

HOUSE BILL ANALYSIS

HB 2687

Title: An act relating to criminal trespass.

Brief Description: Removing statutory authority for access to private property for governmental purposes.

Sponsors: Representatives Sump, McMorris, Mielke, Dunn, Sherstad, Sterk, Smith, Boldt, Koster, Mulliken, Carrell, Thompson and Bush.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background: A person commits trespass if he or she knowingly enters or remains unlawfully on the premises of another. The crime is a gross misdemeanor if the premises consist of a building. Otherwise the crime is a misdemeanor.

For purposes of the crime of trespass, a person "enters or remains unlawfully" when he or she is not "licensed, invited or otherwise privileged" to be on the property in question. Generally, with respect to unfenced, unimproved and apparently unused land, any person enters with privilege and license unless the land has been conspicuously posted or he or she has been personally notified not to trespass.

It is a defense to a charge of trespass that:

- o The premises were open to the public and the defendant complied with all lawful conditions imposed on access;
- o The defendant reasonably believed that the owner of the property would have allowed entry; or
- o The defendant was attempting to serve legal process.

Over the years, statutes have granted many public and private entities implicit or explicit immunity from the trespass law for various purposes. Typically, an entity has been given statutory authority and direction to accomplish some program goal, and has also been given some form of immunity from trespass when entering property in pursuit of that goal. For instance, the Department of Agriculture is charged with the responsibility of inspecting all horticultural premises in order to detect pests or diseases in fruits and vegetables. As part of the authority to carry out this duty, the department is given "free access to any such premises or property at any time."

Similarly, a railroad company has the right to enter onto the property of others in order to examine, locate, or survey the line of its railroad.

Sometimes significant conflicts arise between property owners and those who are authorized to enter lands.

Entities that have been given statutory authority to enter property, for one or more purpose, include:

- o Department of Agriculture and county horticultural pest and disease boards;
- o Animal control and local law enforcement agencies;
- o Weed districts and noxious weed control boards;
- o Department of Labor and Industries;
- o Grain warehouse, elevator, and tramway corporations;
- o Local governments generally with respect to: irrigation, drainage, flood control, sewers, unfit dwellings, tenant inspections, neighborhood blight, and urban renewal;
- o County planning commissions;
- o State militia;
- o Commissioner of Public Lands and Department of Natural Resources;
- o Long-term care ombudsman;
- o Department of Transportation;
- o Water districts;
- o Mobile home park landlords;
- o Department of Health;
- o Department of Fish and Wildlife;
- o Department of Ecology;
- o Mining corporations;
- o Electrical companies;
- o Telecommunications companies;
- o Railroad companies;
- o Flood control, irrigation, and reclamation districts; and
- o Water power companies.

Summary of Bill: The Legislature declares its intent, with limited exceptions, to have all persons be subject to the same restrictions with regard to entering the property of another.

The definition of "enters or remains unlawfully" for purposes of the trespass law is amended. A public official "enters or remains unlawfully" under the same circumstances as any other person, except that it is not unlawful for a public official to enter or remain on premises:

- o When responding to a fire or medical emergency;

- o When acting under authority of a warrant or other court order; or
- o When acting with probable cause to believe a felony has been or is being committed, and circumstances justify a warrantless entry.

Statutory grants of authority to enter land and grants of immunity from prosecution for trespass are removed.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research