

Legislative Analysis



HUNTER ORANGE BARRIERS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5777 (Substitute H-1)

Sponsor: Rep. Michael Lahti

Committee: Tourism, Outdoor Recreation and Natural Resources

Revised First Analysis (3-24-10)

BRIEF SUMMARY: The bill would prohibit the use of a rope, chain, wire, or similar device to block a point of entry to any type of property (except for a commercial farm) unless (1) the device was colored hunter orange or enclosed in material of that color and (2) the device was placed no more than 30 inches above the ground at any point. A violation would be classified as a civil infraction with a civil fine of up to \$250.

FISCAL IMPACT:

DNRE Impact. House Bill 5777 would increase financial costs to the Department of Natural Resources and Environment. Because the bill includes a governmental entity within its definition of a person, the State of Michigan would fall under that definition and be required to come into compliance with the bill's new requirements concerning points of entry into land areas.

The State of Michigan is itself a landowner and owns or manages over 4.5 million acres of land in Michigan. According to the DNRE, bringing the State into compliance with the bill's requirements that any barrier across a point of entry be enclosed in hunter orange colored material and be no higher than 30 inches above the ground would generate very significant costs to the Department. At this time, it is unknown how many points of access currently exist on land that the State owns or manages.

The Department would also incur additional costs from enforcement responsibilities of the bill's provisions.

Fine Revenue. Under current law, each non-traffic-related civil infraction may be assessed the following: civil fines that go to county treasurers to benefit local libraries, a \$10 Justice System Fund (JSF) assessment, and court costs. A violation under this bill would be assessed a fine of up to \$250. This revenue would be allocated to local libraries. Each infraction would also be assessed a \$10 Justice System Assessment to be deposited into the state JSF. The JSF supports various justice-related endeavors in the judicial branch, the Department of State Police, and the Department of Corrections. In addition, the assessed court costs would generate additional revenue for the governmental unit that funds the local court.

THE APPARENT PROBLEM:

Many different types of fences or barriers are used by landowners around the state for many different purposes, including decorative purposes, to keep trespassers off property, to indicate that no hunting is allowed, to close off driveways or paths at certain times, or to keep livestock from escaping. Some landowners use rope, chain, or wire barriers, including electric fences. Thin barriers often blend into the background and they can be almost impossible for a motorcyclist, snowmobiler, or ATV rider to see until it is too late. When placed in a new location, they can catch riders by surprise. There have been cases in Michigan in which a motorcycle, ATV, or snowmobile rider was severely injured or killed after driving into this type of barrier. Examples of accidents caused by this type of barrier include fatal ATV accidents in Baraga County in 2004 and Chippewa County in 2009.

It has been suggested that requiring all barriers of this type to be hunter orange in color and to be placed no higher than 30 inches off the ground would make them more visible, thereby reducing the number of accidents that occur when people drive off-road recreational vehicles into this type of barrier.

THE CONTENT OF THE BILL:

The bill would create a new act to prohibit any individual, partnership, corporation, association, governmental entity, or other legal entity from using a rope, chain, wire, or similar device as a barrier across a point of entry in order to prevent access to land unless: (1) it was of the color hunter orange or enclosed in material of that color; and (2) it was placed no higher than 30 inches above the ground at any point. "Point of entry" means "a road or path suitable for use by a motorized vehicle, including a motorcycle, all terrain vehicle, or snowmobile."

Commercial farm exception. The bill's requirements would not apply on farm property. "Farm property" means "land on a farm used in the production of one or more farm products and any contiguous land under common ownership." "Farm" and "farm product" mean those terms as defined in Section 2 of the Michigan Right to Farm Act (MCL 286.472). We note that to qualify as a "farm" in that act, the property must be used in the commercial production of a "farm product."

Hunter orange. "Hunter orange" means "the color described in Section 40116 of the Natural Resources and Environmental Protection Act." (MCL 324.40116) That description of hunter orange includes blaze orange, flame orange, fluorescent orange, and camouflage that is at least half hunter orange.

Fine. A violation would be classified as a state civil infraction with a civil fine of not more than \$250.

ARGUMENTS:

For:

The bill will improve safety for snowmobile, motorcycle, and ATV riders. The bill aims to improve the safety of snowmobile, motorcycle, and ATV riding by requiring thin barriers to be brightly colored and placed at a low level (not more than 30 inches off the ground). Tragic accidents have been caused by nearly-invisible rope, chain, or wire barriers.

This bill's simple requirements could prevent gruesome injuries or deaths at a low cost to most property owners. Encasing a fence with orange material or painting it orange where it crosses a trail would generally be inexpensive. One witness testified that using neon orange tape for this purpose would cost less than \$2 per roll.

