

ICE SHANTIES: UNAUTHORIZED ENTRY

House Bill 4205 as passed by the House Second Analysis (1-14-00)

**Sponsor: Rep. Rick Johnson
Committee: Criminal Law and Corrections**

THE APPARENT PROBLEM:

Ice fishing is a pastime enjoyed by large numbers of people in Michigan and other states where bodies of water freeze enough so that persons can safely travel across the ice during the winter months. Many people who ice fish construct ice shanties in an effort avoid some of winter's harsher elements. These structures can range from a simple lean-to to cardboard boxes to actual buildings with four walls and a roof. In some areas of the state ice fishing is so popular that some businesses have several ice fishing shanties (of the sturdier variety) that they rent for use to the public. During the winter of 1997, the owner of one of these rental structures found a man and woman ice fishing in one of his rental shanties without having paid for the use of the structure. The man and woman refused to leave and the owner sought the assistance of a conservation officer to have them removed. The conservation officer informed the owner of the shanty that even though his structure was clearly marked with his name, address, and phone number (in accordance with state law) and clearly marked "rental," the persons using the structure could not be removed because there was no specific law regarding the unauthorized entry into or use of ice shanties. At the request of the owner of the rental ice shanty and to prevent similar occasions of unauthorized use of ice shanties, legislation has been introduced to specifically include ice shanties in the list of structures where unauthorized entry amounts to a misdemeanor.

THE CONTENT OF THE BILL:

The bill would amend the Penal Code to include an ice shanty with a value of \$100 or more in the list of structures that may not be broken into or entered without the permission of the owner, occupant, agent, or other person with immediate control of the premises. Such entry constitutes a misdemeanor. The current list includes any dwelling, house, tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, boat, ship, railroad car or structure used or kept for public or private use, or any private apartment

therein, or any cottage, clubhouse, boat house, hunting or fishing lodge, garage or the out-buildings belonging thereto, or any other structure, whether occupied or unoccupied.

MCL 750.115

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill could increase local correctional costs depending upon local conditions and law enforcement priorities. (1-14-00)

ARGUMENTS:

For:

Apparently there is some confusion on the part of some conservation, and possibly law enforcement, officers as to whether an ice shanty may be considered as "any other structure" under the language of the penal code prohibiting unauthorized entry. The bill will clarify that an ice shanty is structure that is protected from unauthorized entry and allow law enforcement officers to act confidently when confronted with violations.

Against:

The bill may be unnecessary, and even counterproductive. The law includes catch-all language that includes "any other structure, whether occupied or unoccupied." The longer the list of specific structures gets, the more likely it is that law enforcement officers will feel less confident about taking action when the crime involves a structure that is not specifically listed. Unfortunately, the language of the current law may have contributed to the confusion - when the law specifically lists structures from tents to clubhouses, people tend to overlook the catchall language and assume that if a type of structure is not specifically listed it must not be included.

Therefore, by adding yet another specific structure to the list, the bill will further obscure the catch-all

language and necessitate, in the future, further enumeration of other structures that should more reasonably be considered to be included in the catch-all language.

Finally, it should be noted that even if not included in the catch-all language, the actions of someone who takes a person's rental property without paying are generally illegal under the larceny laws of this state. If the person had taken rental ice skates without paying, one would assume that an officer would be able to repossess them and return them to the rightful owner.

Response:

Regardless of the options that the conservation officer may or may not have had, the fact remains that he or she was uncertain as to whether the law against unauthorized entry included ice shanties and this bill would clarify that issue for that officer and any others who might also be uncertain about the issue.

POSITIONS:

The Department of Natural Resources does not oppose the bill. (1-12-00)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.