

**Senate Bill No. 36**

(By Senators Williams, Miller, Cann, Cookman, Tucker and  
Fitzsimmons)

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[Introduced January 8, 2014; referred to the Committee on Natural  
Resources; and then to the Committee on the Judiciary.]

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A BILL to amend and reenact §20-2-8 of the Code of West Virginia,  
1931, as amended; and to amend and reenact §61-3B-1 of said  
code, all relating to posting of property to prohibit hunting  
or trespassing; and allowing posting by certain clearly  
visible paint markings.

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

That §20-2-8 of the Code of West Virginia, 1931, as amended,  
be amended and 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  
2 unenclosed lands may have erected and maintained signs or placards  
3 legibly printed, easily discernible, conspicuously posted and  
4 reasonably spaced, or, alternatively, may mark the lands as set  
5 forth in section one, article three-b, chapter sixty-one of this  
6 code, so as to indicate the territory in which hunting, trapping or  
7 fishing is prohibited.

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

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

16 **ARTICLE 3B. TRESPASS.**

17 **§61-3B-1. Definitions.**

18       As used in this article:

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

22       (2) "Conveyance" means any motor vehicle, vessel, railroad  
23 car, railroad engine, trailer, aircraft or sleeping car, and "to

1 enter a conveyance" includes taking apart any portion of the  
2 conveyance.

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

6 (4) "Posted land" is that:

7 (A) Land, upon which reasonably maintained signs are placed  
8 not more than five hundred feet apart, along and at each corner of  
9 the boundaries of the land, upon which signs there appears,  
10 prominently in letters of not less than two inches in height, the  
11 words "no trespassing" and in addition thereto the name of the  
12 owner, lessee or occupant of the land or the boundaries shall be  
13 marked with a clearly visible painted marking consisting of two  
14 parallel lines each no less than two inches in width affixed to  
15 immovable, permanent objects which are not more than one hundred  
16 feet apart. The paint shall be red, orange or bright yellow in  
17 color. Signs adhering to the standards prescribed in this  
18 definition shall be posted at boundary gates. ~~The~~ These signs  
19 shall be placed along the boundary line of posted land in a manner  
20 and in a position as to be clearly noticeable from outside of the  
21 boundary line; and

22 (B) Land upon which the boundaries are marked with clearly  
23 visible painted markings, consisting of two parallel lines, each no

1 less than two inches in width, affixed to immovable, permanent  
2 objects and which are not more than one hundred feet apart. The  
3 paint shall be orange or bright yellow in color and shall be  
4 maintained so that the markings are reasonably visible from a  
5 distance of one hundred feet. Where boundaries are clearly marked  
6 with painted markings, signs, adhering to the standards prescribed  
7 in this definition for posted signs, shall also be posted at all  
8 roads, driveways or gates of entry onto the posted land.

9       It ~~shall not be~~ is not necessary to give notice by posting on  
10 any enclosed land or place not exceeding five acres in area on  
11 which there is a dwelling house or property that by its nature and  
12 use is obviously private in order to obtain the benefits of this  
13 article pertaining to trespass on enclosed lands.

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

18       (6) "Fenced land" is that land which has been enclosed by a  
19 fence of substantial construction, whether with rails, logs, post  
20 and railing, iron, steel, barbed wire, other wire or other  
21 material, which stands at least three feet in height. For the  
22 purpose of this article, it shall not be necessary to fence any  
23 boundary or part of a boundary of any land which is formed by water

1 and is posted with signs pursuant to the provisions of this  
2 article.

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

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

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

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

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

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

22       ~~(e)~~ (E) Entry where no physical damage is done to property in  
23 the performance of surveying to ascertain property boundaries, and

1 in the performance of necessary work of construction, maintenance  
2 and repair of a common property line fence, or buildings or  
3 appurtenances which are immediately adjacent to the property line  
4 and maintenance of which necessitates entry upon the adjoining  
5 owner's property.

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.