Because this type of barrier is hard to see, using this type of fencing without placing it and marking it to be more visible to off-road recreational vehicle riders poses unreasonable hazards to other persons — even to trespassers who may be trying to enter the person's property. Landowners should not be allowed to use dangerous barriers without making them more visible through proper placement and the use of brightly-colored paint or other coverings.

Against:

While almost everyone would agree with the bill's goal of preventing the tragic accidents that may occur when snowmobile, ATV, or motorcycle riders collide with hard-to-see rope, chain, or wire barriers, some people say that numerous problems exist with the bill as written.

The bill's requirements apply even where this type of accident is unlikely to occur. Except for commercial farms, the bill applies to any land in the state, including urban factory parking lots and suburban residential neighborhoods. Does it make sense to require a chain barrier used to close off an urban parking lot at night to meet height limitations or hunter orange requirements? Should a suburban property owner who uses a decorative chain barrier of a different color or height across a driveway (and whose home is located in an area with no snowmobile or ATV riding) be required to change the height of the barrier or paint it hunter orange? Would this serve any useful purpose?

The farm exemption raises questions. The bill does not apply to barriers used on commercial farms because of objections raised by farmers when a similar bill was proposed in 2008. On the one hand, exempting all commercial farms will make the bill less effective because many landowners are farmers in the rural parts of Michigan where this type of accident is most likely. On the other hand, is it fair to exclude all commercial farmers while requiring people who raise or keep animals for their own use (not for sale) to comply with the bill? Will the bill's height limitation create practical difficulties for people who keep or raise animals non-commercially who need to place their barrier at a higher level? Will it apply to electric fences used to keep in livestock when the electric

fences cross what some people might think are paths suitable for snowmobile or ATV riding?

Is the 30-inch rule the best way to improve the visibility of this type of barrier?

Some people have questioned how the height limitation got set at 30 inches, whether there are better ways to improve the visibility of fences, and whether a fence no higher than 30 inches off the ground could be hazardous when buried in snow. It is not uncommon in some parts of the state to have more than 30 inches of snow on the ground in the winter.

The bill's requirements aren't clear. The bill applies to ropes, chains, wires, or similar devices used as a barrier across a point of entry to prevent access to land. However, the bill's language raises many questions, including:

- Although the meaning of the words rope, chain, or wire may be fairly clear, what types of barriers will fall into the more vague "or similar device" category?
- "Point of entry" is defined as "a road or path suitable for use by a motorized vehicle, including a motorcycle, all terrain vehicle, or snowmobile." When is a path "suitable" for use by a motorized vehicle such as an ATV? Are suitable paths only those where motorized vehicles are allowed by law? Or would the bill also include paths that recreational trespassers think are suitable or that have been created (perhaps without the owner's permission or knowledge) by persons who have trespassed over the property in the past on ATVs or other vehicles?
- When the bill prohibits barriers no higher than 30 inches above the ground "at any point" what does "at any point" mean? Would that mean a livestock owner's electric fence could not be higher than 30 inches even where the barrier does not cross an access point? Does that mean that a livestock owner could not continue to use a multi-strand electric fence that had low, medium, and high level strands if any strand was higher than 30 inches?

The bill could expose public and private landowners to increased liability. Michigan has passed laws such as Parts 731 (Recreational Trespass) and 733 (Liability of Landowners) of the Natural Resources and Environmental Protection Act to encourage landowners to allow access to their property for hunting, fishing, and other recreational activities without worrying about personal injury lawsuits except in cases of gross negligence. By placing additional legal duties on landowners, will this bill expose them to increased liability risks if people, including trespassers, were injured on their property and their barriers were not all properly placed or marked? Would the state and local units of government also have increased exposure to liability as a result of the bill? Is it fair to increase the duties of public and private property owners (thereby potentially exposing them to greater legal liability if they breach their new duties) to protect trespassers from injury? While the maximum civil fine violating the bill's requirements is low (\$250), the costs of defending a personal injury lawsuit could be very high.

The bill could impose significant compliance costs on the state and local governments and any other landowner that owns large amounts of land. The State of Michigan

owns or manages over 4.5 million acres of land in Michigan, with an unknown number of fences and access points that would be covered by the bill. According to the DNRE, compliance with the bill's requirements could be very costly, and the department opposes the bill for this reason.

POSITIONS:

The House Committee on Tourism, Outdoor Recreation, and Natural Resources heard testimony from the daughter of a man killed in a 2009 accident, one of the incidents that prompted the proposed legislation. (2-23-10)

The Michigan Farm Bureau indicated a neutral position on the bill as reported. (2-23-10)

The Department of Natural Resources and Environment is opposed to the bill. (2-23-10)

The Michigan Association of Realtors opposes the legislation as written. (News release dated 3-9-10)

Legislative Analyst: Shannan Kane
Fiscal Analyst: Viola Bay Wild

■ 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.