

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978

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## ENROLLED

SENATE BILL NO. 72

(By Mr. Brotherton, Mr. Resident & Mr. Bond)

—•—

PASSED March 11 1978

In Effect ninty days from Passage



110.12

# ENROLLED

## Senate Bill No. 72

(By MR. BROTHERTON, MR. PRESIDENT, and MR. BEALL)

[Passed March 11, 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:

2 (1) "Structure" means any building of any kind, either  
3 temporary or permanent, which has a roof over it, together  
4 with the curtilage thereof.

5 (2) "Conveyance" means any motor vehicle, vessel,  
6 railroad car, railroad engine, trailer, aircraft or sleeping  
7 car, and "to enter a conveyance" includes taking apart any  
8 portion of the conveyance.

9 (3) An act is committed "in the course of committing"  
10 if it occurs in an attempt to commit the offense or in  
11 flight after the attempt or commission.

12 (4) "Posted land" is that land upon which reasonably

13 maintained signs are placed not more than five hundred  
14 feet apart along and at each corner of the boundaries of  
15 the land, upon which signs there appears prominently in  
16 letters of not less than two inches in height the words "no  
17 trespassing" and in addition thereto the name of the own-  
18 er, lessee or occupant of the land. The signs shall be placed  
19 along the boundary line of posted land in a manner and in  
20 a position as to be clearly noticable from outside of the  
21 boundary line. It shall not be necessary to give notice by  
22 posting on any enclosed land or place not exceeding five  
23 acres in area on which there is a dwelling house or prop-  
24 erty that by its nature and use is obviously private in or-  
25 der to obtain the benefits of this article pertaining to tres-  
26 pass on enclosed lands.

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

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

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

42 (8) "Trespass" under this article is the willful unauthor-  
43 ized entry upon, in or under the property of another, but  
44 shall not include the following:

45 (a) Entry by the state, its political subdivisions or by  
46 the officers, agencies or instrumentalities thereof as au-  
47 thorized and provided by law.

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

52 (c) Permissive entry, whether written or oral, and

53 entry from a public road by the established private ways  
54 to reach a residence for the purpose of seeking permission  
55 shall not be trespass unless signs are posted prohibiting  
56 such entry.

57 (d) Entry performed in the exercise of a property right  
58 under ownership of an interest in, under or upon such  
59 property.

60 (e) Entry where no physical damage is done to prop-  
61 erty in the performance of surveying to ascertain property  
62 boundaries, and in the performance of necessary work of  
63 construction, maintenance and repair of a common prop-  
64 erty line fence, or buildings or appurtenances which are  
65 immediately adjacent to the property line and mainte-  
66 nance of which necessitates entry upon the adjoining  
67 owner's property.

**§61-3B-2. Trespass in structure or conveyance.**

1 Any person who knowingly enters in, upon or under a  
2 structure or conveyance without being authorized, li-  
3 censed or invited, or having been authorized, licensed or  
4 invited is requested to depart by the owner, tenant or the  
5 agent of such owner or tenant, and refuses to do so, shall  
6 be guilty of a misdemeanor, and, upon conviction thereof,  
7 shall be fined not more than one hundred dollars.

8 If the offender is armed with a firearm or other danger-  
9 ous weapon while in the structure or conveyance, with  
10 the unlawful and felonious intent to do bodily injury to a  
11 human being in said structure or conveyance at the time  
12 the offender knowingly trespasses, such offender shall,  
13 notwithstanding the provisions of section one, article sev-  
14 en, chapter sixty-one of this code, be guilty of a misde-  
15 meanor, and, upon conviction thereof, shall be fined not  
16 less than one hundred dollars nor more than five hundred  
17 dollars, or be confined in the county jail for a period not  
18 to exceed twelve months, or both such fine or imprison-  
19 ment.

**§61-3B-3. Trespass on property other than structure or conveyance.**

1 (a) Any person who knowingly and without being  
2 authorized, licensed or invited, enters or remains on any

3 property, other than a structure or conveyance, as to  
4 which notice against entering or remaining is either given  
5 by actual communication to such person or by posting,  
6 fencing or cultivation, shall be guilty of a misdemeanor,  
7 and, upon conviction thereof, shall be fined not more than  
8 one hundred dollars.

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

21 (c) If the offender is armed with a firearm or other  
22 dangerous weapon with the unlawful and felonious intent  
23 to do bodily injury to a human being during his commis-  
24 sion of the offense of trespass on property other than a  
25 structure or conveyance, such offender shall, notwith-  
26 standing the provisions of section one, article seven, chap-  
27 ter sixty-one of this code, be guilty of a misdemeanor, and,  
28 upon conviction thereof, shall be confined in the county  
29 jail for a term not to exceed six months, or fined not more  
30 than one hundred dollars, or both such fine and imprison-  
31 ment.

32 (d) Notwithstanding and in addition to any other pen-  
33 alties provided by law, any person who performs or causes  
34 damage to property in the course of a willful trespass  
35 shall be liable to the property owner in the amount of  
36 twice the amount of such damage: *Provided*, That the  
37 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

Chance C. Chustand  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Willan, Jr.  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

W. T. Bratherton, Jr.  
President of the Senate

Donald L. Topp  
Speaker House of Delegates

The within is approved this the 24  
day of March, 1978

John D. Rhyne  
Governor

RECEIVED  
MAR 21 9 34 AM '78  
OFFICE OF THE GOVERNOR

Date March 24, 1978  
Time 1:00 p.m.

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78 MAR 29 P 1:35  
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SECY. OF STATE