

**Senate Bill No. 408**

(By Senators Jenkins, Plymale and Beach)

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[Introduced January 24, 2012; referred to the Committee on the  
Judiciary.]  
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**FISCAL  
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §61-3-59, relating to  
12 crimes against property involving graffiti; imposing liability  
13 on parent or legal guardian of a person under eighteen for  
14 violations; requiring driver's license restrictions;  
15 authorizing a court to require restitution; providing criminal  
16 and civil penalties; and authorizing property owners to  
17 initiate civil actions to recover damages.

18 *Be it enacted by the Legislature of West Virginia:*

19 That the Code of West Virginia, 1931, as amended, be amended  
20 by adding thereto a new section, designated §61-3-59, to read as  
21 follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-59. Graffiti.**

24 (a) As used in this section, "graffiti" means any unauthorized

1 inscription, word, figure or design that is marked, etched,  
2 scratched, drawn, painted on or affixed to the public or private  
3 property, real or personal, of another, which defaces the property.  
4 As used in this section, "value of the loss" is determined by the  
5 cost of repair, replacement or restoration of the defaced property.

6 (b) A person who places graffiti on or otherwise defaces the  
7 public or private property, real or personal, of another, without  
8 the permission of the owner where the value of the loss is less  
9 than \$500, is guilty of a misdemeanor and, upon conviction thereof,  
10 for a first offense, shall be confined in jail not less than  
11 twenty-four hours nor more than six months and fined not more than  
12 \$1,000. For a second offense, the person is guilty of a  
13 misdemeanor and, upon conviction thereof, shall be confined in jail  
14 not less than forty-eight hours nor more than six months and fined  
15 not more than \$2,000. For third and subsequent offenses, the  
16 person is guilty of a felony and, upon conviction thereof, shall be  
17 imprisoned in a correctional facility for not less than one nor  
18 more than three years and fined not more than \$10,000.

19 (c) A person who places graffiti on or otherwise defaces the  
20 public or private property, real or personal, of another, without  
21 the permission of the owner where the value of the loss is greater  
22 than \$500, is guilty of a felony and, upon conviction, shall be  
23 imprisoned in a correctional facility for not less than one nor  
24 more than three years and fined not more than \$10,000.

1 (d) If a person commits more than one offense under this  
2 section, pursuant to a scheme or continuing course of conduct, the  
3 value of all property damaged or destroyed by that person in the  
4 commission of those offenses shall be aggregated for the purpose of  
5 determining the penalty prescribed in this section.

6 (e) The court may, in addition to any other fine or penalty  
7 imposed, order a person who violates this section to pay  
8 restitution.

9 (f) A person convicted under any provision in this section  
10 shall be sentenced to not more than one hundred hours of court-  
11 approved community service. The court may order the person to  
12 repair, replace, clean up or keep free of graffiti the property  
13 damaged or destroyed by the person or any other public or private  
14 property, with approval of the owner, located in the county where  
15 the offence occurred.

16 (g) The parent or legal guardian of a person under eighteen  
17 years of age who violates this section is liable for all fines and  
18 penalties imposed against the person. If the parent or legal  
19 guardian is unable to pay the fine and penalties resulting from a  
20 violation of this section because of financial hardship, the court  
21 may require the parent or legal guardian to perform community  
22 service.

23 (h) If a person who is eighteen years of age or older is found  
24 guilty of violating this section, the court shall, in addition to

1 any other penalty imposed, issue an order suspending the driver's  
2 license of the person for not less than six months and not more  
3 than two years. The court shall require the person to surrender all  
4 driver's licenses then held by the person. If the person does not  
5 possess a driver's license, the court shall issue an order  
6 prohibiting the person from applying for a driver's license for not  
7 less than six months and not more than two years. The court shall,  
8 within five days after issuing the order, forward to the Division  
9 of Motor Vehicles any licenses together with a copy of the order.

10 (i) A criminal penalty imposed pursuant to this section is in  
11 addition to any civil penalty or other remedy available pursuant to  
12 this section or another statute for the same conduct.

13 (j) The owner of public or private property that has been  
14 damaged by graffiti may bring a civil action against the person who  
15 placed the graffiti on the property. The court may award to the  
16 property owner damages in an amount up to three times the amount of  
17 any loss in value to the property or up to three times the cost of  
18 restoring the property plus attorney's fees and costs, or both,  
19 which may be recovered from the offender or, if the offender is  
20 less than eighteen years of age, from the parent or legal guardian  
21 of the offender.

NOTE: The purpose of this bill is to provide criminal penalties for the intentional defacement of public and private property due to graffiti and provide a civil remedy for victims.

This section is new; therefore, strike-throughs and underscoring have been omitted.