

HOUSE BILL NO. 235

INTRODUCED BY E. HILL

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO TRESPASS; PROVIDING FOR AUTHORIZATION TO REMAIN LAWFULLY AT CORNER OF PARCELS; PROVIDING AUTHORIZATION TO CROSS PRIVATE LAND AT CORNER OF PARCELS; AND AMENDING SECTIONS 45-6-201 AND 77-1-806, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-6-201, MCA, is amended to read:

"45-6-201. Definition of enter or remain unlawfully. (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when the person is not licensed, invited, or otherwise privileged to do so. ~~Privilege~~ Except as provided in subsection (6), privilege to enter or remain upon land is may only be extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land. The privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) To provide for effective posting of private land through which the public has no right-of-way, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) To provide for effective posting of private land through which or along which the public has an unfenced right-of-way by means of a public road, a landowner shall:

(a) place a conspicuous sign no closer than 30 feet of the centerline of the roadway where it enters the private land, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT

1 MILES"; or

2 (b) place notice, as described in subsection (2)(a), no closer than 30 feet of the centerline of the roadway
3 at regular intervals of not less than one-fourth mile along the roadway where it borders unfenced private land,
4 except that orange markings may not be placed on posts where the public roadway enters the private land.

5 (4) If property has been posted in substantial compliance with subsection (2) or (3), it is considered
6 closed to public access unless explicit permission to enter is given by the landowner or the landowner's
7 authorized agent.

8 (5) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding
9 hunting, fishing, or trapping licenses or permits by including on any publication concerning the licenses or permits,
10 in condensed form, the provisions of this section concerning entry on private land. The department shall use
11 public media, as well as its own publications, in attempting to educate and inform other recreational users of the
12 provisions of this section. In the interests of providing the public with clear information regarding the public nature
13 of certain unfenced rural rights-of-way, the department may develop and distribute posting signs that satisfy the
14 requirements of subsection (3).

15 (6) (a) When crossing from one property in which a person is lawfully authorized to remain to another
16 property in which the person is lawfully authorized to remain pursuant to subsection (1), a person is permitted
17 to cross private land at the geographic point that represents the corner of one or more parcels of private land so
18 long as the person does not:

19 (i) cause physical harm to a landowner's real or personal property; or

20 (ii) unreasonably interfere with the quiet enjoyment or use of the landowner's property.

21 (b) This subsection (6) does not create a right of prescriptive easement across private land.

22 ~~(6)(7)~~ For purposes of this section, "land" means land as defined in 70-15-102.

23 ~~(7)(8)~~ Civil liability may not be imposed upon the owner or occupier of premises by reason of any
24 privilege created by this section."

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26 **Section 2.** Section 77-1-806, MCA, is amended to read:

27 **"77-1-806. Prior notification to lessee of recreational use -- trespass -- penalty.** (1) If a lessee of
28 state lands under this part desires to be notified prior to anyone entering upon the leasehold, the lessee shall
29 post, at customary access points, signs provided or authorized by the department. The signs must set forth the
30 lessee's or the lessee's agent's name, address, telephone number, and method of notification. The lessee or the

1 lessee's agent must be available to receive notice from recreational users or provide an alternative means for
2 notice as prescribed by rule. When state land is posted, recreational users shall contact and identify themselves
3 to the lessee or the lessee's agent for the purposes of minimizing impact upon the leasehold interest and learning
4 the specific boundaries of adjacent unfenced private property.

5 (2) (a) Each Except as provided in subsection (2)(b), each recreational user of state lands shall obtain
6 permission of the lessee or the lessee's agent before entering the adjacent private property owned by the lessee.
7 Entry to private property from adjacent state lands without permission of the landowner or the landowner's agent
8 is an absolute liability offense. A violator of this subsection is guilty of a misdemeanor and shall be fined not less
9 than \$50 or more than \$500 or imprisoned in the county jail for not more than 6 months, or both.

10 (b) Pursuant to 45-6-201, a person is authorized to cross private land at the geographic point that
11 represents the corner of one or more parcels of land owned by the lessee so long as the person does not:

12 (i) cause physical harm to a landowner's real or personal property; or

13 (ii) unreasonably interfere with the quiet enjoyment or use of the landowner's property.

14 (3) A person may be found guilty of the offense described in subsection (2) regardless of the absence
15 of fencing or failure to post a notice in accordance with 45-6-201.

16 (4) The use of a ford or crossing on a navigable river or stream by the adjacent landowner may not be
17 considered a trespass for the purposes of this section."

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