
PART FIVE — GENERAL OFFENSES CODE

ARTICLE 533 Offenses Relating to Property

- 533.01 Shoplifting.
- 533.02 Trespass.
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CROSS REFERENCES

See sectional histories for similar State law.
Authority to regulate advertising—see WV Code 8-12-5(31)
State law provisions—see WV Code 61-3

533.01 Shoplifting.

(a) General definitions.

- (1) “Conceal” means to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.
- (2) “Merchant” means an owner or operator of any mercantile establishment, and includes the merchant’s employees, servants, security agents or other agents.
- (3) “Mercantile establishment” means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. “Mercantile establishment” does not include adjoining parking lots or adjoining areas of common use with other establishments.
- (4) “Merchandise” means any goods, foodstuffs, wares or personal property or any part or portion thereof of any type or description displayed, held or offered for sale, or a shopping cart.
- (5) “Value of the merchandise” means the merchant’s stated price of the merchandise, or in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the retail value of the merchandise, as defined in subsection (b) hereof, the difference between the merchant’s stated price of the merchandise and the altered price. (WV Code 61-3A-6.)

(b) Shoplifting defined.

- (1) A person commits the offense of shoplifting if, with intent to appropriate merchandise without paying the merchant’s stated price for the merchandise, such person, alone or in concert with another person, knowingly:
 - A. Conceals the merchandise upon his or her person or in another manner; or
 - B. Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or
 - C. Alters, transfers or removes any price marking affixed to the merchandise; or
 - D. Transfers the merchandise from one container to another; or
 - E. Causes cash register or other sales recording device to reflect less than the merchant’s stated price for the merchandise; or

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- F. Removes a shopping cart from the premises of the mercantile establishment.
- (2) A person also commits the offense of shoplifting if such person, alone or in concert with another person, knowingly and with intent obtains an exchange or refund or attempts to obtain an exchange or refund for merchandise which has not been purchased from the mercantile establishment. (WV Code 61-3A-1.)
- (c) Breach of peace; detention. An act of shoplifting as defined herein is hereby declared to constitute a breach of peace and any owner of merchandise, his agent or employee, or any law enforcement officer who has reasonable ground to believe that a person has committed shoplifting, may detain such person in a reasonable manner and for a reasonable length of time not to exceed thirty minutes, for the purpose of investigating whether or not such person has committed or attempted to commit shoplifting. Such reasonable detention shall not constitute an arrest, nor shall it render the owner of merchandise, his agent or employee, liable to the person detained. (WV Code 61-3A-4.)
- (d) Evidence.
- (1) Evidence of stated price or ownership of merchandise may include, but is not limited to:
- A. The actual merchandise alleged to have been shoplifted; or
 - B. The unaltered content of the price tag or marking from such merchandise; or
 - C. Properly identified photographs of such merchandise.
- (2) Any merchant may testify at a trial as to the stated price or ownership of merchandise, as well as to other matters pertaining to the case. (WV Code 61-3A-2.)
- (e) Civil liability.
- (1) General rule. Any person who commits any of the acts described in this section shall be civilly liable:
- A. To restore the merchandise to the mercantile establishment; and
 - B. If such merchandise is not recoverable or is damaged, for actual damages, including the value of the merchandise involved in the shoplifting; and
 - C. For other actual damages arising from the incident, not including the loss of time or loss of wages incurred by the mercantile establishment or any merchant in connection with the apprehension and processing of the suspect; and
 - D. In all cases, for a penalty to be paid to the mercantile establishment in the amount of fifty dollars (\$50.00) or double the value of the merchandise, whichever is higher.
- (2) Costs and attorneys' fees. A merchant who is a prevailing party under this section is entitled to costs.
- (3) Effect of conviction. A conviction for the offense of theft by shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section. However, a merchant who has recovered the penalty prescribed by subsection (f) hereof is not entitled to recover the penalty imposed by this section.
- (4) Right to demand payment. The fact that a mercantile establishment may bring an action against an individual as provided in this section does not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages or a penalty under this section remit such damages or penalty prior to the commencement of any legal action. (WV Code 61-3A-5.)
- (f) Penalty. A person convicted of shoplifting shall be punished as follows:
- (1) First offense conviction. Upon a first shoplifting conviction:

