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SENATE BILL NO. 208

Offered January 8, 2014

Prefiled January 3, 2014

A BILL to amend and reenact §§ 15.2-1812.1, 18.2-95, 18.2-119, and 18.2-137 of the Code of Virginia, relating to damage to coal mines; making health and safety an element of crime.

Patron—Carrico

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1812.1, 18.2-95, 18.2-119, and 18.2-137 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1812.1. Action for damage to memorials for war veterans.

A. If any monument, marker or memorial for war veterans as designated in §§ § 15.2-1812 and or subsection A or B of § 18.2-137 is violated or encroached upon, an action for the recovery of damages may be commenced by the following:

1. For a publicly owned monument, marker or memorial, by the attorney for the locality in which it is located; or, if no such action has commenced within sixty days following any such violation or encroachment, by any person having an interest in the matter; and

2. For a privately owned monument, marker or memorial, by the private organization, society or museum that owns it or any member of such organization, society or museum.

Damages may be awarded in such amounts as necessary for the purposes of rebuilding, repairing, preserving and restoring such memorials or monuments to preencroachment condition. Damages other than those litigation costs recovered from any such action shall be used exclusively for said purposes.

B. Punitive damages may be recovered for reckless, willful or wanton conduct resulting in the defacement of, malicious destruction of, unlawful removal of, or placement of improper markings, monuments or statues on memorials for war veterans.

C. The party who initiates and prevails in an action authorized by this section shall be entitled to an award of the cost of the litigation, including reasonable attorney's fees. The provisions of this section shall not be construed to limit the rights of any person, organization, society, or museum to pursue any additional civil remedy otherwise allowed by law.

§ 18.2-95. Grand larceny defined; how punished.

Any person who (i) commits larceny from the person of another of money or other thing of value of \$5 or more, (ii) commits simple larceny not from the person of another of goods and chattels of the value of \$200 or more, ~~or~~ (iii) commits simple larceny not from the person of another of any firearm, regardless of the firearm's value, ~~shall be or~~ (iv) commits larceny from a coal mine, as defined in § 45.1-161.8, of any thing of value of \$100 or more whose taking or removal affects the health or safety of another is guilty of grand larceny, punishable by imprisonment in a state correctional facility for not less than one nor more than ~~twenty~~ 20 years or, in the discretion of the jury or court trying the case without a jury, ~~be confined by confinement~~ in jail for a period not exceeding ~~twelve~~ 12 months or ~~fine~~ by a fine of not more than \$2,500, either or both.

§ 18.2-119. Trespass after having been forbidden to do so; penalties.

If any person without authority of law goes upon or remains upon the lands, buildings, or premises of another, ~~or any portion or area thereof, or any coal mine, as defined in § 45.1-161.8,~~ after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian, or the agent of any such person, or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by or at the direction of such persons or the agent of any such person or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, or premises, or portion or area thereof, ~~or coal mine~~ at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant, or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, 19.2-152.8, 19.2-152.9 or § 19.2-152.10 or an ex parte order issued pursuant to § 20-103, and after having been served with such order, he ~~shall be~~ is guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136.

§ 18.2-137. Injuring, etc., any property, monument, etc.

INTRODUCED

SB208

59 A. If any person unlawfully destroys, defaces, *or* damages, or removes without the intent to steal,
60 any property, real or personal, not his own, or breaks down, destroys, defaces, *or* damages, or removes
61 without the intent to steal, any monument or memorial for war veterans described in § 15.2-1812, any
62 monument erected for the purpose of marking the site of any engagement fought during the War
63 between the States, or for the purpose of designating the boundaries of any city, town, *or* tract of land,
64 or any tree marked for that purpose, he ~~shall be~~ *is* guilty of a Class 3 misdemeanor, provided that the
65 court may, in its discretion, dismiss the charge if the locality or organization responsible for maintaining
66 the injured property, monument, or memorial files a written affidavit with the court stating it has
67 received full payment for the injury.

68 B. If any person intentionally causes such injury, he ~~shall be~~ *is* guilty of (i) a Class 1 misdemeanor
69 if the value of or damage to the property, memorial, or monument is less than \$1,000 or (ii) a Class 6
70 felony if the value of or damage to the property, memorial, or monument is \$1,000 or more. The
71 amount of loss caused by the destruction, defacing, damage, or removal of such property, memorial, or
72 monument may be established by proof of the fair market cost of repair or fair market replacement
73 value. Upon conviction, the court may order that the defendant pay restitution.

74 C. *If any person intentionally causes such injury to property that is located at a coal mine, as*
75 *defined in § 45.1-161.8, whose damage or removal affects the health or safety of another and the value*
76 *of such damage is more than \$100, he is guilty of a felony punishable by a fine of not less than \$3,000*
77 *nor more than \$10,000 or by imprisonment for a period of not less than one year nor more than three*
78 *years, either or both.*

79 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
80 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
81 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
82 **806 of the Acts of Assembly of 2013 requires the Virginia Criminal Sentencing Commission to**
83 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
84 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
85 **Department of Juvenile Justice.**