

Senate Bill No. 116

(By Senators Jenkins and McCabe)

[Introduced February 13, 2013; referred to the Committee on the
Judiciary.]

**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; defining offenses
13 and a term; establishing misdemeanor and felony criminal
14 penalties; providing for mandatory court-approved community
15 service; permitting court-ordered restitution; providing for
16 suspension of driver's license in certain circumstances;
17 providing that if an offender does not have a driver's license
18 that person may be temporarily prohibited from applying for
19 one; providing that affected property owners may institute a
20 civil action to recover damages in an amount up to three times
21 the loss or the cost of restoration, attorneys' fees and
22 costs; and providing that civil liability is not precluded by
23 criminal penalties.

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

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

5 **ARTICLE 3. CRIMES AGAINST PROPERTY.**

6 **§61-3-59. Graffiti; definition; penalties; restitution; driver's**
7 **license suspension; damages recoverable in a civil**
8 **action.**

9 (a) As used in this section, "graffiti" means any unauthorized
10 inscription, word, figure or design that is marked, etched,
11 scratched, drawn or painted on any real or personal property.

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

1 correctional facility for not less than one nor more than three
2 years or fined not more than \$10,000, or both fined and confined.

3 (c) Any conviction for a violation of subsection (b) of this
4 section for an offense which occurred more than ten years prior to
5 the date of arrest in a current proceeding, that previous
6 conviction may not be considered for the purposes of imposing a
7 sentence under that subsection relating to a second, third and
8 subsequent offense.

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

12 (e) A person convicted under this section shall be sentenced
13 to not less than one hundred twenty hours of court-approved
14 community service. The court may order the person to repair,
15 replace, or clean up the property damaged or destroyed by the
16 person or any other public or private property, with approval of
17 the owner, that is located in the county where the offense
18 occurred.

19 (f) If a person who is less than eighteen years of age is
20 found guilty of violating this section, the court may, in addition
21 to any other penalty imposed, issue an order suspending the
22 driver's license of the person for not more than two years. If the
23 person does not possess a driver's license, the court may issue an

1 order prohibiting the person from applying for a driver's license
2 for not less than six months and not more than two years. The court
3 shall, within five days after issuing the order, forward to the
4 Division of Motor Vehicles any licenses together with a copy of the
5 order.

6 (g) A criminal penalty imposed pursuant to this section is in
7 addition to any civil penalty or other remedy available pursuant to
8 this section or another statute for the same conduct.

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

NOTE: The purpose of this bill is to make it a crime to place graffiti on real and personal property. The bill defines the offenses and a term. The bill establishes misdemeanor and felony criminal penalties. The bill provides for suspension of driver's license in certain circumstances. The bill provides for sentencing of community service. The bill provides that affected property owners may institute a civil action for recovery of damages in an amount up to three times the loss or the cost of restoration, attorneys' fees and costs. The bill provides that civil liability is not precluded by criminal provisions.

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