provisions of subsection (a), (b) or (c) of this section if such act were done without the required permission specified therein, shall display the written permission to such officer.

(e) Notwithstanding the provisions of this section or section forty-eight-a of this article:

(1) An employee of the department of highways or of a county or municipality performing roadside maintenance shall obtain the permission of an owner before engaging in any act specified in subsection (a), (b) or (c) of this section but is not required to obtain the permission in writing or to display the written permission as provided in subsection (d) of this section; and

(2) When any of the acts specified in subsection (a), (b) or (c) of this section are permitted pursuant to an existing contract with the owner or a predecessor in title to the subject real estate, or by virtue of a judgment or decree of a court of competent jurisdiction, or by other operation of civil law, then a public utility as defined in section two, article one, chapter twenty-four of this code, or any other person or entity holding such existing rights, shall not be required to obtain any further permission of the present owner to exercise such existing rights: Provided, That the holder of such existing rights shall notify the owner of the land of the holder's intent to perform proposed work upon such lands, by first class United States mail, postage prepaid, addressed to the person and address of record upon the current land books in the assessor's office in the county in which the land is situate: Provided, however, That if the proposed work includes several tracts within a larger area, then notice shall be

WV Legislature

sufficient if provided by publication in a newspaper of general circulation within the county, describing the boundaries and type of work proposed within such area of work. Where prior notice is not practical by reason of a sudden emergency which endangers persons or property of either the owner of the real property, the holder of such rights, the general public or public service, then the owner of the real property shall be notified that such emergency work has been performed, such notice to be by first class United States mail, as above provided for prior notice to the current owner as indicated in the land book records. Where the emergency work was performed on several tracts within a larger area, then the notice shall be sufficient if made by publication in a newspaper of general circulation within the county.

(f) Any person who violates the provisions of subsection (a) or (c) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, for the first offense shall be fined not more than $50, and for subsequent offenses shall be confined in the county jail for not more than three months, or fined not more than $50, or both, for each offense.

(g) Any person who violates the provisions of subsection (b) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, for the first offense shall be fined not less than $50, and for subsequent offenses shall be confined in the county jail for not less than three months, or fined not less than $50, or both, for each offense.

(h) Magistrates shall have concurrent jurisdiction with circuit courts for offenses under this section.

WV Legislature

§61-3-48a. Cutting, damaging or carrying away without written permission, timber, trees, growing plants or the products thereof; treble damages provided.

Any person who enters upon the land or premises of another without written permission from the owner of the land or premises in order to cut, damage or carry away or cause to be cut, damaged or carried away, any timber, trees, logs, posts, fruit, nuts, growing plant or product of any growing plant, shall be liable to the owner in the amount of three times the value of the timber, trees, growing plants or products thereof, which shall be in addition to and notwithstanding any other penalties by law provided.

WV Legislature

§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records, and reports of such purchases; criminal penalties.

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Business registration certificate" has the same meaning ascribed to it in §11-12-2 of this code.

(2) "Purchaser" means any person in the business of purchasing scrap metal or used auto parts, any salvage yard owner or operator, or any public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of scrap metal or used auto parts.

(3) "Scrap metal" means any form of copper, aluminum, brass, lead, or other nonferrous metal of any kind, a catalytic converter, or any materials derived from a catalytic converter, or steel railroad track and track material.

(b) In addition to any requirement necessary to do business in this state, a scrap metal dealer shall:

(1) Have a current valid business registration certificate from the Tax Commissioner;

(2) Register any scales used for weighing scrap metal with the Division of Labor Weights and Measures;

(3) Provide a notice of recycling activity to the Department of Environmental Protection; and

(4) Register as a scrap metal dealer with the Secretary of State, who shall maintain a list of scrap metal dealers and make it publicly available. The list shall include the dealer's business address, hours of operation, physical address, phone number, facsimile number, if any, and the name of the owners or principal officers of the business.

