

SENATE BILL NO. 97

INTRODUCED BY T. BECK, MCCAFFREE

IN THE SENATE

JANUARY 15, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON FISH & GAME.

 FIRST READING.

JANUARY 30, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 31, 1991 PRINTING REPORT.

FEBRUARY 1, 1991 SECOND READING, DO PASS.

FEBRUARY 2, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 46; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON FISH & GAME.

 FIRST READING.

MARCH 9, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 12, 1991 SECOND READING, CONCURRED IN AS
AMENDED.

MARCH 14, 1991 THIRD READING, CONCURRED IN.
AYES, 89; NOES, 11.

 RETURNED TO SENATE.

IN THE SENATE

MARCH 16, 1991 RECEIVED FROM HOUSE.

 SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 18, 1991 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 97
2 INTRODUCED BY Buck M. Coffey
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROCEDURES
5 FOR THE POSTING OF PRIVATE LAND ALONG PUBLIC ROADS;
6 REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO
7 ENFORCE POSTING REQUIREMENTS; AND AMENDING SECTION 45-6-201,
8 MCA."
9

10 WHEREAS, the Attorney General in 42 A.G. Op. 96 (1988),
11 held that private property along public roadways may not be
12 closed to public access through the use of orange markings
13 placed on posts located where the road enters the private
14 property; and

15 WHEREAS, the Legislature desires to address the problem
16 of adequate posting of private land while ensuring proper
17 public access to public roads and the proper inclusion of
18 county road mileage for gas tax purposes.
19

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 Section 1. Section 45-6-201, MCA, is amended to read:
22 "45-6-201. Definition of "enter or remain unlawfully".
23 (1) A person enters or remains unlawfully in or upon any
24 vehicle, occupied structure, or premises when he is not
25 licensed, invited, or otherwise privileged to do so.

1 Privilege to enter or remain upon land is extended either by
2 the explicit permission of the landowner or other authorized
3 person or by the failure of the landowner or other
4 authorized person to post notice denying entry onto private
5 land. Such The privilege may be revoked at any time by
6 personal communication of notice by the landowner or other
7 authorized person to the entering person.

8 (2) To be provide for effective posting of private land
9 through which the public has no right-of-way under this
10 section, the notice provided for in subsection (1) must
11 satisfy the following requirements:

12 (a) notice must be placed on a post, structure, or
13 natural object by marking it with written notice or with not
14 less than 50 square inches of flurescent orange paint,
15 except that when metal fenceposts are used, the entire post
16 must be painted; and

17 (b) the notice described in subsection (2)(a) must be
18 placed at each outer gate and normal point of access to the
19 property, including both sides of a water body crossing the
20 property wherever the water body intersects an outer
21 boundary line.

22 (3) To provide for effective posting of private land
23 through which the public has the right-of-way by means of a
24 public road, a landowner shall:

25 (a) place a conspicuous sign on the edge of the roadway

1 upon entering the private land, stating "PRIVATE PROPERTY,
2 NO TRESPASSING OFF ROAD NEXT MILES"; or

3 (b) place conventional no trespassing signs at regular
4 intervals along the private land bordering the road.

5 ~~(3)~~(4) If property has been posted in substantial
6 compliance with subsection (2) or (3), it is considered
7 closed to public access unless explicit permission to enter
8 is given by the landowner or his authorized agent.

9 ~~(4)~~(5) The department of fish, wildlife, and parks
10 shall attempt to educate and inform all persons holding
11 hunting, fishing, or trapping licenses or permits by
12 including on any publication concerning ~~such~~ the licenses or
13 permits, in condensed form, the provisions of this section
14 concerning entry on private land. The department shall use
15 public media, as well as its own publications, in attempting
16 to educate and inform other recreational users of the
17 provisions of this section. The department shall enforce the
18 posting provisions set out in subsections (2) and (3).

19 ~~(5)~~(6) For purposes of this section, "land" means land
20 as defined in 70-15-102.

21 ~~(6)~~(7) In no event ~~shall~~ may civil liability be imposed
22 upon the owner or occupier of premises by reason of any
23 privilege created by this section."

