

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 138**

4 (By Senators Williams, Beach, Snyder, D. Hall and Sypolt)

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6 [Originating in the Committee on Natural Resources;  
7 reported January 22, 2015.]  
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11 A BILL to amend and reenact §20-2-8 of the Code of West Virginia, 1931, as amended; and to  
12 amend and reenact §61-3B-1 of said code, all relating to posting of property to prohibit  
13 hunting or trespassing; and allowing posting by certain clearly visible paint markings.

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

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

17 **CHAPTER 20. NATURAL RESOURCES.**

18 **ARTICLE 2. WILDLIFE RESOURCES.**

19 **§20-2-8. Posting unenclosed lands; hunting, etc., on posted land.**

20 (a) The owner, lessee or other person entitled to possession of unenclosed lands may have  
21 erected and maintained signs or placards legibly printed, easily discernible, conspicuously posted and  
22 reasonably spaced, so as to indicate the territory in which hunting, trapping or fishing is prohibited.  
23 Alternately, the unenclosed land may be marked with clearly visible red, orange or bright yellow

1 painted markings, consisting of two horizontal, parallel lines, each no less than twelve inches long  
2 and two inches in height, affixed to immovable, permanent objects that are no more than one  
3 hundred feet apart to indicate the territory in which hunting, trapping or fishing is prohibited.

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

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

10 **ARTICLE 3B. TRESPASS.**

11 **§61-3B-1. Definitions.**

12 As used in this article:

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

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

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

20 (4) "Posted land" is that:

21 (A) Land upon which reasonably maintained signs are placed not more than five hundred feet  
22 apart, along and at each corner of the boundaries of the land, upon which signs there appears,  
23 prominently in letters of not less than two inches in height, the words "no trespassing" and in

1 ~~addition thereto~~ the name of the owner, lessee or occupant of the land. ~~The~~ These signs shall be  
2 placed along the boundary line of posted land in a manner and in a position as to be clearly  
3 noticeable from outside of the boundary line; or

4 (B) Land upon which boundaries are marked with clearly visible red, orange or bright yellow  
5 painted markings, consisting of two horizontal, parallel lines, each no less than twelve inches long  
6 and two inches in height, affixed to immovable, permanent objects that are no more than one  
7 hundred feet apart. Signs shall also be posted at all roads, driveways or gates of entry onto the  
8 posted land.

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

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

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

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

23 (8) "Trespass" under this article is the willful unauthorized entry upon, in or under the

1 property of another, but shall not include the following:

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

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

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

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

12       ~~(e)~~ (E) Entry where no physical damage is done to property in the performance of surveying  
13 to ascertain property boundaries, and in the performance of necessary work of construction,  
14 maintenance and repair of a common property line fence, or buildings or appurtenances which are  
15 immediately adjacent to the property line and maintenance of which necessitates entry upon the  
16 adjoining 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.