(c) Any purchaser of scrap metal shall make a record of such purchase that shall contain the following information for each transaction:

(1) The full name, permanent home and business addresses, and telephone number, if available, of the seller;

(2) A description and the motor vehicle license number of any vehicle used to transport the purchased scrap metal to the place of purchase;

(3) The time and date of the transaction;

(4) A complete description of the kind, character, and weight of the scrap metal purchased; and

www.Legislature

(5) A statement of whether the scrap metal was purchased, taken as collateral for a loan, or taken on consignment.

(d) A purchaser also shall require and retain from the seller of the scrap metal the following:

(1) A signed certificate of ownership of the scrap metal being sold or a signed authorization from the owner of the scrap metal to sell the scrap metal; and

(2) A photocopy of a valid driver's license or identification card issued by the West Virginia Division of Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other valid photo identification of the seller issued by any other state or the federal government: *Provided*, That, if the purchaser has a copy of the seller's valid photo identification on file, the purchaser may reference the identification that is on file, without making a separate photocopy for each transaction.

(e) It is unlawful for any purchaser to purchase any scrap metal without obtaining and recording the information required under subsections (c) and (d) of this section. The provisions of this subsection do not apply to purchases made at wholesale under contract or as a result of a bidding process: *Provided*, That the purchaser retains and makes available for review consistent with subsection (g) of this section the contract, bill of sale, or similar documentation of the purchase made at wholesale under contract or as a result of a bidding process: *Provided, however*, That the purchaser may redact any pricing or other commercially sensitive information from the contract, bill of sale, or similar documentation before making it available for inspection.

(f) A purchaser of scrap metal may not knowingly purchase or possess a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, for the intended purpose of reselling as scrap metal unless the purchaser receives the keg or keg parts from the beer manufacturer or its authorized representative.

(g) Using a form provided by the West Virginia State Police, or his or her own form, a purchaser of scrap metal shall retain the records required by this section at his or her place of business for not less than three years after the date of the purchase. Upon completion of a purchase, the records required to be retained at a purchaser's place of business shall be available for inspection by any law-enforcement officer or, upon written request and during the purchaser's regular business hours, by any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property: *Provided*, That in lieu of the purchaser keeping the records at his or her place of business, the purchaser shall file the records with the local detachment of the State Police and with the chief of police of the municipality or the sheriff of the county he or she is transacting business within 72 hours of completion of the purchase. The records shall be retained by the State Police and the chief of police of the municipality or the sheriff for a period of not less than three years.

(h) To the extent otherwise permitted by law, any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property may accompany a law-

WV Legislature

enforcement officer upon the premises of a purchaser in the execution of a valid warrant or assist law enforcement in the review of records required to be retained pursuant to this section.

(i) Upon the entry of a final determination and order by a court of competent jurisdiction, scrap metal found to have been misappropriated, stolen, or taken under false pretenses may be returned to the proper owner of the material.

(j) Nothing in this section applies to scrap purchases by manufacturing facilities that melt, or otherwise alter, the form of scrap metal and transform it into a new product or to the purchase or transportation of food and beverage containers or other nonindustrial materials having a marginal value per individual unit.

(k)(1) Nothing in this section applies to a purchaser of a motor vehicle on which a catalytic converter is installed, a scrap metal dealer purchasing a detached catalytic converter or converters accompanying the motor vehicle or motor vehicles from which it or they were removed, a purchaser of a catalytic converter intended for installation on a vehicle owned or leased by the purchaser, or any person who purchases, other than for purposes of resale, a catalytic converter, or a motor vehicle on which a catalytic converter is installed, for personal, family, household, or business use.

