ENROLLED

House Bill No. 3153
(By Delegates Boggs, Craig and R. M. Thompson)

Passed April 9, 2005
In Effect Ninety Days from Passage
AN ACT to amend §61-3-28 of the Code of West Virginia, 1931, as amended; and to amend §61-3-41 of said code, all relating to creation of criminal offenses for damaging, stealing or injury to railroad property; defining terms; creating an offense for reckless disregard for railroad property; creating an offense for intentionally damaging railroad property; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-3-41 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§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 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, any 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 one thousand dollars 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 more than five thousand dollars, 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 one thousand dollars, upon conviction thereof, the person shall be fined not more than ten thousand dollars, 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.

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 is approved this the 2nd day of May, 2005.