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- A. When the value of the merchandise is less than or equal to one hundred dollars (\$100.00), the defendant shall be fined not more than two hundred fifty dollars (\$250.00).
 - B. When the value of the merchandise exceeds one hundred dollars (\$100.00), the defendant shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), and such fine shall not be suspended; or the defendant shall be imprisoned not more than thirty days; or both.
- (2) Second offense conviction. Upon a second shoplifting conviction:
- A. When the value of the merchandise is less than or equal to one hundred dollars (\$100.00), the defendant shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), and such fine shall not be suspended; or the defendant shall be imprisoned not more than thirty days; or both.
 - B. When the value of the merchandise exceeds one hundred dollars (\$100.00), the defendant shall be fined not less than five hundred dollars (\$500.00) and shall be imprisoned not more than thirty days. At least thirty days shall actually be spent in confinement and not subject to probation.
- (3) Mandatory penalty. In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of fifty dollars (\$50.00), or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.
- (4) Prior convictions. In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question. (WV Code 61-3A-3.)

533.02 Trespass.

- (a) Definitions. As used in this section:
- (1) "Structure" means any building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.
 - (2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.
 - (3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.
 - (4) "Posted land" means that land upon which reasonably maintained signs are placed not more than 500 feet apart along and at each corner of the boundaries of the land upon which signs there appears prominently in letters of not less than two inches in height the words "no trespassing" and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is

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obviously private in order to obtain the benefits of this section pertaining to trespass on enclosed lands.

- (5) “Cultivated land” means that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees, or is fallow land as part of a crop rotation.
 - (6) “Fenced land” means that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this section it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this section.
 - (7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purposes of this section, shall be considered as enclosed and posted.
 - (8) “Trespass” means the willful unauthorized entry upon, in or under the property of another, but shall not include the following:
 - A. Entry by the State, its political subdivisions, or by the officers, agencies or instrumentalities thereof as authorized and provided by law.
 - B. The exercise of rights in, under or upon property by virtue of rights of way or easements by a public utility or other person owning such right of way or easement, whether by written or prescriptive right.
 - C. Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.
 - D. Entrance performed in the exercise of a property right under ownership of an interest in, under or upon such property.
 - E. Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner’s property. (WV Code 61-3B-1.)
- (b) Trespass in Structure or Conveyance. Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be fined not more than one hundred dollars (\$100.00). If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in such structure notwithstanding the provisions of West Virginia Code 61-7-1, be subject to the penalty provided in Section 501.99(a). (WV Code 61-3B-2.)
- (c) Trespass on Property other than Structure or Conveyance.
- (1) Whoever knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be fined not more than one hundred dollars (\$100.00).
 - (2) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any

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door, fence, or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be subject to the penalty provided in Section 501.99(a).

- (3) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be imprisoned not more than thirty days, or fined not more than one hundred dollars (\$100.00) or both.
- (4) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage, provided, that the provisions of this action shall not apply in a labor dispute. (WV Code 61-3B-3.)

533.03 Petit larceny.

No person shall commit petit larceny as defined in West Virginia Code 61-3-13 within the City.

533.04 Dealing with stolen goods.

If any person buys or receives from another person, or aids in concealing, or transfers to a person other than the owner thereof, any stolen goods or other thing of value which he knows or has reason to believe has been stolen, he shall be deemed guilty of the larceny thereof, and may be prosecuted although the principal offender is not convicted. (WV Code 61-3-18.)