(2) In transactions not exempted by subdivision (1) of this subsection, any person delivering one or more automobile catalytic converters to a scrap metal dealer shall, in addition to the requirements set forth in subsection (c) of this section, execute a document containing the name of the person or entity from whom or which the catalytic converter or converters being delivered was received and affirming that he or she is the lawful owner of the catalytic converters or is authorized by the lawful owner to sell the catalytic converters. Next to his or her signature the person delivering the catalytic converter or converters shall place a clear impression of his or her index finger or thumb that is in ink and free of smearing, or the scrap metal dealer may elect to obtain the fingerprint electronically. This documentation shall be maintained consistent with subsection (c) of this section. Payment shall be made by check payable to the seller. No scrap metal dealer may process, sell, or remove a catalytic converter from its premises for at least 14 days after its acquisition: *Provided*, That the 14-day retention requirement may be reduced to five days if, within the first consecutive five-day period, the scrap dealer provides all documentation required under this section to the local detachment of the State Police and: (A) The chief of police of the municipality; or (B) the sheriff of the county in which he or she is transacting business. A scrap metal dealer shall make a good faith effort to record any identifying information on a catalytic converter received or purchased and shall not purchase or take possession of a catalytic converter if the identifying information on it has been manually altered.

(l) Any person who knowingly or with fraudulent intent violates any provision of this section for which no penalty is specifically set forth, including the knowing failure to make a report or the knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction of a first offense, shall be fined not less than $1,000 nor more than $3,000;

wvlegislature

upon conviction of a second offense, shall be fined not less than $2,000 and not more than $4,000 and, notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to suspend for a period of six months any business registration certificate held by that person; and upon conviction of a third or subsequent offense, shall be fined not less than $3,000 and not more than $5,000 and, notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to cancel any business registration certificate held by that person and state the date the cancellation takes effect.

(m) A person may not have or take possession of any scrap metal that he or she knows, or has reason to know, has been stolen or unlawfully obtained. Any person violating this subsection is guilty of larceny.

(n) A scrap metal dealer may not purchase, possess, or receive scrap metal that the scrap metal dealer knows, or has reason to know, has been stolen or unlawfully obtained by the seller. Any person violating this subsection is guilty of larceny.

(o) A scrap metal dealer may not purchase, possess, or receive any of the following items of scrap metal, or any reasonably recognizable part thereof, without obtaining written documentation which reflects that the seller is authorized to possess and sell the item or items and that the seller is in lawful possession of the item of scrap metal:

(1) Utility access covers;

(2) Street light poles or fixtures;

(3) Road or bridge guard rails;

(4) Water meter covers;

(5) Highway or street signs;

(6) Traffic directional or traffic control signs;

(7) Traffic light signals;

(8) Any metal marked with any form of the name or initials of a governmental entity;

(9) Property marked as or readily identifiable as owned by a telephone, cable, electric, water, or other utility provider;

(10) Property owned and marked by a railroad;

(11) Cemetery markers or vases;

WV Legislature

(12) Historical markers;

(13) Utility manhole covers and storm water grates;

(14) Fire hydrant or fire hydrant caps; or

(15) Twisted pair copper telecommunications wiring of 25 pair or greater in 19, 22, 24, or 26 gauge.

(p) Nothing in this section prohibits a scrap dealer from purchasing or taking possession of scrap metal knowing or having reason to know, that it is stolen or obtained illegally if it is done pursuant to a written agreement with law-enforcement officials.

WV Legislature

§61-3-49a. Unlawful sale of used, secondhand, rebuilt, repossessed, etc., watches and clocks; penalty; revocation of license to sell.

It shall be unlawful for any person, firm, corporation, association or copartnership, either foreign or domestic, to display, barter, sell, offer or expose for sale, any clock or watch or other instrument or contrivance by which the progress of time is perceived or measured, or which instrument or contrivance is intended for such use, and which has before been used, rebuilt, repossessed, reconstructed or reconditioned, without at all times having the same marked by label plainly written or printed in the English language, and attached thereto, with the words thereon, "used," "secondhand," "rebuilt," "repossessed," "reconstructed" or "reconditioned," as the case may be.

