



**House
Legislative
Analysis
Section**

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RECREATIONAL TRESPASS

AS ENROLLED

**Senate Bill 504 (Substitute H-2)
Sponsor: Sen. William Faust**

**Senate Bill 505 as passed by the Senate
Sponsor: Sen. Harry Gast**

First Analysis (10-20-93)

**Senate Committee: Natural Resources
and Environmental Affairs**

**House Committee: Conservation,
Recreation, & Great Lakes**

THE APPARENT PROBLEM:

Despite the existence of the Recreational Trespass Act (Public Act 323 of 1976), reportedly "recreational trespass" -- where people trespass on other people's land in the course of hunting, fishing, or other recreational activities -- has become a major problem for landowners. According to a 1992 newspaper article, not only is the existing law too weak and unenforceable, but apparently some landowners have refused to press charges (or have withdrawn charges) after being threatened with bodily harm or the destruction of their homes, barns, or other buildings by the trespassers. Legislation has been introduced that would address these issues.

THE CONTENT OF THE BILLS:

The bills would increase the penalties for recreational trespass, including allowing the forfeiture of property involved in second and subsequent violations of the Recreational Trespass Act.

Senate Bill 504 (Substitute H-2) would amend the Recreational Trespass Act (MCL 371.1a et al.) to do the following:

- * allow oral, as well as written, consent for trespassers;
- * allow peace officers to seize violators' property;
- * provide added legal protection for landowners;

- * specify fines and imprisonment for violations; and
- * add license revocations, restitution, and property forfeiture for second and subsequent violations.

Trespassing. Currently, the act prohibits people, without the written consent of the landowner or farmer, from trespassing on fenced or posted private land or on farm land (and connected wood lots), whether or not the farm land was posted or fenced, in order to hunt, fish, or drive motorized recreational vehicles. The act also prohibits people, unless they have been granted "due authority" from landowners, from putting up posters or fences to keep people from hunting, fishing, trapping, or engaging in other recreational uses on the land.

The bill would prohibit people, without the oral or written consent of the owner, from trespassing on fenced or posted property or on farm property (whether or not it was fenced or posted) for any recreational purposes, including trapping. Landowners could give consent to trespassing either orally or in writing, and could change or revoke written consent orally. The bill also would prohibit people from posting signs on or fencing someone else's property, without his or her written permission, in order to keep recreational users off the land.

Lawsuits. Currently, if someone is injured on someone else's land while hunting, fishing, trapping, camping, hiking, sightseeing, motorcycling, or snowmobiling for free, the injured person can't sue

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the owner unless the injuries resulted from the owner's gross negligence or "wilful and wanton misconduct."

The bill would change this prohibition slightly and would add provisions regarding people who paid for the recreational use of someone else's land. If people were injured while engaging in recreational activities (including trapping) on someone else's land with the owner's consent, the owner couldn't be sued except for gross negligence or willful and wanton misconduct. If someone paid a landowner to hunt, fish, or trap on the owner's land and had the owner's written or oral permission to be on the land, the trespasser couldn't sue the owner for injuries unless there was reasonable risk of harm that the owner was aware of and the owner either failed to warn the trespasser or failed to exercise reasonable care to make the condition safe.

Forfeiture. The bill would allow the seizure and forfeiture of property, in accordance with the Revised Judicature Act, used or involved in second-time (or subsequent) violations of the act.

Enforcement. Currently, peace officers and conservation officers can enforce the act when a landowner complains to them, and only county prosecutors are authorized to enforce the act and prosecute violators. The presence of anyone on the land without the written consent of the owner is prima facie evidence of illegal entry.

The bill would delete conservation officers from its provisions, and instead allow peace officers (upon a landowner's complaint) to seize property and otherwise enforce the act. City, village, and township attorneys (as well as county prosecuting attorneys) would be authorized to enforce the act in their city, village, or township and prosecute all violators in that city, village, or township. Being on someone else's land without their written consent would be prima facie evidence of illegal trespass if the owner required written consent.

Penalties. Currently, violations of the act are misdemeanors without specified fines or jail terms. Under the bill, violations would continue to be misdemeanors but the bill would specify that first-time offenders could be fined up to \$100 and be imprisoned for up to 90 days; second-time (and subsequent) offenses within three years of a previous violation would be subject to fines of \$100 to \$1,000 and imprisonment for up to 90 days. The

court also could revoke offenders' hunting or fishing licenses for the rest of the calendar year (and these offenders couldn't apply for a new license for up to three years), including those of second-time offenders who were hunting (with firearms or bows, including crossbows) on licensed private shooting preserves. Finally, courts would be required to order offenders to pay for any damages they caused and could order offenders to pay the costs of their prosecution.

