

SENATE BILL NO. 252

INTRODUCED BY HERTEL

IN THE SENATE

JANUARY 25, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 9, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	PRINTING REPORT.
FEBRUARY 10, 1993	SECOND READING, DO PASS.
FEBRUARY 11, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 46; NOES, 4.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 23, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 29, 1993	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 31, 1993	THIRD READING, CONCURRED IN. AYES, 57; NOES, 42.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1993	SECOND READING, AMENDMENTS NOT CONCURRED IN.
APRIL 6, 1993	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 7, 1993

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

APRIL 19, 1993

FREE CONFERENCE COMMITTEE REPORT  
ADOPTED.

IN THE SENATE

APRIL 20, 1993

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

APRIL 21, 1993

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

APRIL 22, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 252  
2 INTRODUCED BY Hertel  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A  
5 PROFESSIONAL LAND SURVEYOR OR OTHER QUALIFIED PERSON FROM  
6 THE CRIMINAL TRESPASS LAW WHEN ENTRY TO LAND IS FOR SURVEY  
7 PURPOSES; PROVIDING FOR NOTICE TO THE LANDOWNER OF A PENDING  
8 SURVEY; ESTABLISHING NOTICE CONDITIONS AND PROVISIONS FOR  
9 ENTRY TO THE LAND; ESTABLISHING LIABILITY FOR DAMAGES AND  
10 INJURY OCCURRING ON THE LAND DURING A SURVEY; AND AMENDING  
11 SECTION 45-6-203, MCA."

12  
13 WHEREAS, the Legislature finds that in the interest of  
14 the public health, safety, and welfare, the entry onto  
15 private property by a professional land surveyor in the  
16 performance of the surveyor's legal duties and obligations  
17 should not be considered criminal trespass.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 **Section 1.** Section 45-6-203, MCA, is amended to read:

21 "45-6-203. Criminal trespass to property. (1) A Except  
22 as provided in [section 2], a person commits the offense of  
23 criminal trespass to property if he the person knowingly:

24 (a) enters or remains unlawfully in an occupied  
25 structure; or

1 (b) enters or remains unlawfully in or upon the  
2 premises of another.

3 (2) A person convicted of the offense of criminal  
4 trespass to property shall be fined not to exceed \$500 or be  
5 imprisoned in the county jail for any term not to exceed 6  
6 months, or both."

7 **NEW SECTION. Section 2.** Entry to property by  
8 professional land surveyor or other qualified person --  
9 trespass exception -- notice -- liability. (1) Subject to  
10 the conditions and restrictions of this section, the  
11 provisions of 45-6-203 do not apply to a person who is  
12 licensed or registered under Title 37, chapter 67, part 3,  
13 as a professional land surveyor, as defined in 37-67-101, or  
14 to a person acting under the direct supervision of a  
15 professional land surveyor as an employee, agent, or  
16 representative.

17 (2) A person qualified under subsection (1) may enter  
18 public or private land to investigate and use boundary  
19 evidence and perform boundary surveys if the notice  
20 requirements of subsection (3) are met.

21 (3) (a) At least 15 days before the desired date of  
22 entry to land, a professional land surveyor shall give  
23 notice to the owner of the land, by certified mail, return  
24 receipt requested. The notice must contain the following  
25 information:

1 (i) the identity of the person for whom the survey is  
2 being performed;

3 (ii) the purpose for which the survey is being  
4 performed;

5 (iii) the name of the employer of the professional land  
6 surveyor;

7 (iv) the identity of the professional land surveyor;

8 (v) the dates, times, and location of entry to the  
9 land, including the estimated number of entries;

10 (vi) a timetable for completion of the survey, including  
11 an estimated completion date; and

12 (vii) a statement requesting the landowner to provide  
13 the surveyor with the name of each person who occupies the  
14 land as a tenant or lessee.

15 (b) A landowner may waive the notice requirement of  
16 this subsection (3), either orally or in writing.

17 (c) This section does not impose liability upon a  
18 landowner who fails or refuses to provide the requested  
19 entry.

20 (4) (a) If a landowner does not acknowledge receipt of  
21 the notice within 15 days, a person qualified under  
22 subsection (1) may enter the land pursuant to the  
23 specifications given in the notice.

24 (b) If a landowner acknowledges receipt of the notice  
25 within 15 days, the landowner may modify the access

1 provisions of the notice, as long as the modifications do  
2 not unreasonably restrict completion of the survey.