Any person, firm, corporation, association or copartnership, foreign or domestic, who or which shall violate the provisions of this section, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall, for the first offense, be fined not less than $25 nor more than $100; and for a second offense shall be fined not less than $50 nor more than $250, and in addition thereto, the owner, manager or acting agent of the seller shall be imprisoned in the county jail not less than ten nor more than sixty days; and upon conviction for a third or subsequent offense, shall be fined not less than $100 nor more than $500, and in addition thereto the owner, manager or acting agent of the seller shall be confined in the county jail not less than thirty days nor more than six months, at the discretion of the court, and upon conviction for such third or subsequent offense, in addition to the penalty herein provided, the license of the offender for the sale of merchandise shall be revoked and shall not be renewed for the period of six months from the date of such third conviction, and then only upon the offender executing bond with approved security in the sum of $1,000, conditioned that he or it will not violate the provisions of this section.

WV Legislature

§61-3-49b. Disruption of communications and utilities services.

(a) Any person who causes a disruption of communications services or public utility services by the theft or by intentionally damaging communications or public utility equipment and by such conduct causes:

(1) A disruption of communication services or public utility services to ten or more households or subscribers; or

(2) A loss in the value of the property in an amount of one thousand dollars or more, shall be guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be sentenced to not more than two thousand hours of court-approved community service or fined not more than $10,000, or both. For a second offense, the person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years or fined not more than $10,000, or both. For third and subsequent offenses, the person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than one nor more than ten years, or fined not more than $10,000, or both.

(b) As used in this section, communications and public utility equipment includes but is not limited to public safety communications towers and equipment, telephone lines, communications towers and tower equipment, radio towers and tower equipment, railroad and other industrial safety communication devices or systems, electric towers and equipment and electric transmission and distribution lines.

WV Legislature

§61-3-49c. Possession of a catalytic converter without documentation of ownership or authority to possess; advertising the sale or purchase of a catalytic converter.

(a) As used in this section, catalytic converter means a motor vehicle exhaust emission control that reduces toxic gases and pollutants from an internal combustion engine.

(b) Any person in possession of a catalytic converter which had previously been installed on a motor vehicle, or parts thereof, shall have in his or her possession written documentation of ownership or authorization to possess the catalytic converter. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than one year, or both fined and confined.

(1) Each catalytic converter possessed in violation of this subsection shall constitute a separate offense.

(2) Any catalytic converter possessed in violation of this subsection is subject to seizure at the time of arrest.

(3) A person possessing a single catalytic converter in violation of this subsection shall for the offense be charged by citation and not subject to arrest for that offense.

(4) Notwithstanding the provisions of this subsection, presentation to the court in which charges alleging a violation of said subsection are pending sufficient evidence to show lawful ownership or authority to possess constitutes an absolute defense to the charge or charges.

(c) Any person placing an advertisement on an Internet-based platform, including, but not limited to, Facebook or Twitter, soliciting the sale or purchase of a catalytic converter in this state must have completed the requirements to be a scrap metal recycler in §61-3-49(b) of this code, including any other business requirements. Any person who violates this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than one year, or both fined and confined.

(1) Each catalytic converter possessed in violation of this subsection shall constitute a separate offense.

(2) Any catalytic converter possessed in violation of this subsection is subject to seizure at the time of arrest.

(3) Notwithstanding the provisions of this subsection, presentation to the court in which charges alleging a violation of said subsection are pending sufficient evidence to show lawful ownership or authority to possess constitutes an absolute defense to the charge or charges.

WV Legislature

§61-3-50. Unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; definition.

(a) No person shall knowingly and willfully for commercial advantage or private financial gain transfer by electronic or mechanical means or cause to be transferred by electronic or mechanical means with intent to sell for profit the recorded sounds contained on any phonograph record, disc, tape, film or other device without the permission of the owner of such recorded sounds or his authorized representative, or to knowingly, or with reasonable grounds to know, sell or possess with intent to sell any phonograph record, disc, tape, film or other device containing such unauthorized transferred recorded sounds. This paragraph applies to sound recordings initially fixed prior to February 15, 1972.

No person shall knowingly and willfully for commercial advantage or private financial gain offer for sale, sell, rent, transport, cause the sale, resale, rental or transportation of or possess for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

No person shall knowingly and willfully for commercial advantage or private financial gain record or fix or cause to be recorded or fixed on any type of recording device a live performance with the knowledge that the live performance is being recorded or fixed without the consent of the owner.

