

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 43

BY SENATORS WILLIAMS, BEACH, BLAIR, LEONHARDT AND

MILLER

[Introduced January 13, 2016;

Referred to the Committee on Natural Resources; and

then to the Committee on the Judiciary.]

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 posting of property to prohibit
 3 hunting or trespassing; and allowing posting by 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 lands as set forth in section one, article
 4 three-b, chapter sixty-one of this code, so as to indicate the territory in which hunting, trapping or
 5 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 that:

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

20 (B) Land upon which the boundaries are marked with clearly visible painted markings,
21 consisting of two parallel lines, each no less than two inches in width, affixed to immovable,
22 permanent objects and which are not more than one hundred feet apart. The paint shall be orange
23 or bright yellow in color and shall be maintained so that the markings are reasonably visible from
24 a distance of one hundred feet. Where boundaries are clearly marked with painted markings,
25 signs, adhering to the standards prescribed in this definition for posted signs, shall also be posted
26 at all roads, driveways or gates of entry onto the posted land.

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

30 enclosed lands.

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

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

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

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

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

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

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

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

53 ~~(e)~~ (E) Entry where no physical damage is done to property in the performance of
54 surveying to ascertain property boundaries, and in the performance of necessary work of
55 construction, maintenance and repair of a common property line fence, or buildings or

- 56 appurtenances which are immediately adjacent to the property line and maintenance of which
57 necessitates entry upon the 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.