

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4100

FISCAL
NOTE

BY DELEGATES HOLSTEIN, KEATON, SYPOLT, AND FAST

[Introduced January 17, 2022; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §61-3-60, relating to establish the crime of damaging property by graffiti;
3 creating misdemeanor and felony criminal penalties for those who place graffiti on or
4 otherwise defaces the public or private property, real or personal; defining terms; imposing
5 liability on parent or legal guardian of a person under eighteen for violations; requiring
6 driver's license restrictions upon conviction; authorizing a court to require restitution; and
7 authorizing property owners to recover damages up to three times the amount of any loss
8 in value to the property or up to three times the cost of restoring the property plus attorney's
9 fees and costs, or both costs and fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-60. Graffiti.

1 (a) As used in this section,

2 "Graffiti" means any unauthorized inscription, word, figure or design that is marked,
3 etched, scratched, drawn, painted on, or affixed to the public or private property, real or personal,
4 of another, which defaces the property; and

5 "Value of the loss" means the amount of damage to property as determined by the cost of
6 repair, replacement, or restoration of the defaced property.

7 (b) A person who places graffiti on or otherwise defaces the public or private property, real
8 or personal, of another, without 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, for a first offense, shall be
10 confined in jail not less than 24 hours nor more than six months and fined not more than \$1,000.
11 For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall
12 be confined in jail not less than 48 hours nor more than six months and fined not more than
13 \$2,000. For third and subsequent offenses, the person is guilty of a felony and, upon conviction
14 thereof, shall be imprisoned in a state correctional facility for not less than one nor more than

15 three years and fined not more than \$10,000.

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

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

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

26 (f) A court may also impose a sentence of not more than one hundred hours of court-
27 approved community service to be performed by a person convicted under any provision in this
28 section. The court may, in its discretion, order the person to repair, replace, clean up, or keep free
29 of graffiti the property damaged or destroyed by the person or any other public or private property,
30 with approval of the owner, located in the county where the offence occurred.

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

35 (h) If a person who is 18 years of age or older is found guilty of violating this section, the
36 court shall, in addition to any other penalty imposed, issue an order suspending the driver's
37 license of the person for not less than six months and not more than two years. The court shall
38 require the person to surrender all driver's licenses then held by the person. If the person does
39 not possess a driver's license, the court shall issue an order prohibiting the person from applying
40 for a driver's license for not less than six months and not more than two years. The court shall,

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

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

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

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.