No person shall knowingly and willfully for commercial advantage or private financial gain offer for sale, sell, rent, transport, or cause the sale, resale, rental or transportation of or possess for one or more of these purposes, any phonograph record, disc, tape, film, video tape, video cassette or other device which fails to clearly and conspicuously disclose the actual name and address of the manufacturer thereof.

(b) Any owner of such recorded sounds, images or any audio-visual combination and any person lawfully transferring such sounds by agreement with such owner shall have a cause of action for the unauthorized transferral of such sounds and shall be entitled to treble damages resulting therefrom.

(c)(1) For the purpose of this section, the term "owner" means the person vested with the rights to and ownership of the original fixation of sounds, images or any audio-visual combination embodied in the master phonograph record, master disc, master tape, master film or other device used for transferring sounds or images on phonograph records, discs, tapes, films, video tapes or video cassettes or other similar articles upon which sounds, images or any audio-visual combination are recorded and from which the transferred recorded sounds and/or images are directly derived.

In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix the sounds, images or any audio-visual combination of a live performance. A person who is authorized to maintain

WV Legislature

custody and control over business records that reflect whether or not the owner or owners of a live performance consented to having a live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent.

(2) For the purposes of this section, the term "manufacturer" means the person who transfers, authorizes or causes the transfer of a recording of sounds, images or any audio-visual combination to a phonograph record, disc, tape, film, video tape, video cassette or other device.

(d)(1) Any person convicted of an offense under this section involving less than one hundred unlawful sound recordings or less than twenty unlawful audio-visual recordings shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned for not more than one year in jail or both fined and imprisoned.

(2) Any person convicted of an offense under this section involving at least one hundred but less than one thousand unlawful sound recordings or at least twenty but less than sixty-five audio-visual recordings shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, or imprisoned for not more than two years in the penitentiary or both fined and imprisoned.

(3) Any person convicted of an offense under this section involving at least one thousand unlawful sound recordings or at least sixty-five unlawful audio-visual recordings shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, or imprisoned for not more than five years in the penitentiary or both fined and imprisoned.

(4) Any person convicted of a second or subsequent offense under this section shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $1,000 nor more than $10,000, or imprisoned for not more than five years or both fined and imprisoned.

(5) Any unauthorized recorded sounds or images produced in violation of this section and any equipment used for such purpose shall be confiscated by the appropriate law-enforcement agency.

If a person is convicted of any violation under this chapter, the court in its judgment of conviction shall order the forfeiture and destruction or release to a law-enforcement agency for use in official agency business of all infringing recordings and of any equipment or components used or intended to be used in the production of the recordings. All infringing phonograph records, discs, tapes, films, video tapes, video cassettes or other devices shall be destroyed once they are no longer needed for court proceedings. Nothing contained herein shall apply to televisions and radio stations licensed by the federal communications commission or to educational institutions, when the purpose of such reproduction is limited and used for criticism, comments, news reporting, archival or educational purposes.

WV Legislature

§61-3-51. Precious metals and gem dealers; records; prohibited acts.

(a) Each person, firm or corporation in the business of purchasing precious metals or precious gems, or both, for any purpose other than personal, family or household use, shall be subject to the provisions of this section. Each such purchaser shall secure from the seller of the precious metal or precious gem sufficient proof of lawful ownership or a sworn affidavit of ownership, the original of which shall be retained by the purchaser.

(b) Each such purchaser of a precious metal or precious gem shall truly and accurately list each purchase in a permanent record book clearly showing the kind, character and amount of metal or gem purchased, any special or unique quality or item of description concerning the metal or gem purchased; the date of purchase, the full name and residence address and mailing address of the seller, and any telephone number of the seller. Such record book shall be open to inspection by any law-enforcement officer in this state during normal business hours of the purchaser. If any such purchase is made within a municipality, the purchaser shall report all the information required by this section in writing to the chief of the police department of the municipality within twenty-four hours of the purchase. If any such purchase is made outside of a municipality, the purchaser shall report all the information required by this section in writing to the sheriff of the county wherein the purchase was made within twenty-four hours of the purchase. The information required by this section shall be preserved for a period of not less than three years.

