

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 5091

BY DELEGATES FERRELL, ESPINOSA, DEVULT, MALLOW,
SHAMBLIN, CANNON, MAZZOCCHI, TULLY, CROUSE,
ADKINS, AND W. CLARK

[Passed March 7, 2024; in effect ninety days from
passage.]

HB 5091

2024 MAR 26 P 2:33
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend and reenact §61-10-34 of the Code of West Virginia, 1931, as amended,
2 relating to the "West Virginia Critical Infrastructure Protection Act"; defining terms;
3 removing the requirement that a critical infrastructure facility be enclosed; including
4 hardware, software, digital property, nuclear reactors, and nuclear components in
5 definition of critical infrastructure facility; clarifying that digital and physical equipment is
6 protected; including damage inflicted by cyber-attack or digital interference as punishable
7 conduct; increasing criminal penalties; creating second offense penalties for a person who
8 willfully damages, destroys, vandalizes, defaces, or tampers with equipment in a critical
9 infrastructure facility causing damage in excess of \$2,500; providing person who buys or
10 receives certain property stolen from a critical infrastructure facility is guilty of larceny;
11 providing exception to larceny for persons acting at the request of law enforcement or in
12 cooperation with law enforcement; providing liability for compensatory and punitive
13 damages in certain circumstances; providing for forfeiture of items of personal property in
14 certain circumstances; and providing that forfeiture be governed by the applicable
15 provisions of the West Virginia Contraband Forfeiture Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

**§61-10-34. Critical Infrastructure Protection Act; prohibiting certain acts, including
trespass and conspiracy to trespass against property designated a critical
infrastructure facility; criminal penalties; and civil action.**

1 (a) This section may be referred to as the "West Virginia Critical Infrastructure Protection
2 Act".

3 (b) For purposes of this section:

4 "Critical Infrastructure" means systems and assets, whether physical or virtual, so vital to
5 the United States of America or the State of West Virginia that the incapacity or destruction of
6 such systems and assets would have a debilitating impact on security, national economic security,

7 state economic security, national public health or safety, state public health or safety, or any
8 combination of those matters, whether such systems or assets are in operation or are under any
9 state of construction.

10 "Critical infrastructure facility" means one of the following:

11 (1) A petroleum or alumina refinery;

12 (2) An electrical power generating facility, substation, switching station, electrical control
13 center or electric power lines, and associated equipment infrastructure;

14 (3) A chemical, polymer, or rubber manufacturing facility;

15 (4) A water intake structure, water treatment facility, wastewater treatment plant, or pump
16 station;

17 (5) A natural gas compressor station;

18 (6) A liquid natural gas terminal or storage facility;

19 (7) Wireline and wireless telecommunications infrastructure;

20 (8) A port, railroad switching yard, trucking terminal, or other freight transportation facility;

21 (9) A gas processing plant, including a plant used in the processing, treatment, or
22 fractionation of natural gas or natural gas liquids;

23 (10) A transmission facility used by a federally licensed radio or television station;

24 (11) A steelmaking facility that uses an electric arc furnace to make steel;

25 (12) A facility identified and regulated by the United States Department of Homeland
26 Security Chemical Facility Anti-Terrorism Standards (CFATS) program;

27 (13) A dam that is regulated by the state or federal government;

28 (14) A natural gas distribution utility facility including, but not limited to, pipeline
29 interconnections, a city gate or town border station, metering station, below- or above-ground
30 pipeline or piping and truck loading or offloading facility, a natural gas storage facility, a natural
31 gas transmission facility, or a natural gas utility distribution facility;

32 (15) A crude oil or refined products storage and distribution facility including, but not limited
33 to, valve sites, pipeline interconnections, pump station, metering station, below- or above-ground
34 pipeline or piping, and truck loading or offloading facility;

35 (16) Military facilities, including national guard facilities and equipment storage areas
36 where non-military personnel are prohibited;

37 (17) Department of Highways facilities and locations near or on roads or highways where
38 the public is prohibited;

39 (18) Health care facilities;

40 (19) Any above-ground portion of an oil, gas, hazardous liquid, or chemical pipeline, tank,
41 or other storage facility that is enclosed by a fence, other physical barrier, or is clearly marked
42 with signs prohibiting trespassing that are obviously designed to exclude intruders;

43 (20) A commercial service airport as defined by the Federal Aviation Administration;

44 (21) Any nuclear reactor and its associated components including, but not limited to,
45 components related to modular or microreactors, cooling technologies, sensors, instrumentation,
46 or storage involved in training or research opportunities; or

47 (22) The hardware, software, or other digital property of any critical infrastructure facility
48 listed in this subsection.

49 (c)(1) Any person who willfully and knowingly trespasses or enters property containing a
50 critical infrastructure facility without permission by the owner of the property or lawful occupant
51 thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not
52 less than \$250 nor more than \$1,000, or confined in jail not less than 30 days nor more than one
53 year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy,
54 vandalize, deface, tamper with the physical or digital equipment, or impede or inhibit operations
55 of the critical infrastructure facility, the person is guilty of a misdemeanor and, upon conviction
56 thereof, shall be fined not less than \$100 nor more than \$1,000, or confined in a jail for not more
57 than one year, or both fined and confined.

