

SENATE BILL NO. 202

INTRODUCED BY J. HINKLE

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING ACTIONS THAT ATTEMPT TO RESTRICT ACCESS TO ANOTHER'S PROPERTY; PROVIDING PENALTIES; AND AMENDING SECTIONS 45-6-101 AND 45-6-201, MCA."

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

**Section 1.** Section 45-6-101, MCA, is amended to read:

**"45-6-101. Criminal mischief.** (1) A person commits the offense of criminal mischief if the person knowingly or purposely:

- (a) injures, damages, or destroys any property of another or public property without consent;
- (b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;
- (c) damages or destroys property with the purpose to defraud an insurer;
- (d) attempts to restrict access to the property of another or public property through actions prohibited pursuant to 45-6-201(5); or

~~(d)~~(e) fails to close a gate previously unopened that the person has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed \$1,500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of \$1,500, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, the offender shall be fined an amount not to exceed \$50,000 or

1 be imprisoned in the state prison for a term not to exceed 10 years, or both.

2 (4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same  
3 transaction, whether against the public or the same person or several persons, may be aggregated in determining  
4 pecuniary loss.

5 (5) A person convicted of or who forfeits bond or bail for committing an act of criminal mischief involving  
6 property owned or administered by the department of fish, wildlife, and parks shall forfeit any current hunting,  
7 fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for at least 24  
8 months from the date of conviction or forfeiture."

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10 **Section 2.** Section 45-6-201, MCA, is amended to read:

11 **"45-6-201. Definition of enter or remain unlawfully -- posting restrictions.** (1) A person enters or  
12 remains unlawfully in or upon any vehicle, occupied structure, or premises when the person is not licensed,  
13 invited, or otherwise privileged to do so. Privilege to enter or remain upon land is extended either by the explicit  
14 permission of the landowner or other authorized person or by the failure of the landowner or other authorized  
15 person to post notice denying entry onto private land. The privilege may be revoked at any time by personal  
16 communication of notice by the landowner or other authorized person to the entering person.

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

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

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

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

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

30 (b) place notice, as described in subsection (2)(a), no closer than 30 feet of the centerline of the roadway

1 at regular intervals of not less than one-fourth mile along the roadway where it borders unfenced private land,  
2 except that orange markings may not be placed on posts where the public roadway enters the private land.

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

6 (5) A landowner may not:

7 (a) post notice similar to the notice required by subsection (2) or (3) without permission on land not  
8 owned by the landowner; or

9 (b) take any action that gives the appearance that public land is not open to the public.

10 ~~(5)~~(6) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding  
11 hunting, fishing, or trapping licenses or permits by including on any publication concerning the licenses or permits,  
12 in condensed form, the provisions of this section concerning entry on private land. The department shall use  
13 public media, as well as its own publications, in attempting to educate and inform other recreational users of the  
14 provisions of this section. In the interests of providing the public with clear information regarding the public nature  
15 of certain unfenced rural rights-of-way, the department may develop and distribute posting signs that satisfy the  
16 requirements of subsection (3).

17 ~~(6)~~(7) For purposes of this section, "land" means land as defined in 70-15-102.

18 ~~(7)~~(8) Civil liability may not be imposed upon the owner or occupier of premises by reason of any  
19 privilege created by this section."

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