Local ordinances. The bill would allow local units of government to adopt the act as an ordinance (though they couldn't impose greater penalties for violations than the penalties in the act). The bill also would prohibit local units of government from enacting or enforcing ordinances, regulations, or resolutions that contradicted or conflicted with the act.

Tie-bar. Senate Bill 504 is tie-barred to Senate Bill 505, which would amend the Revised Judicature Act (MCL 600.4701) to add violations of the Recreational Trespass Act to the list of crimes for which property could be forfeited.

HOUSE COMMITTEE ACTION:

The House Committee on Conservation, Recreation and Great Lakes made several changes to the Senate-passed version of Senate Bill 504 to:

- * change the definition of "farm property" to delete language referring to "intended" use and to add language referring to "all lands contained within the farm";
- * explicitly include trapping among the activities mentioned in the act;
- * reinstate a minimum letter height on posted signs (though changing this minimum from two inches to one inch);
- * allow landowners to give either oral or written consent for people to enter their land;
- * prohibit local units of government from enacting, keeping, or enforcing ordinances, regulations, or resolutions that contradicted or conflicted with the act; and
- * tie-bar the bill to Senate Bill 505 (which would amend the Revised Judicature Act to add

recreational trespass to the list of crimes in connection with which the forfeiture of property could be sought).

FISCAL IMPLICATIONS:

According to a Senate Fiscal Agency Analysis dated 5-19-93, Senate Bills 504 and 505 as originally introduced and passed by the Senate would have no fiscal implications for the state.

ARGUMENTS:

For:

Damage done by trespassers to private property and farm land can be considerable, and many people believe that the existing Recreational Trespass Act is ineffective in deterring illegal trespass. Reportedly, both hunters and recreational "off-road" drivers cause considerable damage to private property in pursuit of their chosen kind of recreation. There are stories of farmers' fences being knocked down and fields torn up by four-wheelers, as well as of vandalism and threats of further harm to owners who complain about such illegal and destructive activities.

The bills would make the existing law more enforceable, while at the same time remaining fair to sportspeople. Proponents of the bill argue that there are too few law enforcement officers to enforce the existing act, that few prosecuting attorneys are willing to take trespassers to court, and that some landowners are afraid to press complaints because of threats of violence from the trespassers. Increasing the penalties that could be brought against trespassers -- including the seizure and forfeiture of such personal property as firearms, fishing or hunting equipment, off-road vehicles, trucks, cars, or motorcycles used in illegal trespass and damage to private property -- should make trespassing too costly for illegal trespassers while protecting legitimate sportspeople who got permission to fish, hunt, or trap on someone else's land and who obeyed existing laws. In addition, by protecting landowners from nuisance lawsuits, the bills would give landowners greater incentives to allow recreational users on their land and eventually result in the opening up of more private property for hunting, fishing, and trapping.

Against:

While it would appear that allowing oral as well as written permission for entrance onto someone's land

would make it easier for the landowner to give such permission, it could result in problems with how the question of denial of permission was handled by the court. If permission no longer had to be written, and the landowner later rescinded permission, then it would seem that the issue would become one of witness credibility (who was telling the truth, the landowner or the purported trespasser) than one of whether or not a written permission slip existed.

Against:

Some people believe that allowing the forfeiture of private property -- especially if that means four-wheel trucks or off-road vehicles -- used by violators who illegally trespass and damage other people's property is too harsh a penalty. They point out that the forfeiture law in the Revised Judicature Act originally was aimed at drug dealers, and while some illegal trespassers may be drunk when they do their damage there is little question that they are not dealing in drugs. Adding fines, imprisonment, restitution, and costs of prosecution should be enough to give the existing act "teeth" enough without adding the possible forfeiture of private property.

Response:

Allowing the forfeiture of property used in committing a crime may be the most effective way of impressing poachers and other people who trespass on private property and cause damage. The seizure and forfeiture would have to be in compliance with the procedures set forth in the Revised Judicature Act, which means that only property used in committing the crime would be vulnerable. (In addition, the banks would be protected in the case of seized and forfeited property with liens on it.) People need to be held accountable for their behavior, and if they are going to use their vehicles to illegally trespass on and damage other people's property they should be subject to having those vehicles forfeited.

POSITIONS:

The Department of Natural Resources supports the bills. (10-19-93)

The Michigan United Conservation Clubs testified in support of the bills. (10-19-93)