3 (5) Persons qualified under subsection (1) who enter  
4 land pursuant to this section shall carry on their person  
5 identification sufficient to identify themselves and their  
6 employer or principal and shall present the identification  
7 upon request.

8 (6) Vehicular access to perform surveys is limited to  
9 established roads and trails, unless approval for other  
10 vehicular access is granted by the landowner.

11 (7) Approval of the landowner is required for the  
12 clearing of trees, brush, or other vegetation.

13 (8) A landowner may request a person qualified under  
14 subsection (1) who enters land pursuant to this section to  
15 wash any vehicle prior to entry in order to remove mud and  
16 debris that might carry noxious weeds or noxious weed seeds.  
17 The person may request that the landowner be present at the  
18 time of any entry to inspect the vehicle under the terms of  
19 this subsection.

20 (9) A person qualified under subsection (1) who enters  
21 land pursuant to this section is liable for actual damages  
22 caused during entry to and stay on the land. A person  
23 qualified under subsection (1) who enters land for survey  
24 purposes does not have a civil cause of action against a  
25 landowner or lessee for personal injury or property damage

1 incurred while on the land, except when the injury or  
2 damages were purposely or knowingly caused by the landowner  
3 or lessee.

4 (10) As an act of good will and in order to keep the  
5 landowner informed, a professional land surveyor shall  
6 supply the landowner with information on located,  
7 established, or reestablished corners that lie on the land  
8 or that may affect the boundaries of the land. Upon request,  
9 the professional land surveyor shall provide the landowner  
10 with a copy of any relevant survey filed or recorded.

11 NEW SECTION. **Section 3.** Codification instruction.  
12 [Section 2] is intended to be codified as an integral part  
13 of Title 70, chapter 16, and the provisions of Title 70,  
14 chapter 16, apply to [section 2].

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

SENATE BILL NO. 252

INTRODUCED BY HERTEL

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A PROFESSIONAL LAND SURVEYOR OR OTHER QUALIFIED PERSON FROM THE CRIMINAL TRESPASS LAW WHEN ENTRY TO LAND IS FOR SURVEY PURPOSES; PROVIDING FOR NOTICE TO THE LANDOWNER OF A PENDING SURVEY; ESTABLISHING NOTICE CONDITIONS AND PROVISIONS FOR ENTRY TO THE LAND; ~~ESTABLISHING LIABILITY FOR DAMAGES AND INJURY OCCURRING ON THE LAND DURING A SURVEY~~; AND AMENDING SECTION 45-6-203, MCA."

WHEREAS, the Legislature finds that in the interest of the public health, safety, and welfare, the entry onto private property by a professional land surveyor in the performance of the surveyor's legal duties and obligations should not be considered criminal trespass; AND

WHEREAS, THE LEGISLATURE DOES NOT INTEND TO GRANT OR ABROGATE ANY CIVIL LIABILITY OR IMMUNITY TO PROFESSIONAL LAND SURVEYORS OR LANDOWNERS BY [THIS ACT].

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

**Section 1.** Section 45-6-203, MCA, is amended to read:

"45-6-203. Criminal trespass to property. (1) A Except as provided in [section 2], a person commits the offense of

criminal trespass to property if he the person knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

NEW SECTION. **Section 2.** Entry to property by professional land surveyor or other qualified person -- trespass exception -- notice ---liability. (1) Subject to the conditions and restrictions of this section, the provisions of 45-6-203 do not apply to a person who is licensed or registered under Title 37, chapter 67, part 3, as a professional land surveyor, as defined in 37-67-101, or to a person acting under the direct supervision of a professional land surveyor as an employee, agent, or representative.

(2) A person qualified under subsection (1) may enter public or private land to investigate and use boundary evidence and perform boundary surveys if the notice requirements of subsection (3) are met.

(3) (a) At least 15 days before the desired date of entry to land, a professional land surveyor shall give

notice to the owner of the land, by certified mail, return receipt requested. The notice must contain the following information:

(i) the identity of the person for whom the survey is being performed;

(ii) the purpose for which the survey is being performed;

(iii) the name of the employer of the professional land surveyor;

(iv) the identity of the professional land surveyor;

(v) the dates, times, and location of entry to the land, including the estimated number of entries;

(vi) a timetable for completion of the survey, including an estimated completion date; and

(vii) a statement requesting the landowner to provide the surveyor with the name of each person who occupies the land as a tenant or lessee.

(b) A landowner may waive the notice requirement of this subsection (3), either orally or in writing.

