

HOUSE BILL REPORT

HB 2687

As Reported By House Committee On:

Law & Justice

Title: An act relating to criminal trespass.

Brief Description: Removing statutory authority for access to private property for governmental purposes.

Sponsors: Representatives Sump, McMorris, Mielke, Dunn, Sherstad, Sterk, Smith, Boldt, Koster, Mulliken, Carrell, Thompson and Bush.

Brief History:

Committee Activity:

Law & Justice: 1/30/98, 2/5/98 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Mulliken; Robertson and Sherstad.

Minority Report: Do not pass. Signed by 5 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney and Lantz.

Staff: Bill Perry (786-7123).

Background: A person commits trespass if he or she knowingly enters or remains unlawfully on the premises of another. The crime is a gross misdemeanor if the premises consist of a building. Otherwise the crime is a misdemeanor.

For purposes of the crime of trespass, a person "enters or remains unlawfully" when he or she is not "licensed, invited or otherwise privileged" to be on the property in question. Generally, with respect to unfenced, unimproved and apparently unused land, any person enters with privilege and license unless the land has been conspicuously posted or he or she has been personally notified not to trespass.

It is a defense to a charge of trespass that:

- The premises were open to the public and the defendant complied with all lawful conditions imposed on access;
- The defendant reasonably believed that the owner of the property would have allowed entry; or
- The defendant was attempting to serve legal process.

Over the years, statutes have granted many public and private entities implicit or explicit immunity from the trespass law for various purposes. Typically, an entity has been given statutory authority and direction to accomplish some program goal, and has also been given some form of immunity from trespass when entering property in pursuit of that goal. For instance, the Department of Agriculture is charged with the responsibility of inspecting all horticultural premises in order to detect pests or diseases in fruits and vegetables. As part of the authority to carry out this duty, the department is given "free access to any such premises or property at any time." Similarly, a railroad company has the right to enter onto the property of others in order to examine, locate, or survey the line of its railroad.

Sometimes significant conflicts arise between property owners and those who are authorized to enter lands.

Entities that have been given statutory authority to enter property, for one or more purpose, include:

- Department of Agriculture and county horticultural pest and disease boards;
- Animal control and local law enforcement agencies;
- Weed districts and noxious weed control boards;
- Department of Labor and Industries;
- Grain warehouse, elevator, and tramway corporations;
- Local governments generally with respect to: irrigation, drainage, flood control, sewers, unfit dwellings, tenant inspections, neighborhood blight, and urban renewal;
- County planning commissions;
- State militia;
- Commissioner of Public Lands and Department of Natural Resources;
- Long-term care ombudsman;
- Department of Transportation;
- Water districts;
- Mobile home park landlords;
- Department of Health;
- Department of Fish and Wildlife;
- Department of Ecology;
- Mining corporations;
- Electrical companies;
- Telecommunications companies;

- Railroad companies;
- Flood control, irrigation, and reclamation districts; and
- Water power companies.

Summary of Substitute Bill: The Legislature declares its intent, with limited exceptions, to have all persons be subject to the same restrictions with regard to entering the property of another.

The definition of "enters or remains unlawfully" for purposes of the trespass law is amended. A public official "enters or remains unlawfully" under the same circumstances as any other person, except that it is not unlawful for a public official to enter or remain on premises:

- When responding to a fire or medical emergency; or
- When acting under authority of a warrant or other court order.

Law enforcement personnel may continue to enter or remain on property in the same manner and under the same circumstances as are currently permissible.

Statutory grants of authority to enter land and grants of immunity from prosecution for trespass are removed.

Substitute Bill Compared to Original Bill: The substitute bill adds the provision granting law enforcement continued authority to enter land. The substitute bill also further states that a person licensed to enter property may do so without committing trespass.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Private property rights need to be protected. The current situation leads to confrontation and potential violence. Too many entities have been given the authority to enter private property.

Testimony Against: Many programs designed to protect the public health and welfare will be seriously hampered. The bill will be very costly to taxpayers.

Testified: Representative Sump, prime sponsor; Joe Pestinger, Washington State Department of Transportation (con); Mark Erickson, Association of Washington Cities (con); Jim White, Association of Washington Cities (con); and Tim Schellberg,

Washington Association of Sheriffs and Police Chiefs (con).