(c) Each such purchaser of a precious metal or precious gem shall not, for a period of ten calendar days after the purchase, dispose of such metal or gem, remove such metal or gem from the state or alter in any way the form or substance of such metal or gem.

(d) As used in this section, “precious metal” means any gold, silver, platinum or other valuable metal; and “precious gem” means any diamond, pearl, emerald, ruby, sapphire or similar precious stone.

(e) Any person, firm or corporation violating any provision of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than two years, or, in the discretion of the court, be confined in jail not more than one year or shall be fined not less than $100 nor more than $5,000, or both fined and so confined in either the penitentiary or jail, all in the discretion of the court.

WV Legislature

§61-3-52. Wrongful injuries to timber; criminal penalties.

(a) Any person who knowingly and intentionally cuts down, injures, removes, or destroys, without the permission of the owner or his or her agent, timber of a value of $2,500 or less is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500 or confined in jail for not more than 30 days, or both fined and confined.

(b) Any person who knowingly and intentionally cuts down, injures, removes, or destroys, without the permission of the owner or his or her agent, timber of a value of $2,500 or more or who is convicted of a second or subsequent violation within 10 years of subsection (a) of this section shall be guilty of a felony and, upon conviction thereof, shall be fined not more than three times the value of the timber cut down, injured, removed, or destroyed, or imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

(c) The necessary trimming and removal of timber to permit the construction, repair, maintenance, cleanup, and operations of pipelines and utility lines and appurtenances of public utilities, public service corporations, and to aid registered land surveyors and professional engineers in the performance of their professional services, and municipalities, and pipeline companies, or lawful operators and product purchasers of natural resources other than timber, shall not be considered a willful and intentional cutting down, injuring, removing, or destroying of timber.

(d) The necessary trimming and removal of timber for boundary line maintenance, for the construction, maintenance, and repair of streets, roads, and highways, or for the control and regulation of traffic thereon by the state and its political subdivisions or registered land surveyors and professional engineers, shall not be considered a willful and intentional cutting down, injuring, removing, or destroying of timber.

(e) No fine or imprisonment imposed pursuant to this section shall be construed to limit any cause of action by a landowner for recovery of damages otherwise allowed by law. If a person charged or convicted under the provisions of this section enters into an agreement with a landowner to make financial restitution for the landowner’s timber damages, any applicable statute of limitations effecting the landowner’s cause of action shall be tolled from the date the agreement was entered into until a breach of the agreement occurs.

(f) If a criminal action is brought under the provisions of this section, the county prosecutor shall publish a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code in the county where the property involved is located which provides a description of the property and a general summary of the timber damages. If a landowner suffering timber damages is not aware of those damages prior to the publication of the Class II legal advertisement, any applicable statute of limitations effecting the landowner’s cause of action for the recovery of damages shall be tolled from the time the damages were incurred, and may not commence until the date the final Class II legal advertisement is published.

WV Legislature

§61-3-53. Unauthorized use of dumpsters.

(a) Any person who without authorization dumps garbage or trash, or assists in the unauthorized dumping of garbage or trash, in a dumpster or other solid waste container which is located on the property of another person and leased or otherwise owned or maintained by another person is guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with subsection (b) of this section. The act of throwing isolated objects into a dumpster or other solid waste container in the prevention or elimination of litter is specifically excepted from any penalties under this section.

(b) Any person convicted of a misdemeanor under subsection (a) of this section shall be subject to the following penalties:

(1) Upon a first conviction under this section, the defendant shall be fined not less than $50 nor more than $250.

(2) Upon a second conviction under this section, the defendant shall be fined not less than $250 nor more than $500.