58 (2) (A) Any person who willfully damages, destroys, vandalizes, defaces, or tampers with
59 the physical or digital equipment in a critical infrastructure facility causing damage, including
60 damage inflicted by cyber-attack or digital interference in excess of \$2,500 is guilty of a felony
61 and, upon conviction thereof, shall be fined not less than \$3,000 nor more than \$10,000, or
62 imprisoned in a state correctional facility for a term of not less than one year nor more than five
63 years, or both fined and imprisoned.

64 (B) Any person convicted of a second offense under the provisions of this subdivision is
65 guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than
66 \$15,000, or imprisoned in a state correctional facility for a term of not less than two years nor
67 more than 10 years, or both fined and imprisoned.

68 (3) Any person who conspires with any person to commit the offense of trespass against
69 a critical infrastructure facility in violation of subdivision (1) of subsection (c) of this section and
70 the trespass actually occurs is guilty of a misdemeanor and, upon conviction thereof, shall be
71 fined in an amount of not less than \$250 nor more than \$1,000. Any person who conspires with
72 any person to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical
73 infrastructure facility and the damage, destruction, vandalization, defacing, or tampering causes
74 damage, including damage inflicted by cyber-attack or digital interference in excess of \$2,500 is
75 guilty of a felony and, shall, upon conviction thereof, be fined not less than \$3,000 nor more than
76 \$10,000.

77 (d)(1) Any person who is arrested for or convicted of an offense under this section may be
78 held civilly liable for any damages to personal or real property while trespassing, in addition to the
79 penalties imposed by this section.

80 (2) Any person or entity that compensates, provides consideration to, or remunerates a
81 person for trespassing as described in subdivision (1) of subsection (c) of this section may also
82 be held liable for damages to personal or real property committed by the person compensated or
83 remunerated for trespassing.

84 (e) A person who buys or receives from another person, aids in concealing, transfers to a
85 person other than the owner thereof, or possesses any stolen goods or other thing of value from
86 a critical infrastructure facility, which he or she knows or has reason to believe has been stolen
87 from a critical infrastructure facility, is guilty of larceny, and may be prosecuted although the
88 principal offender has not been convicted: *Provided*, That possession of stolen goods from a
89 critical infrastructure facility while acting at the request of law enforcement or in cooperation with
90 law enforcement does not constitute a violation of this section. Any person convicted of an
91 offense under this subsection, in addition the criminal penalties imposed for larceny, is liable to
92 the critical infrastructure facility owner for compensatory damages and, in addition, for punitive
93 damages in an amount not less than three times the amount of the compensatory damages.

94 (f) The provisions of §61-10-34(c)(1) of this code do not apply to any person or
95 organization:

96 (1) Monitoring or attentive to compliance with public or worker safety laws, or, wage and
97 hour requirements;

98 (2) Picketing at the workplace that is otherwise lawful and arises out of a bona fide labor
99 dispute, including any controversy concerning wages, salaries, hours, working conditions, or
100 benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions,
101 the managing or maintenance of collective bargaining agreements, and the terms to be included
102 in those agreements; or

103 (3) Engaging in union organizing or recruitment activities, including attempting to reach
104 workers verbally, in writing with pamphlets, and investigation of non-union working conditions, or
105 both.

106 (g) The provisions of this section do not apply to:

107 (1) The right to free speech or assembly including, but not limited to, protesting and
108 picketing; or

109 (2) A contractor who has a contractual relationship with a critical infrastructure facility and
110 the contractor's employees are acting within their scope of employment performing work at a
111 critical infrastructure facility.

112 (h)(1) All items of personal property which are used, have been used, or are intended for
113 use in perpetration of theft or damage to infrastructure are subject to forfeiture.

114 (2) The items of personal property subject to forfeiture include all conveyances, including
115 aircraft, vehicles, or vessels, except that:

116 (A) A conveyance used by any person as a common carrier in the transaction of business
117 as a common carrier may not be forfeited under this section unless it appears that the person
118 owning the conveyance is a consenting party or privy to a violation of this section;

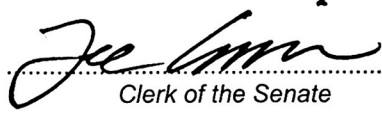
119 (B) A conveyance may not be forfeited under the provisions of this article, unless the
120 state proves by a preponderance of the evidence that the person owning the conveyance knew,
121 or had reason to know, that the conveyance was being employed or was likely to be employed
122 in a violation of this section; and

123 (C) A bona fide security interest or other valid lien in any conveyance may not be
124 forfeited under the provisions of this article, unless the state proves by a preponderance of the
125 evidence that the holder of the security interest or lien either knew, or had reason to know, that
126 the conveyance was being used or was likely to be used in a violation of this section.

127 (3) All procedures relating to the seizure and disposition of property subject to forfeiture
128 under the authority of this section are governed by the applicable provisions of the West Virginia
129 Contraband Forfeiture Act, §60A-7-701 *et seq.* of this code.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.


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Clerk of the House of Delegates

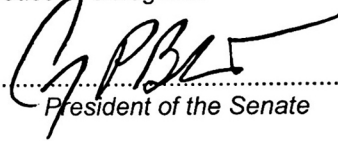

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Clerk of the Senate

FILED
2024 MAR 26 P 2:33
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the House of Delegates.

In effect ninety days from passage.


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Speaker of the House of Delegates


.....
President of the Senate

The within is approved this the 26th
Day of March, 2024.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2024

Time 10:42am