

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 43**

BY SENATORS WILLIAMS, BEACH, BLAIR, LEONHARDT

AND MILLER

[Originating in the Committee on Natural Resources;

reported on January 21, 2016.]



1 A BILL to amend and reenact §20-2-8 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §61-3B-1 of said code, all relating to posted land; and allowing  
3 boundaries be posted with certain clearly visible paint markings.

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

1 That §20-2-8 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; and that §61-3B-1 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 20. NATURAL RESOURCES.**

### **ARTICLE 2. WILDLIFE RESOURCES.**

#### **§20-2-8. Posting unenclosed lands; hunting, etc., on posted land.**

1 The owner, lessee or other person entitled to possession of unenclosed lands may have  
2 erected and maintained signs or placards legibly printed, easily discernible, conspicuously posted  
3 and reasonably spaced or, alternatively, may mark the posted land as set forth in section one,  
4 article three-b, chapter sixty-one of this code, so as to indicate the territory in which hunting,  
5 trapping or fishing is prohibited.

6 Any person who enters upon the unenclosed lands of another which have been lawfully  
7 posted, for the purpose of hunting, trapping or fishing, shall be guilty of a misdemeanor. The  
8 officers charged with the enforcement of the provisions of this chapter shall have the duty to  
9 enforce the provisions of this section if requested to do so by such owner, lessee, person or agent,  
10 but not otherwise.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENTS.**

### **ARTICLE 3B. TRESPASS.**

#### **§61-3B-1. Definitions.**

1 As used in this article:

2 (1) "Structure" means any building of any kind, either temporary or permanent, which has  
3 a roof over it, together with the curtilage thereof.

4 (2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer,  
5 aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the  
6 conveyance.

7 (3) An act is committed "in the course of committing" if it occurs in an attempt to commit  
8 the offense or in flight after the attempt or commission.

9 (4) "Posted land" is land that has:

10 ~~(A) Land upon which reasonably maintained signs are~~ Signs placed not more than five  
11 hundred feet apart, along and at each corner of the boundaries of the land. ~~upon which signs~~  
12 ~~there appears, prominently in~~ The signs shall be reasonably maintained, with letters of not less  
13 than two inches in height and the words "no trespassing". ~~and in addition thereto the name of the~~  
14 ~~owner, lessee or occupant of the land.~~ The signs shall be placed along the boundary line and at  
15 all roads, driveways and gates of entry onto the of posted land ~~in a manner and in a position so~~  
16 as to be clearly noticeable from outside of the boundary line; or

17 (B) Boundaries marked with clearly visible purple, red, orange or bright yellow painted  
18 markings, consisting of two horizontal, parallel lines, each no less than twelve inches in length  
19 and two inches in height, affixed to immovable, permanent objects that are no more than one  
20 hundred feet apart. Signs shall also be posted at all roads, driveways or gates of entry onto the  
21 posted land so as to be clearly noticeable from outside of the boundary line.

22 ~~It shall not be~~ (C) It is not necessary to give notice by posting on any enclosed land or  
23 place not exceeding five acres in area on which there is a dwelling house or property that by its  
24 nature and use is obviously private in order to obtain the benefits of this article pertaining to  
25 trespass on enclosed lands.

26 (5) "Cultivated land" is that land which has been cleared of its natural vegetation and is  
27 presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop  
28 rotation.

29           (6) "Fenced land" is that land which has been enclosed by a fence of substantial  
30 construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other  
31 material, which stands at least three feet in height. For the purpose of this article, it shall not be  
32 necessary to fence any boundary or part of a boundary of any land which is formed by water and  
33 is posted with signs pursuant to the provisions of this article.

34           (7) Where lands are posted, cultivated or fenced as described herein, then such lands, for  
35 the purpose of this article, shall be considered as enclosed and posted.

36           (8) "Trespass" under this article is the willful unauthorized entry upon, in or under the  
37 property of another, but shall not include the following:

38           ~~(a)~~ (A) Entry by the state, its political subdivisions or by the officers, agencies or  
39 instrumentalities thereof as authorized and provided by law.

40           ~~(b)~~ (B) The exercise of rights in, under or upon property by virtue of rights-of-way or  
41 easements by a public utility or other person owning such right-of-way or easement whether by  
42 written or prescriptive right.

43           ~~(c)~~ (C) Permissive entry, whether written or oral, and entry from a public road by the  
44 established private ways to reach a residence for the purpose of seeking permission shall not be  
45 trespass unless signs are posted prohibiting such entry.

46           ~~(d)~~ (D) Entry performed in the exercise of a property right under ownership of an interest  
47 in, under or upon such property.

48           ~~(e)~~ (E) Entry where no physical damage is done to property in the performance of  
49 surveying to ascertain property boundaries, and in the performance of necessary work of  
50 construction, maintenance and repair of a common property line fence, or buildings or  
51 appurtenances which are immediately adjacent to the property line and maintenance of which  
52 necessitates entry upon the adjoining owner's property.

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NOTE: The purpose of this bill is to allow posting of real property by certain clearly visible paint markings in order to prohibit hunting or trespassing.

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