

No: 2646

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

Com. Sub. for
HOUSE BILL No. 2646

(By Mr. Delegates M. Harman and
Shiflet



Passed March 12, 1988

In Effect Ninety Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2646

(By DELEGATES M. HARMAN and SHIFLET)

[Passed March 12, 1988; in effect ninety days from passage.]

AN ACT to amend and reenact section forty-eight, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes against property generally; defining the misdemeanor offense of breaking, cutting, taking or carrying away, or in any manner damaging 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, and prescribing a penalty therefor; defining the misdemeanor offense of entering 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, and prescribing the penalty therefor; defining the misdemeanor offense of willfully or knowingly possessing, or hauling along any public road in this state, any trees, shrubbery or flowers, including everything under the title of flora, which are protected by law, 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, and prescribing the penalty therefor; requiring persons, at the request of a law-enforcement officer, to display the written permission to such officer; providing for certain exceptions as to the persons required to obtain permission in writing or to display the written permission; providing for notice to landowners by an employee, agent or contractor of a public utility if the written permission is pursuant to a contract with said owner or his predecessor in title or by other operation of law; and providing that magistrates shall have concurrent jurisdiction with circuit courts for offenses defined herein.

Be it enacted by the Legislature of West Virginia:

That section forty-eight, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

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

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

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

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

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

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

33 (1) An employee of the department of highways or of
34 a county or municipality performing roadside mainte-
35 nance shall obtain the permission of an owner before
36 engaging in any act specified in subsections (a), (b) or
37 (c) of this section but is not required to obtain the
38 permission in writing or to display the written permis-
39 sion as provided in subsection (d) of this section; and

40 (2) If an employee, agent or contractor of a public
41 utility as defined in section two, article one, chapter
42 twenty-four of this code, has obtained the written
43 permission of an owner pursuant to a contract with said
44 owner or his predecessor in title or by other operation
45 of law, the employee, agent or contractor of said public
46 utility shall, prior to engaging in any act specified in
47 subsections (a), (b) or (c) of this section, provide
48 reasonable notice to the owner under rules and regula-
49 tions which the public service commission shall promul-
50 gate: *Provided*, That such rules and regulations shall not
51 require prior notice in a case of sudden emergency
52 endangering persons or property of either the land-
53 owner, the occupant of the land, the public utility or the
54 general public: *Provided, however*, That such rules and
55 regulations shall require reasonable notice to the

56 landowner that such acts have been performed without
57 prior notice by reason of such emergency.

58 (f) Any person who violates the provisions of subsec-
59 tion (a) or (c) of this section shall be guilty of a
60 misdemeanor, and, upon conviction thereof, for the first
61 offense shall be fined not more than fifty dollars, and
62 for subsequent offenses shall be confined in the county
63 jail for not more than three months, or fined not more
64 than fifty dollars, or both, for each offense.

65 (g) Any person who violates the provisions of subsec-
66 tion (b) of this section shall be guilty of a misdemeanor,
67 and, upon conviction thereof, for the first offense shall
68 be fined not less than fifty dollars, and for subsequent
69 offenses shall be confined in the county jail for not less
70 than three months, or fined not less than fifty dollars,
71 or both, for each offense.

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

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

Bruce O. Williams

Chairman Senate Committee

Bernard V. Kelly

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Isidore C. Hillis

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Don Tomkins

President of the Senate

William W. Miller

Speaker of the House of Delegates

The within *Approved* this the *28th*
March
day of _____, 1988.

Arthur M. Shaffer

Governor

PRESENTED TO THE
GOVERNOR

Date 3/23/88

Time 3:38 p.m.

RECEIVED

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OFFICE OF THE SECRETARY OF STATE