WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

ENROLLED

Senate Bill No. 761

(By Senators Jenkins, Browning, Chafin, Foster, Kessler, Laird, Minard, Oliverio, Palumbo, Snyder, Stollings, Williams, Yost, Barnes, Caruth, Deem and Hall)

[Passed April 10, 2009; in effect ninety days from passage.]
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(BY SENATORS JENKINS, BROWNING, CHAPIN, FOSTER, KESSLER, LAIRD, MINARD, OLIVERIO, PALUMBO, SNYDER, STOLLINGS, WILLIAMS, YOST, BARNES, CARUTH, DEEM AND HALL)

[Passed April 10, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §61-3-12 and §61-3-29 of the Code of West Virginia, 1931, as amended, relating to crimes committed on or against commercial, railroad or public utility property; extending criminal penalties for prohibited entry upon commercial property enclosed by a fence or similar physical barrier or upon certain structures used for utility transmission or distribution; clarifying the offense of breaking and entering or entering without breaking onto public utility property that is enclosed or fenced, with the intent to commit a felony or larceny; establishing the felony offense of knowingly and willfully damaging and destroying utility or railroad property, resulting in the creation of a substantial risk of serious bodily injury to another; and criminal penalties.

Be it enacted by the Legislature of West Virginia:
That §61-3-12 and §61-3-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.

1 If any person shall, at any time, break and enter, or shall enter without breaking, any office, shop, underground coal mine, storehouse, warehouse, banking house or any house or building, other than a dwelling house or outhouse adjoining thereto or occupied therewith, any railroad or traction car, propelled by steam, electricity or otherwise, any steamboat or other boat or vessel, or any commercial, industrial or public utility property enclosed by a fence, wall or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons, within the jurisdiction of any county in this state, with intent to commit a felony or any larceny, he or she shall be deemed guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one nor more than ten years. And if any person shall, at any time, break and enter, or shall enter without breaking, any automobile, motorcar or bus, with like intent, within the jurisdiction of any county in this state, he or she shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than two nor more than twelve months and be fined not exceeding $100.

An indictment for burglary may contain one or more counts for breaking and entering, or for entering without breaking, the house or building mentioned in the count for burglary under the provisions of this section and section eleven of this article.
§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

1 (a) Any person who knowingly and willfully damages or destroys any real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,000, or confined in jail not more than one year, or both fined and confined.

(b) Any person who knowingly and willfully: (1) Damages or destroys any real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; and (2) creates a substantial risk of serious bodily injury to another or results in the interruption of service to the public is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or confined in a state correctional facility not less than one nor more than three years, or both fined and imprisoned.

(c) Any person who knowingly and willfully: (1) Damages or destroys any real or personal property owned by a railroad company, or public utility company, or any real or personal property used for producing, generating, transmitting, distributing, treating or collecting electric-
ity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; and (2) causes serious bodily injury to another is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $50,000, or confined in a state correctional facility not less than one nor more than five years, or both fined and imprisoned.

(d) Nothing in this section may be construed to limit or restrict the ability of an entity referred to in subsection (a), (b) or (c) of this section or a property owner or other person who has been damaged or injured as a result of a violation of this section from seeking recovery for damages arising from violation of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the Day of .................., 2009.

Governor