(c) This section does not impose liability upon a landowner who fails or refuses to provide the requested entry.

(4) (a) If a landowner does not acknowledge receipt of the notice within 15 days, a person qualified under subsection (1) may enter the land pursuant to the

specifications given in the notice.

(b) If a landowner acknowledges receipt of the notice within 15 days, the landowner may modify the access provisions of the notice, as long as the modifications do not unreasonably restrict completion of the survey.

(5) Persons qualified under subsection (1) who enter land pursuant to this section shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification upon request.

(6) Vehicular access to perform surveys is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(7) Approval of the landowner is required for the clearing of trees, brush, or other vegetation.

(8) A landowner may request a person qualified under subsection (1) who enters land pursuant to this section to wash any vehicle prior to entry in order to remove mud and debris that might carry noxious weeds or noxious weed seeds. The person may request that the landowner be present at the time of any entry to inspect the vehicle under the terms of this subsection.

~~(9) A person qualified under subsection (1) who enters land pursuant to this section is liable for actual damages caused during entry to and stay on the land. A person~~

1 qualified--under--subsection--(1)--who-enters-land-for-survey  
2 purposes-does-not-have-a-civil-cause--of--action--against--a  
3 landowner--or--lessee-for-personal-injury-or-property-damage  
4 incurred-while-on--the--land,--except--when--the--injury--or  
5 damages--were-purposely-or-knowingly-caused-by-the-landowner  
6 or-lessee-

7 (10)(9) As an act of good will and in order to keep the  
8 landowner informed, a professional land surveyor shall  
9 supply the landowner with information on located,  
10 established, or reestablished corners that lie on the land  
11 or that may affect the boundaries of the land. Upon request,  
12 the professional land surveyor shall provide the landowner  
13 with a copy of any relevant survey filed or recorded.

14 NEW SECTION. **Section 3.** Codification instruction.  
15 [Section 2] is intended to be codified as an integral part  
16 of Title 70, chapter 16, and the provisions of Title 70,  
17 chapter 16, apply to [section 2].

-End-



## SENATE BILL NO. 252

INTRODUCED BY HERTEL

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A PROFESSIONAL LAND SURVEYOR OR OTHER QUALIFIED PERSON FROM THE CRIMINAL TRESPASS LAW WHEN ENTRY TO LAND IS FOR SURVEY PURPOSES; PROVIDING FOR NOTICE TO THE LANDOWNER OF A PENDING SURVEY; ESTABLISHING NOTICE CONDITIONS AND PROVISIONS FOR ENTRY TO THE LAND; ESTABLISHING LIABILITY FOR DAMAGES AND INJURY OCCURRING ON THE LAND DURING A SURVEY; AND AMENDING SECTION 45-6-203, MCA."

WHEREAS, the Legislature finds that in the interest of the public health, safety, and welfare, the entry onto private property by a professional land surveyor in the performance of the surveyor's legal duties and obligations should not be considered criminal trespass; AND

WHEREAS, THE LEGISLATURE DOES NOT INTEND TO GRANT OR ABROGATE ANY CIVIL LIABILITY OR IMMUNITY TO PROFESSIONAL LAND SURVEYORS OR LANDOWNERS BY [THIS ACT].

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

Section 1. Section 45-6-203, MCA, is amended to read:

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criminal trespass to property if he the person knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

NEW SECTION. Section 2. Entry to property by professional land surveyor or other qualified person -- trespass exception -- notice ---liability. (1) Subject to the conditions and restrictions of this section, the provisions of 45-6-203 do not apply to a person who is licensed or registered under Title 37, chapter 67, part 3, as a professional land surveyor, as defined in 37-67-101, or to a person acting under the direct supervision of a professional land surveyor as an employee, agent, or representative.

(2) A person qualified under subsection (1) may enter public or private land to investigate and use boundary evidence and perform boundary surveys if the notice requirements of subsection (3) are met.

(3) (a) At least 15 days before the desired date of entry to land, a professional land surveyor shall give

notice to the owner of the land, by certified mail, return receipt requested. The notice must contain the following information:

(i) the identity of the person for whom the survey is being performed;

(ii) the purpose for which the survey is being performed;

(iii) the name of the employer of the professional land surveyor;

(iv) the identity of the professional land surveyor;

(v) the dates, times, and location of entry to the land, including the estimated number of entries;

(vi) a timetable for completion of the survey, including an estimated completion date; and

(vii) a statement requesting the landowner to provide the surveyor with the name of each person who occupies the land as a tenant or lessee.

