WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2012

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.]
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(SENATORS JENKINS, PLYMALE AND BEACH, original sponsors)

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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 unauthorized inscription, word, figure or design that is marked, etched, scratched, drawn or painted on any real or personal property.
(b) A person who places graffiti on public or private property, real or personal, of another, without the permission of the owner is guilty of a misdemeanor and, upon conviction thereof, for a first offense, may be confined in jail not less than twenty-four hours nor more than six months or fined not more than $1,000, or both. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail not less than forty-eight hours nor more than six months or fined not more than $2,000, or both. For third and subsequent offenses, the person is guilty of a felony and, upon conviction thereof, may be imprisoned in a correctional facility for not less than one nor more than three years or fined not more than $10,000, or both.

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

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

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

(f) If a person who is less than eighteen years of age is found guilty of violating this section, the court may, in addition to any other penalty imposed, issue an order suspending the driver's license of the person for not more than two years. If the person does not possess a driver's license, the court may issue an order prohibiting the person from applying for a driver's license for not less than six months and not more than two years. The court shall, within
five days after issuing the order, forward to the Division of Motor Vehicles any licenses together with a copy of the order.

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

(h) The owner of public or private property that has been damaged by graffiti may bring a civil action against the person who placed the graffiti on the property. The court may award to the property owner damages in an amount up to three times the amount of any loss in value to the property or up to three times the cost of restoring the property plus attorney's fees and costs, or both.
Enr. Com. Sub. for S. B. No. 408]

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ... disapproved ... this the ... Day of ... April ..., 2012.

Governor
PRESENTED TO THE GOVERNOR

DATE 2-9-2012

Time 4:15 PM