-End-

APPROVED BY COMM.
ON FISH AND GAME

SENATE BILL NO. 97

INTRODUCED BY T. BECK, MCCAFFREE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING PROCEDURES FOR THE POSTING OF PRIVATE LAND ALONG PUBLIC ROADS; REQUIRING ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENFORCE PROVIDE INFORMATION REGARDING POSTING REQUIREMENTS; AND AMENDING SECTION 45-6-201, MCA."

WHEREAS, the Attorney General in 42 A.G. Op. 96 (1988), held that UNFENCED private property along public roadways may not be closed to public access through the use of orange markings placed on posts located where the road enters the private property; and

WHEREAS, the Legislature desires to address the problem of adequate posting of private land while ensuring proper public access to public roads and the proper inclusion of county road mileage for gas tax purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-6-201, MCA, is amended to read:

"45-6-201. Definition of "enter or remain unlawfully".

(1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so.

Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land. ~~Such~~ The privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) To be provide for effective posting of private land through which the public has no right-of-way under--this section, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) To provide for effective posting of private land through which OR ALONG WHICH the public has the AN UNFENCED right-of-way by means of a public road, a landowner shall:

(a) place a conspicuous sign on WITHIN 30 FEET OF the

SECOND READING



1 edge of the roadway upon--entering WHERE IT ENTERS the
 2 private land, stating WORDS SUBSTANTIALLY SIMILAR TO
 3 "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT MILES";
 4 or
 5 (b) place conventional-no-trespassing-signs NOTICE, AS
 6 DESCRIBED IN SUBSECTION (2)(A), WITHIN 30 FEET OF THE EDGE
 7 OF THE ROADWAY at regular intervals OF NOT LESS THAN
 8 ONE-FOURTH MILE along the private-land-bordering-the-road
 9 ROADWAY WHERE IT BORDERS UNFENCED PRIVATE LAND, EXCEPT THAT
 10 ORANGE MARKINGS MAY NOT BE PLACED ON POSTS WHERE THE PUBLIC
 11 ROADWAY ENTERS THE PRIVATE LAND.

12 {3}{4} If property has been posted in substantial
 13 compliance with subsection (2) or (3), it is considered
 14 closed to public access unless explicit permission to enter
 15 is given by the landowner or his authorized agent.

16 {4}{5} The department of fish, wildlife, and parks
 17 shall attempt to educate and inform all persons holding
 18 hunting, fishing, or trapping licenses or permits by
 19 including on any publication concerning such the licenses or
 20 permits, in condensed form, the provisions of this section
 21 concerning entry on private land. The department shall use
 22 public media, as well as its own publications, in attempting
 23 to educate and inform other recreational users of the
 24 provisions of this section. ~~The department shall enforce the~~
 25 ~~posting provisions set out in subsections (2) and (3):~~ IN

1 THE INTERESTS OF PROVIDING THE PUBLIC WITH CLEAR INFORMATION
 2 REGARDING THE PUBLIC NATURE OF CERTAIN UNFENCED RURAL
 3 RIGHTS-OF-WAY, THE DEPARTMENT MAY DEVELOP AND DISTRIBUTE
 4 POSTING SIGNS THAT SATISFY THE REQUIREMENTS OF SUBSECTION
 5 (3).

6 {5}{6} For purposes of this section, "land" means land
 7 as defined in 70-15-102.

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 9 upon the owner or occupier of premises by reason of any
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1 edge of the roadway upon--entering WHERE IT ENTERS the
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-End-

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 97
Representative McCaffree

March 11, 1991 12:45 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 97 (third reading copy -- blue).

Signed: Ed McCaffree
Representative McCaffree

And, that such amendments to Senate Bill 97 read as follows:

1. Page 2, line 25.

Following: "on"

Strike: "WITHIN 30 FEET"

Insert: "no closer than 30 feet of centerline"

2. Page 3, line 1.

Strike: "edge of the"

ADOPT

REJECT

HOUSE
SB 97

521245CW H-3

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