(3) Upon any subsequent conviction in excess of a second conviction under this section, the defendant shall be fined not less than $500 nor more than $1,000, or imprisoned in the county jail not less than thirty days nor more than sixty days, or both fined and imprisoned.

Notwithstanding the provisions of section four, article eleven-a of this chapter or section two-a, article three, chapter fifty of this code, the magistrate or court may order restitution not to exceed the value of unauthorized solid waste services received.

WV Legislature

§61-3-54. Taking identity of another person; penalty.

Any person who knowingly takes the name, birth date, social security number, or other identifying information of another person, without the consent of that other person, with the intent to fraudulently represent that he or she is the other person for the purpose of making financial or credit transactions in the other person's name, or for the purpose of gaining employment, is guilty of a felony and, upon conviction, shall be punished by confinement in the penitentiary not more than five years, or fined not more than $1,000, or both: Provided, That the provisions of this section do not apply to any person who obtains another person's drivers license or other form of identification for the sole purpose of misrepresenting his or her age.

WV Legislature

§61-3-55. Failure to pay for gasoline.

Any person who knowingly and willfully drives a motor vehicle off the premises of an establishment where gasoline offered for retail sale was dispensed into the fuel tank of the motor vehicle with the intent to avoid payment for the gasoline that was so dispensed shall be deemed to be guilty of the larceny thereof. In addition to the penalties provided for by the provisions of section thirteen, article three of this chapter, upon a second conviction for larceny of gasoline, the court shall order the suspension of the person's license to drive a motor vehicle for six months, and upon a third or subsequent conviction, the court shall order the suspension of the person's license to drive a motor vehicle for one year.

Whenever a second or subsequent offense is had under the provisions of this section, the clerk of the court shall transmit a certified abstract of the judgment to the Division of Motor Vehicles within seventy-two hours of the conviction. Upon receipt of the abstract of judgment the Division of Motor Vehicles shall enter an order suspending the person's license to operate a motor vehicle for the appropriate time period.

WV Legislature

§61-3-56. Scanning device or reencoder fraud; felony; definitions; and penalties.

(a) As used in this section, the term:

(1) "Authorized user" means the person to whom a payment card is issued or any other person acting with the permission of the person to whom the card is issued;

(2) "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of the owner or operator. A "merchant" also means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing or receiving goods, services, money or anything else of value from the person;

(3) "Payment card" means a credit card, charge card, debit card, hotel key card, stored value card or any other card that is issued to an authorized card user and that allows the user to obtain, purchase or receive goods, services, money or anything else of value from a merchant;

(4) "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card; and

(5) "Scanning device" means a scanner, reader or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

(b) Any person who uses a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card or a merchant is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500 or confined in a county or regional jail for not more than one year, or both.

(c) Any person who uses a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card or a merchant is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500 or confined in a county or regional jail not more than one year, or both.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, any person who is convicted of the provisions of subsection (b) or (c) of this section who has previously been

WV Legislature

convicted of a violation of either subsection shall be guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than three years or fined not more than $5,000, or both.

WV Legislature

§61-3-57. Possession of bogus receipts or universal product codes with intent to defraud; penalties.

Any person who, with intent to defraud, possesses fifteen or more fraudulently obtained or counterfeit sales receipts or fraudulently obtained or counterfeit universal product codes, or possesses a device the purpose of which is to manufacture counterfeit retail sales receipts or counterfeit universal product code labels, is guilty of a felony and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000 or imprisoned in a state correctional facility not less than one year nor more than three years, or both.

WV Legislature

§61-3-58. Unlawful operation of a recording device.

(a)(1) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater in order to record the motion picture that is being exhibited, without the written consent of the motion picture theater owner, and with intent to distribute, or cause the distribution of, multiple copies of the motion picture, for pecuniary gain, is guilty of a felony and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 or imprisoned in a correctional facility for not more than one nor more than ten years, or both fined and imprisoned.