533.05 Injury or destruction of property or monuments.

- (a) No person shall unlawfully, but not feloniously, take and carry away or destroy, tamper with, injure or deface any property, real or personal, not his own.
- (b) No person shall break down, destroy, injure, deface or remove any monument erected for the purpose of designating the boundaries of the Municipality, tract or lot of land, or any tree marked for that purpose. (WV Code 61-3-30.)

533.06 Tampering with and theft of utilities; CATV.

- (a) No person with intent to injure or defraud shall procure, make or cause to be made, any pipe, tube, wire or other conductor of gas, water or electric energy, and connect the same, or cause it to be connected, with any main service pipe or other pipe for conducting or supplying gas, water or electric energy to any lamp, motor, burner, office or any other device, by at which gas, water or electric energy is consumed, around or without passing through the meter provided for measuring and registering the quantity of gas, water or electric energy consumed, or in any other manner so as to evade payment therefore, and no person, with like intent, shall injure or alter any gas, water or electric meter, or obstruct its action. (WV Code 61-3-44.)
- (b) No person with intent to injure or defraud shall connect, or cause to be connected, any pipe, tube, wire, electrical conductor or other instrument with any main, service pipe or other pipe or conduit or flume for conducting water, or with any main, service pipe or other pipe or conduit for conducting gas, or with any main, service wire or other electric conductor used for the purpose of conducting electric energy for light, heat or motive services, for the purpose of taking therefrom water, gas or electric energy, without the knowledge of the owner thereof and with intent to evade payment therefor. (WV Code 61-3-45.)

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- (c) No person shall make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a CATV system within the Municipality for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound or other transmission, without payment for the service.
- (d) No person, without the consent of the owner, shall willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

533.07 Littering and deposit of garbage, rubbish, junk, etc.

- (a) No person shall, without lawful authority, place or dispose of in any manner, upon any public property or upon the premises of another, any paper, trash, garbage, waste, rubbish, refuse, junk or any substance or material which is or may become noxious, offensive, injurious or dangerous to the public health, comfort or safety.
- (b) No person shall cause or allow trash, garbage, waste, rubbish, refuse or any other noxious or offensive materials or substances to be collected or remain in any place to the damage or prejudice of others or of the public, or unlawfully obstruct, impede, divert, corrupt or render unwholesome or impure, any natural watercourse.

533.08 Barricades and warning lights; abandoned excavations.

- (a) No person shall abandon or knowingly permit to remain on public or private property, any excavation, well, cesspool or structure which is in the process of construction, reconstruction, repair or alteration unless the same is adequately protected by suitable barricades and guarded by warning devices or lights at night so that the condition will not reasonably prove dangerous to life or limb.
- (b) No person shall destroy, remove, damage, or extinguish any barricade or warning light that is placed for the protection of the public so as to prevent injury to life or limb.
- (c) Any owner or agent in control of a premises upon which a basement, cellar, well or cistern has been abandoned due to demolition, failure to build or any other reason shall cause the same to be filled to the ground surface with rock, gravel, earth or other suitable material.

533.09 Aircraft.

- (a) No person shall pilot, fly, drive, or otherwise operate within the corporate limits of the Town any airplane, balloon or other aircraft at an altitude of less than one thousand feet above ground, except in ascending from or descending to any regularly used landing field or airport.
- (b) No person shall, while occupying or traveling in any airplane, balloon, or other aircraft, within the corporate limits of the Town, fire or discharge or otherwise set off a ignite any gun, firearm or other of explosive.
- (c) No person shall, while occupying or traveling in any airplane, balloon or other aircraft, cast out, drop or otherwise release or emit any paper or other matter which will descend within the corporate limits of the Town.

533.99 Penalty.

(EDITOR'S NOTE: See Section 501.99 for General Offenses Code penalty if no specific penalty is provided.)

Whoever violates Section 533.05 (b) shall be fined not more than \$200.00 or imprisoned not more than thirty days, or both.