

HOUSE BILL REPORT

ESB 5048

As Passed House - Amended:
March 5, 2014

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], 2/20/14, 2/26/14 [DPA].

Floor Activity:

Passed House - Amended: 3/5/14, 96-2.

Brief Summary of Engrossed Bill
(As Amended by House)

- Defines "posting in a conspicuous manner," in the context of criminal trespass statutes, to include posting signs or the use of orange paint marks.
- Limits the use of orange paint marks as notice against trespass to property located outside of urban growth areas and incorporated cities and towns.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

Staff: Cece Clynch (786-7195).

Background:

"Enters or remains unlawfully" is one of the elements of the crimes of criminal trespass in the first degree and second degree. Knowingly entering or remaining unlawfully in a building is Criminal Trespass in the first degree, a gross misdemeanor.

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 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:

- 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.

Summary of 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. if the property is located outside of urban growth areas and incorporated cities and towns, the placement of identifying fluorescent orange paint marks on trees or posts on property. Such marks must be:
 - a. vertical lines not less than 8 inches in length and not less than 1 inch in width;
 - b. placed so that the bottom of the mark is between 3 and 5 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.

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 is a simple bill that benefits landowners and the public. For the public, this will make it easier for them to determine when they are crossing boundaries. An owner of 400 acres in Grays Harbor and Mason counties has had experience with trespassers who have done considerable damage to the property, including cutting off the top of a 20 foot tree to use as a Christmas tree, cutting maple trees for the burl, leaving drug waste and trash, and driving ATVs over trees. Per current law, 437 signs are necessary to cover the perimeter of the property. Frequently, the signs are stolen. Signs are expensive and time consuming to post. Paint is easier, lasts longer, and is hard to destroy or remove. Signs are shot, damaged, destroyed, and defaced. Then, the trespasser says he or she never saw the sign and therefore showing that the entry was unlawful is problematic. This is important to rural landowners. With respect to how people will know of the significance of orange paint, it should be the responsibility of the public to know the law just as it is for other laws such as the speed limit. But, organizations and the state can help publicize through outreach programs and including it in pamphlets that are provided with hunting and fishing licenses. Perhaps information could be included with the Discover Pass. Also, signs will still be required on access roads.

(Opposed) None.

Persons Testifying: Heather Hansen, Washington Farm Forestry Association; Howard Wilson, Washington Farm Forestry Association; and Jack Field, Washington Cattlemen's Association.

Persons Signed In To Testify But Not Testifying: None.