WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

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ENROLLED
Com. Sub. for
HOUSE BILL No. 2646

(By Delegates M. Harman and
Shiflet)

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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, 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.

10 (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 subsections (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 subsections (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) If an employee, agent or contractor of a public utility as defined in section two, article one, chapter twenty-four of this code, has obtained the written permission of an owner pursuant to a contract with said owner or his predecessor in title or by other operation of law, the employee, agent or contractor of said public utility shall, prior to engaging in any act specified in subsections (a), (b) or (c) of this section, provide reasonable notice to the owner under rules and regulations which the public service commission shall promulgate: Provided, That such rules and regulations shall not require prior notice in a case of sudden emergency endangering persons or property of either the landowner, the occupant of the land, the public utility or the general public: Provided, however, That such rules and regulations shall require reasonable notice to the
landowner that such acts have been performed without prior notice by reason of such emergency.

(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 fifty dollars, and for subsequent offenses shall be confined in the county jail for not more than three months, or fined not more than fifty dollars, 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 fifty dollars, and for subsequent offenses shall be confined in the county jail for not less than three months, or fined not less than fifty dollars, or both, for each offense.

(h) Magistrates shall have concurrent jurisdiction with circuit courts for offenses under this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill was approved this the 28th day of December, 1988.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/23/88
Time 3:38 p.m.