

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 43

BY SENATORS WILLIAMS, BEACH, BLAIR, LEONHARDT AND

MILLER, *original sponsors*

[Passed March 10, 2016 in effect 90 days from passage]

1 AN ACT 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) Signs placed not more than five hundred feet apart, along and at each corner of the
11 boundaries of the land. The signs shall be reasonably maintained, with letters of not less than
12 two inches in height and the words "no trespassing". The signs shall be placed along the boundary
13 line and at all roads, driveways and gates of entry onto the posted land so as to be clearly
14 noticeable from outside of the boundary line; or

15 (B) Boundaries marked with a clearly visible purple painted marking, consisting of one
16 vertical line no less than eight inches in length and two inches in width, and the bottom of the
17 mark not less than three nor more than six feet from the ground or normal water surface. Such
18 marks shall be affixed to immovable, permanent objects that are no more than one hundred feet
19 apart and readily visible to any person approaching the property. Signs shall also be posted at
20 all roads, driveways or gates of entry onto the posted land so as to be clearly noticeable from
21 outside the boundary line.

22 (C) It is not necessary to give notice by posting on any enclosed land or place not
23 exceeding five acres in area on which there is a dwelling house or property that by its nature and
24 use is obviously private in order to obtain the benefits of this article pertaining to trespass on
25 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) Entry by the state, its political subdivisions or by the officers, agencies or
39 instrumentalities thereof as authorized and provided by law.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2016.

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Governor