



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 540 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Ron Jelinek
Committee: Judiciary

(as enrolled)

Date Completed: 8-6-07

RATIONALE

Under the Michigan Penal Code, a person is guilty of trespassing only if he or she willfully enters another person's land or premises after being forbidden to do so or if he or she remains after being notified to depart. Some people believe that the owner or occupant of fenced or posted farm property should not have to request a person to leave the premises in order for the trespassing prohibition to apply, and that a person's entrance onto another's property should not have to be willful in order to be considered trespassing.

In addition, it has been more than 50 years since the current penalty for trespassing was enacted. Some people believe that the maximum fine of \$50 is an insufficient punishment for trespassing and is ineffective in deterring violations.

CONTENT

The bill would amend the Michigan Penal Code to do the following:

- **Prohibit a person from entering or remaining without lawful authority on another person's farm property without the owner's consent.**
- **Specify that a request to leave those premises would not be a necessary element of that violation.**
- **Remove the requirement that a person's entry onto another's property be willful in order to constitute a trespass.**
- **Increase the maximum fine for trespassing.**

The Code prohibits both of the following:

- Remaining without lawful authority on another person's land or premises after being notified to leave by the owner or occupant or his or her agent.
- Willfully entering upon another person's land or premises without lawful authority after having been forbidden to do so by the owner or occupant or his or her agent.

The bill would delete "willfully" from that prohibition.

The bill also would prohibit a person from entering or remaining without lawful authority on another person's fenced or posted farm property without the consent of the owner or his or her lessee or agent. A request to leave the premises would not be a necessary element for a violation of the prohibition. This provision would not apply to a person who was in the process of attempting, by the most direct route, to contact the owner or the owner's lessee or agent to request consent.

A trespassing violation is a misdemeanor punishable by up to 30 days' imprisonment and/or a maximum fine of \$50. The bill would increase the maximum fine to \$250.

The bill would take effect 90 days after its enactment.

MCL 750.552

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Penal Code's trespassing prohibition currently applies only if a person willfully enters upon another person's land or premises after he or she has been forbidden from entering or if the person remains on the property after being requested to leave. With large tracts of land, such as on some farm property, the owner may not be able to monitor his or her property at all times, so people may be able to enter the property without the owner's knowledge. If the owner is unaware that someone is about to enter upon the property or remains there, the owner cannot forbid the person from entering or request the person to leave. If the owner has fenced or posted the farm property, however, that should be sufficient to warn people that they are trespassing if they enter or remain upon the property, and the trespassing prohibition and penalties should apply to them.

Supporting Argument

A person's willfulness should not be an element of the crime of trespass. Providing that trespassing occurs only if a person acts willfully suggests that the actor must intend to commit the particular offense. Someone who enters onto or remains upon another person's property under the circumstances described in the Code should be held accountable for trespassing regardless of whether he or she intends to commit that violation. Even without the element of willfulness, a person would be guilty of trespass only if the owner or occupant had forbidden entry, the person remained after being told to leave, or, under the bill, the property were fenced or posted farm property. Absent those circumstances, a person would not be criminally liable if, for example, he or she were hiking on public land, such as a State forest, and inadvertently wandered onto adjacent private property.

Supporting Argument

The trespassing prohibition and its penalty were added to the Penal Code in 1951 and have not been amended since then. While \$50 may have served as a sufficient fine to penalize offenders and deter trespassing violations more than 50 years ago, it does not seem to do so today. The bill would update the penalty by increasing the maximum fine to \$250.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the proposed offense. To the extent that the bill would increase convictions, local governments would incur increased costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.