

# HOUSE BILL REPORT

## ESB 5048

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to notice against trespass.

**Brief Description:** Concerning notice against trespass.

**Sponsors:** Senators Sheldon, Benton and Hargrove.

**Brief History:**

**Committee Activity:**

Judiciary: 3/20/13, 4/2/13 [DPA].

**Brief Summary of Engrossed Bill**  
**(As Amended by Committee)**

- Defines "posting in a conspicuous manner," in the context of criminal trespass statutes, to include posting signs or the placement of fluorescent orange paint marks on trees or posts on the property.
- Limits the use of orange paint marks as notice against trespass to certain farm and agricultural lands and forest lands.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 12 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

**Staff:** Cece Clynch (786-7195).

**Background:**

A person is guilty of Criminal Trespass in the second degree if he or she knowingly enters or remains unlawfully in or upon premises of another (other than a building). Second degree Criminal Trespass is a misdemeanor.

"Enters or remains unlawfully" is defined in pertinent part as follows:

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- A person "enters or remains unlawfully" in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

... A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land or some other authorized person, *or unless notice is given by posting in a conspicuous manner.* Land that is used for commercial aquaculture or for growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible *or if notice is given by posting in a conspicuous manner.* Similarly, a field fenced in any manner is not unimproved and apparently unused land. A license or privilege to enter or remain on improved and apparently used land that is open to the public at particular times, which is neither fenced nor otherwise enclosed in a manner to exclude intruders, is not a license or privilege to enter or remain on the land at other times *if notice of prohibited times of entry is posted in a conspicuous manner.*

What constitutes posting in a conspicuous manner is not defined in statute.

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#### **Summary of Amended Bill:**

"Posting in a conspicuous manner" is defined. It includes:

1. posting a sign or signs reasonably likely to come to the attention of intruders, indicating that entry is restricted; *or*
2. placement of identifying fluorescent orange paint marks on trees or posts on property. Such marks must be:
  - a. vertical lines not less than eight inches in length and not less than one inch in width;
  - b. placed so that the bottom of the mark is between three and five feet from the ground; *and*
  - c. placed at locations that are readily visible to any person approaching the property and no more than 100 feet apart on forest land, or 1,000 feet apart on other land.

A landowner must use signs for posting in a conspicuous manner on access roads.

Landowners may use fluorescent orange paint marks to provide notice against trespass only on the following lands:

- "Farm and agricultural land" defined in the laws with respect to open space lands as follows:
  - any parcel of land or multiple contiguous parcels totaling 20 or more acres and meeting certain other criteria;
  - any parcel of land that is at least five but less than 20 acres which has produced a certain gross income from agricultural uses; or

- any parcel of land that is at least five but less than 20 acres devoted to agricultural uses, and meeting certain other criteria.
- "Forest land" defined in the laws with respect to forest practices as follows:
  - all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

**Amended Bill Compared to Engrossed Bill:**

The provision limiting the use of fluorescent orange paint to farm and agricultural land and forest land is added.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This interesting bill is not an urban bill. There has been a lot of theft from rural lands, including theft of metal, cattle, salal, berries, ferns, and mushrooms. Trespassers tear down the signs and then, when caught trespassing, say they did not see the signs. Paint, by contrast, is difficult to remove. Fourteen other states have similar laws. The specifications with respect to the distance between paint marks will serve to make it very clear. Also, access roads must have signs. The idea for the bill came from a magazine article. Orange is the color used in Idaho. Some states use the color purple, but that is not as easily seen on dark days. A floor amendment that included a "phase-in" period was defeated. Experience with using paint on ranch lands in Idaho has proven very effective. Each season, the posts are repainted. When trespassers have been confronted, they have generally acknowledged that they did, in fact, see the paint markings. Paint is universally recognized. There is no cost to the state. While some persons may not initially know the significance of paint, everyone must learn new rules just as they must with respect to traffic rules.

(Opposed) None.

**Persons Testifying:** Senator Sheldon, prime sponsor; and Jack Field, Washington Cattlemen's Association.

**Persons Signed In To Testify But Not Testifying:** None.