

# HOUSE BILL REPORT

## SB 5233

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to notice against trespass.

**Brief Description:** Concerning notice against trespass.

**Sponsors:** Senators Sheldon, Dandel, Dammeier, Becker, Schoesler and Honeyford.

**Brief History:**

**Committee Activity:**

Judiciary: 3/25/15, 4/1/15 [DPA].

**Brief Summary of Bill**  
**(As Amended by Committee)**

- Defines "posting in a conspicuous manner," in the context of criminal trespass statutes, to include posting signs or the use of orange paint marks.
- Provides that license to be on unimproved and apparently unused land, absent notice against trespass, does not apply to land that is gated.
- Encourages the Department of Fish and Wildlife, the Department of Natural Resources, and the State Parks and Recreation Commission to use their websites and appropriate publications to inform the public about the meaning of vertical orange paint marks.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

**Staff:** Omeara Harrington (786-7136).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A person commits the crime of criminal trespass if that person knowingly enters or remains unlawfully on another person's property. Knowingly entering or remaining unlawfully in a building is Criminal Trespass in the first degree, a gross misdemeanor. A person is guilty of Criminal Trespass in the second degree if he or she knowingly enters or remains unlawfully in or upon premises of another (other than a building). Second degree Criminal Trespass is a misdemeanor.

A person enters or remains unlawfully in or upon a premises when he or she is not licensed, invited, or otherwise privileged to enter or remain. A person who enters or remains upon unimproved and apparently unused land that is unfenced or not enclosed in a manner designed to exclude intruders does so with license and privilege unless notice otherwise is personally communicated to him or her, or notice against trespass is posted in a conspicuous manner. License or privilege to enter or remain on improved and apparently used land that is open to the public at particular times, and is not fenced or otherwise enclosed in a manner to exclude intruders, is not a license or privilege to enter or remain on the land at other times if notice of prohibited times of entry is posted in a conspicuous manner.

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### **Summary of Amended Bill:**

License to be on unimproved and apparently unused land, absent notice against trespass, does not apply to land that is gated (in addition to not applying to land that is fenced or otherwise enclosed to exclude intruders).

"Posting in a conspicuous manner" for purposes of notifying against trespass may include posting signage that is reasonably likely to come to the attention of intruders indicating that entry is restricted, placing identifying fluorescent orange paint marks on trees or posts on the property, or a combination of signs and paint marks.

The option to use orange paint for posting in a conspicuous manner is limited to property located outside of urban growth areas and incorporated cities and towns. Marks must be:

- vertical lines approximately 12 inches in length and not less than 1 inch in width;
- placed so that the bottom of the mark is between 3 and 5 feet from the ground; and
- placed at locations that are readily visible to any person approaching the property and no more than 100 feet apart on forest land, or 1,000 feet apart on other land.

Identifying fluorescent orange paint marks alone may not be used for posting in a conspicuous manner on a road or driveway approved by the owner for motorized access where vehicles can enter the property.

The Department of Fish and Wildlife, the Department of Natural Resources, and the State Parks and Recreation Commission are encouraged to use their websites and publications to inform the public as to the meaning of orange paint marks on trees or posts.

### **Amended Bill Compared to Original Bill:**

The presumption that a person has license to be on unimproved and apparently unused land, absent notice against trespass, does not apply to land that is gated (in addition to land that is fenced or otherwise enclosed to exclude intruders).

In addition to the use of signs or paint marks alone, a combination of signs and paint marks may be used to post in a conspicuous manner. Orange paint marks used for posting in a conspicuous manner must be approximately 12 inches, rather than "no less than 8 inches." The requirement that a landowner use signage to post in a conspicuous manner on access roads is replaced with language stating that paint marks alone cannot be used on a road or driveway approved by the owner for motorized access where vehicles can enter the property.

The effective date of the changes to the trespassing law is delayed until July 1, 2016.

The Department of Fish and Wildlife, the Department of Natural Resources, and the State Parks and Recreation Commission are encouraged to use their web sites and publications to inform the public about the meaning of vertical orange paint marks.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1, relating to defining "posting in a conspicuous manner" and stating that license to be on unimproved and apparently unused land does not apply to gated land, which takes effect July 1, 2016.

**Staff Summary of Public Testimony:**

(In support) This is a very simple, common sense, low cost way to help landowners notify people that they will be trespassing. Thirteen other states have similar laws. Among those states are Oregon, Idaho, and Montana, which also use orange paint so there would be consistency. This method also works for non-English readers. An orange blaze is seen as a universal warning sign that should make a reasonable person stop and think they should not proceed. The Department of Fish and Wildlife has a section in the hunting and fishing guide about permission to be on private property, which it could add to regarding the meaning of orange paint, and hopefully the Washington State Parks and Recreation Commission will add to the Discover Pass literature.

Rural landowners are not worried about people on nature walks; they are subject to trespassers who come on their land to use ATVs, steal timber or firewood, dump garbage or animal carcasses, and build meth labs. Often signs are torn down, and the trespassers plead ignorance when they are caught. This will not stop trespassing, but will help honest people keep from trespassing. Hunters and other people should know where they are and have permission to be there.

(Opposed) None.

**Persons Testifying:** Ken Miller and Heather Hansen, Washington Farm Forestry Association.

**Persons Signed In To Testify But Not Testifying:** None.