(b) A landowner may waive the notice requirement of this subsection (3), either orally or in writing.

(c) This section does not impose liability upon a landowner who fails or refuses to provide the requested entry.

(4) (a) If a landowner does not acknowledge receipt of the notice within 15 days, a person qualified under subsection (1) may enter the land pursuant to the

specifications given in the notice.

(b) If a landowner acknowledges receipt of the notice within 15 days, the landowner may modify the access provisions of the notice, as long as the modifications do not unreasonably restrict completion of the survey.

(5) Persons qualified under subsection (1) who enter land pursuant to this section shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification upon request.

(6) Vehicular access to perform surveys is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(7) Approval of the landowner is required for the clearing of trees, brush, or other vegetation.

(8) A landowner may request a person qualified under subsection (1) who enters land pursuant to this section to wash any vehicle prior to entry in order to remove mud and debris that might carry noxious weeds or noxious weed seeds. The person may request that the landowner be present at the time of any entry to inspect the vehicle under the terms of this subsection.

~~(9) A person qualified under subsection (1) who enters land pursuant to this section is liable for actual damages caused during entry to and stay on the land. A person~~

1 ~~qualified--under--subsection--(1)--who--enters--land--for--survey~~  
 2 ~~purposes--does--not--have--a--civil--cause--of--action--against--a~~  
 3 ~~landowner--or--lessee--for--personal--injury--or--property--damage~~  
 4 ~~incurred--while--on--the--land,--except--when--the--injury--or~~  
 5 ~~damages--were--purposely--or--knowingly--caused--by--the--landowner~~  
 6 ~~or--lessee:~~

7     ~~(10)(9)~~ As an act of good will and in order to keep the  
 8 landowner informed, a professional land surveyor shall  
 9 supply the landowner with information on located,  
 10 established, or reestablished corners that lie on the land  
 11 or that may affect the boundaries of the land. Upon request,  
 12 the professional land surveyor shall provide the landowner  
 13 with a copy of any relevant survey filed or recorded.

14     NEW SECTION. Section 3. Codification instruction.  
 15 [Section 2] is intended to be codified as an integral part  
 16 of Title 70, chapter 16, and the provisions of Title 70,  
 17 chapter 16, apply to [section 2].

-End-

# 1

HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 252  
Representative Brandewie

March 29, 1993 4:38 pm  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 252 (third reading copy -- blue).

Signed: Ray Brandewie  
Representative Brandewie

And, that such amendments to Senate Bill 252 read as follows:

1. Title, line 10.

Following: ", "

Insert: "ESTABLISHING LIABILITY FOR DAMAGES AND INJURY OCCURRING  
ON THE LAND DURING A SURVEY; "

2. Page 1, lines 17 through 20.

Strike: "I" on line 17 through "ACT]" on line 20

3. Page 2, line 12.

Following: "~~liability~~"

Insert: "liability"  
Blt ^

4. Page 5, line 7.

Following: "(9)"

Insert: "A person qualified under subsection (1) who enters land pursuant to this section is liable for actual damages caused during entry to and stay on the land. A person qualified under subsection (1) who enters land for survey purposes does not have a civil cause of action against a land owner or lessee for personal injury or property damage incurred while on the land, except when the injury or damages were purposely or knowingly caused by the land owner or lessee.  
(10)"

-END-

ADOPT

REJECT

SB 252

HOUSE

SENATE BILL NO. 252

INTRODUCED BY HERTEL

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A PROFESSIONAL LAND SURVEYOR OR OTHER QUALIFIED PERSON FROM THE CRIMINAL TRESPASS LAW WHEN ENTRY TO LAND IS FOR SURVEY PURPOSES; PROVIDING FOR NOTICE TO THE LANDOWNER OF A PENDING SURVEY; ESTABLISHING NOTICE CONDITIONS AND PROVISIONS FOR ENTRY TO THE LAND; ~~ESTABLISHING LIABILITY FOR DAMAGES AND INJURY OCCURRING ON THE LAND DURING A SURVEY;~~ ESTABLISHING LIABILITY FOR DAMAGES AND INJURY OCCURRING ON THE LAND DURING A SURVEY; AND AMENDING SECTION 45-6-203, MCA."

