

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 408

(SENATORS JENKINS, PLYMALE AND BEACH, *original sponsors*)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-59, relating to crimes against property involving graffiti; defining offenses and terms; providing for suspension of driver's license in certain circumstances; providing for sentencing of community service; providing that civil liability is not precluded by criminal provisions; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-59. Graffiti; penalties; and damages recoverable in a civil action.

1 (a) As used in this section, "graffiti" means any unautho-
2 rized inscription, word, figure or design that is marked,
3 etched, scratched, drawn or painted on any real or personal
4 property.

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

19 (c) Any conviction for a violation of subsection (b) for an
20 offense which occurred more than ten years prior to the date
21 of arrest in the current proceeding, may not be considered
22 for the purposes of imposing a sentence under subsection (b)
23 relating to a second, third and subsequent offense.

24 (d) The court may, in addition to any other fine or
25 penalty imposed, order a person who violates this section to
26 pay restitution.

27 (e) A person convicted under any provision in this section
28 shall be sentenced to not less than one hundred twenty hours
29 of court-approved community service. The court may order
30 the person to repair, replace, or clean up the property
31 damaged or destroyed by the person or any other public or
32 private property, with approval of the owner, that is located
33 in the county where the offense occurred.

34 (f) If a person who is less than eighteen years of age is
35 found guilty of violating this section, the court may, in
36 addition to any other penalty imposed, issue an order
37 suspending the driver's license of the person for not more
38 than two years. If the person does not possess a driver's
39 license, the court may issue an order prohibiting the person
40 from applying for a driver's license for not less than six
41 months and not more than two years. The court shall, within

42 five days after issuing the order, forward to the Division of
43 Motor Vehicles any licenses together with a copy of the
44 order.

45 (g) A criminal penalty imposed pursuant to this section
46 is in addition to any civil penalty or other remedy available
47 pursuant to this section or another statute for the same
48 conduct.

49 (h) The owner of public or private property that has been
50 damaged by graffiti may bring a civil action against the
51 person who placed the graffiti on the property. The court
52 may award to the property owner damages in an amount up
53 to three times the amount of any loss in value to the property
54 or up to three times the cost of restoring the property plus
55 attorney's fees and costs, or both.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2012.

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Governor