(2) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater in order to record the motion picture that is being exhibited, without the written consent of the motion picture theater owner, and with intent to distribute, or cause the distribution of, multiple copies of the motion picture, but not for pecuniary gain, is guilty of a felony and, upon conviction thereof, shall be fined not less than $100 nor more than $500 or imprisoned in a correctional facility for not less than one year nor more than three years, or both fined and imprisoned, or, in the discretion of the court, be confined in a regional jail not more than one year and fined not more than $1,000.

(3) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater in order to record the motion picture that is being exhibited, without the written consent of the motion picture theater owner, and without the intent to distribute, or cause the distribution of, multiple copies of the motion picture, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.

(4) Any person who commits the acts described in subdivision (1) of this subsection is civilly liable for actual damages arising from his or her distribution of copies of the motion picture. A conviction for the offense described in subdivision (1) of this subsection is not a prerequisite to the maintenance of a civil action authorized by this subdivision.

(b) The term "audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

(c) The term "motion picture theater" means a movie theater, screening room, or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

(d) The owner or lessee of a motion picture theater, or the authorized agent or employee of the owner or lessee, who alerts law-enforcement authorities of an alleged violation of this section shall not be liable in any civil action arising out of measures taken by the owner, lessee, agent or employee in the course of subsequently detaining a person that the owner, lessee, agent or employee in good faith believed to have violated this section while awaiting the arrival of law-enforcement authorities, unless the plaintiff can show by clear and convincing evidence that such measures were manifestly unreasonable or the period of

WV Legislature

detention was unreasonably long.

(e) This section does not prevent any lawfully authorized investigative, law-enforcement protective, or intelligence gathering employee or agent, of the local, state or federal government, from operating any audiovisual recording device in a motion picture theater, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

(f) Nothing in this section prevents prosecution, instead, under any other provision of law providing for greater penalty.

WV Legislature

§61-3-59. Misrepresentation of past or present military status or military awards to obtain anything of value; penalties.

(a) Any person who misrepresents himself or herself to:

(1) Be a member or veteran of the armed forces of the United States; or

(2) Be a recipient of any military commendation, decoration, or medal awarded to members of the armed forces of the United States or the several states who does so with the intent to obtain money, property, or a thing of value is guilty of the offense of misrepresentation of military status.

(b)(1) Any person violating the provisions of §61-3-59(a) of this code where the value of the money, property, or thing of value is $1,000 or more shall be guilty of a felony and, upon conviction thereof, be fined not more than $5,000, or imprisoned in a state correctional facility for not less than one nor more than 10 years, or both fined and imprisoned.

(2) Any person violating the provisions of §61-3-59(a) of this code where the value of the money, property, or thing of value is $999 or less, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,500, or confined in jail for not more than one year, or both fined and confined.

WV Legislature

§61-3-60. Damage, destruction, or theft of equipment used by emergency responders; criminal penalties.

(a) Any person who knowingly and willfully damages, destroys, or commits the larceny of any equipment, or personal property, owned or operated by the state, a county or a municipality of this state, a volunteer fire department of this state, or a private entity that has contracted with the state or a county or municipality of the state for the performance of emergency response duties, that is used by emergency responders in the performance of emergency response duties, whether that equipment or personal property is in use or maintained in a garage or other building, structure, or location, and that action thereby creates a substantial risk of bodily injury or actual bodily injury to another person, results in property loss to any person served by the emergency responder, or results in the interruption of service by emergency responders to the public, is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in a state correctional facility not less than one nor more than three years, or both fined and imprisoned.

(b) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.

(c) For purposes of this section:

(1) “Emergency responder" has the same meaning as that term is defined in §5H-1-2 of this code and shall additionally include any entity of a political subdivision of the state providing emergency services pursuant to the provisions of §15-5-8 of this code and any county commission, political subdivision, or county 911 public safety answering point.

(2) “Emergency response duties” has the same meaning as that term is defined in §5H-1-2 of this code and shall additionally include disaster response activities and emergency services as those terms are defined in §15-5-2 of this code and activities of a county commission, political subdivision, or county 911 public safety answering point in providing emergency responder services.

WV Legislature