WHEREAS, the Legislature finds that in the interest of the public health, safety, and welfare, the entry onto private property by a professional land surveyor in the performance of the surveyor's legal duties and obligations should not be considered criminal trespass; ~~AND~~

~~WHEREAS, THE LEGISLATURE DOES NOT INTEND TO GRANT OR ABROGATE ANY CIVIL LIABILITY OR IMMUNITY TO PROFESSIONAL LAND SURVEYORS OR LANDOWNERS BY THIS ACT.~~

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(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

**NEW SECTION. Section 2.** Entry to property by professional land surveyor or other qualified person -- trespass exception -- notice ---liability -- LIABILITY. (1) Subject to the conditions and restrictions of this section, the provisions of 45-6-203 do not apply to a person who is licensed or registered under Title 37, chapter 67, part 3, as a professional land surveyor, as defined in 37-67-101, or to a person acting under the direct supervision of a professional land surveyor as an employee, agent, or representative.

(2) A person qualified under subsection (1) may enter public or private land to investigate and use boundary evidence and perform boundary surveys if the notice requirements of subsection (3) are met.

(3) (a) At least 15 days before the desired date of

1 entry to land, a professional land surveyor shall give  
2 notice to the owner of the land, by certified mail, return  
3 receipt requested. The notice must contain the following  
4 information:

5 (i) the identity of the person for whom the survey is  
6 being performed;

7 (ii) the purpose for which the survey is being  
8 performed;

9 (iii) the name of the employer of the professional land  
10 surveyor;

11 (iv) the identity of the professional land surveyor;

12 (v) the dates, times, and location of entry to the  
13 land, including the estimated number of entries;

14 (vi) a timetable for completion of the survey, including  
15 an estimated completion date; and

16 (vii) a statement requesting the landowner to provide  
17 the surveyor with the name of each person who occupies the  
18 land as a tenant or lessee.

19 (b) A landowner may waive the notice requirement of  
20 this subsection (3), either orally or in writing.

21 (c) This section does not impose liability upon a  
22 landowner who fails or refuses to provide the requested  
23 entry.

24 (4) (a) If a landowner does not acknowledge receipt of  
25 the notice within 15 days, a person qualified under

1 subsection (1) may enter the land pursuant to the  
2 specifications given in the notice.

3 (b) If a landowner acknowledges receipt of the notice  
4 within 15 days, the landowner may modify the access  
5 provisions of the notice, as long as the modifications do  
6 not unreasonably restrict completion of the survey.

7 (5) Persons qualified under subsection (1) who enter  
8 land pursuant to this section shall carry on their person  
9 identification sufficient to identify themselves and their  
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11 upon request.

12 (6) Vehicular access to perform surveys is limited to  
13 established roads and trails, unless approval for other  
14 vehicular access is granted by the landowner.

15 (7) Approval of the landowner is required for the  
16 clearing of trees, brush, or other vegetation.

17 (8) A landowner may request a person qualified under  
18 subsection (1) who enters land pursuant to this section to  
19 wash any vehicle prior to entry in order to remove mud and  
20 debris that might carry noxious weeds or noxious weed seeds.  
21 The person may request that the landowner be present at the  
22 time of any entry to inspect the vehicle under the terms of  
23 this subsection.

24 ~~{9}--A--person-qualified-under-subsection-{1}-who-enters~~  
25 ~~land-pursuant-to-this-section-is-liaible-for--actual--damages~~

1 ~~caused--during--entry--to--and--stay--on--the--land--A--person~~  
 2 ~~qualified--under--subsection--(1)--who--enters--land--for--survey~~  
 3 ~~purposes--does--not--have--a--civil--cause--of--action--against--a~~  
 4 ~~landowner--or--lessee--for--personal--injury--or--property--damage~~  
 5 ~~incurred--while--on--the--land--except--when--the--injury--or~~  
 6 ~~damages--were--purposely--or--knowingly--caused--by--the--landowner~~  
 7 ~~or--lessee.~~

8 (10)(9) A PERSON QUALIFIED UNDER SUBSECTION (1) WHO  
 9 ENTERS LAND PURSUANT TO THIS SECTION IS LIABLE FOR ACTUAL  
 10 DAMAGES CAUSED DURING ENTRY TO AND STAY ON THE LAND. A  
 11 PERSON QUALIFIED UNDER SUBSECTION (1) WHO ENTERS LAND FOR  
 12 SURVEY PURPOSES DOES NOT HAVE A CIVIL CAUSE OF ACTION  
 13 AGAINST A LANDOWNER OR LESSEE FOR PERSONAL INJURY OR  
 14 PROPERTY DAMAGE INCURRED WHILE ON THE LAND, EXCEPT WHEN THE  
 15 INJURY OR DAMAGES WERE PURPOSELY OR KNOWINGLY CAUSED BY THE  
 16 LANDOWNER OR LESSEE.

