WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

ENROLLED
SENATE BILL NO. 72

(By Mr. [Signature])

PASSED [Date] 1978

In Effect ninety days from Passage
AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-b, relating to making the act of trespass in, on, under or across certain property, structures and conveyances a criminal offense; defining terms; and providing civil and criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-b, to read as follows:

ARTICLE 3B. TRESPASS.

§61-3B-1. Definitions.

1. As used in this article:
   1. (1) "Structure" means any building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.
   2. (2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.
   3. (3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.
   4. (4) "Posted land" is that land upon which reasonably
maintained signs are placed not more than five hundred feet apart along and at each corner of the boundaries of the land, upon which signs there appears prominently in letters of not less than two inches in height the words “no trespassing” and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this article pertaining to trespass on enclosed lands.

(5) “Cultivated land” is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.

(6) “Fenced land” is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this article, it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this article.

(7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this article, shall be considered as enclosed and posted.

(8) “Trespass” under this article is the willful unauthorized entry upon, in or under the property of another, but shall not include the following:

(a) Entry by the state, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.

(b) The exercise of rights in, under or upon property by virtue of rights of way or easements by a public utility of other person owning such right of way or easement whether by written or prescriptive right.

(c) Permissive entry, whether written or oral, and
entry from a public road by the established private ways
to reach a residence for the purpose of seeking permission
shall not be trespass unless signs are posted prohibiting
such entry.
(d) Entry performed in the exercise of a property right
under ownership of an interest in, under or upon such
property.
(e) Entry where no physical damage is done to property
in the performance of surveying to ascertain property
boundaries, and in the performance of necessary work of
construction, maintenance and repair of a common prop-
erty line fence, or buildings or appurtenances which are
immediately adjacent to the property line and mainte-
nance of which necessitates entry upon the adjoining
owner's property.

§61-3B-2. Trespass in structure or conveyance.
Any person who knowingly enters in, upon or under a
structure or conveyance without being authorized, li-
censed or invited, or having been authorized, licensed or
invited is requested to depart by the owner, tenant or the
agent of such owner or tenant, and refuses to do so, shall
be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not more than one hundred dollars.
If the offender is armed with a firearm or other danger-
ous weapon while in the structure or conveyance, with
the unlawful and felonious intent to do bodily injury to a
human being in said structure or conveyance at the time
the offender knowingly trespasses, such offender shall,
notwithstanding the provisions of section one, article sev-
en, chapter sixty-one of this code, be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not
less than one hundred dollars nor more than five hundred
dollars, or be confined in the county jail for a period not
to exceed twelve months, or both such fine or imprison-
ment.

§61-3B-3. Trespass on property other than structure or con-
veyance.
(a) Any person who knowingly and without being
authorized, licensed or invited, enters or remains on any
(a) If the offender enters, or remains on, property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars.

(b) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail for a period not to exceed six months, or both such fine and imprisonment.

(c) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall, notwithstanding the provisions of section one, article seven, chapter sixty-one of this code, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for a term not to exceed six months, or fined not more than one hundred dollars, or both such fine and imprisonment.

(d) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage: Provided, That the provisions of this article shall not apply in a labor dispute.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Charles E. Schuster
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. William Jr.
Clerk of the Senate

O.A. Blankenship
Clerk of the House of Delegates

W. T. Battle Jr.
President of the Senate

Donald L. Topp
Speaker House of Delegates

The within is presented this the 24th day of March, 1978

[Signature]
Governor