17 (10) As an act of good will and in order to keep the  
 18 landowner informed, a professional land surveyor shall  
 19 supply the landowner with information on located,  
 20 established, or reestablished corners that lie on the land  
 21 or that may affect the boundaries of the land. Upon request,  
 22 the professional land surveyor shall provide the landowner  
 23 with a copy of any relevant survey filed or recorded.

24 NEW SECTION. Section 3. Codification instruction.  
 25 [Section 2] is intended to be codified as an integral part

1 of Title 70, chapter 16, and the provisions of Title 70,  
 2 chapter 16, apply to [section 2].

-End-

Free Conference Committee  
on Senate Bill No. 252  
Report No. 1, April 19, 1993

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 252, met and considered Senate Bill No. 252. We recommend that Senate Bill No. 252 (reference copy - salmon) be amended as follows:

1. Title, lines 10 through 12.

Following: "~~SURVEY~~," on line 10

Strike: remainder of line 10 through "SURVEY;" on line 12

Insert: "CREATING A REBUTTABLE PRESUMPTION REGARDING A  
LANDOWNER'S LIABILITY TO A SURVEYOR ON LAND FOR SURVEYING  
PURPOSES;"

2. Page 5, lines 8 through 10.

Following: "(9)" on line 8

Strike: remainder of line 8 through "LAND." on line 10

3. Page 5, line 10.

Strike: "A"

Insert: "Entry upon land for survey purposes by a"

4. Page 5, lines 11 through 16.

Following: "(1)" on line 11

Strike: remainder of line 11 through "LESSEE" on line 16

Insert: "creates a rebuttable presumption that the landowner or  
lessee properly protected the person against personal injury  
or property damage while the person was on the land"

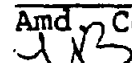
And that this Free Conference Committee report be adopted.

For the Senate:

  
Senator Doherty, Chair

  
Senator Hertel


  
Senator Yellowtail

M-  
Amd. Coord.  
  
Sec. of Senate

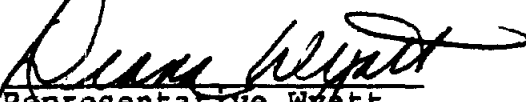
ADOPT

REJECT

For the House:

  
Representative R. Johnson, Chair

  
Representative Brandewie

  
Representative Wyatt

SB 252  
F.C.C.R. #1  
861245CC.Sma



SENATE BILL NO. 252

INTRODUCED BY HERTEL

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A PROFESSIONAL LAND SURVEYOR OR OTHER QUALIFIED PERSON FROM THE CRIMINAL TRESPASS LAW WHEN ENTRY TO LAND IS FOR SURVEY PURPOSES; PROVIDING FOR NOTICE TO THE LANDOWNER OF A PENDING SURVEY; ESTABLISHING NOTICE CONDITIONS AND PROVISIONS FOR ENTRY TO THE LAND; ~~ESTABLISHING LIABILITY FOR DAMAGES AND INJURY OCCURRING ON THE LAND DURING A SURVEY; ESTABLISHING LIABILITY FOR DAMAGES AND INJURY OCCURRING ON THE LAND DURING A SURVEY;~~ CREATING A REBUTTABLE PRESUMPTION REGARDING A LANDOWNER'S LIABILITY TO A SURVEYOR ON LAND FOR SURVEYING PURPOSES; AND AMENDING SECTION 45-6-203, MCA."

WHEREAS, the Legislature finds that in the interest of the public health, safety, and welfare, the entry onto private property by a professional land surveyor in the performance of the surveyor's legal duties and obligations should not be considered criminal trespass; ~~AND~~

~~WHEREAS, THE LEGISLATURE DOES NOT INTEND TO GRANT OR ABROGATE ANY CIVIL LIABILITY OR IMMUNITY TO PROFESSIONAL LAND SURVEYORS OR LANDOWNERS BY THIS ACT.~~

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

**Section 1.** Section 45-6-203, MCA, is amended to read:

"45-6-203. Criminal trespass to property. (1) A Except as provided in [section 2], a person commits the offense of criminal trespass to property if he the person knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

NEW SECTION. **Section 2.** Entry to property by professional land surveyor or other qualified person -- trespass exception -- ~~notice ---liability~~ -- LIABILITY. (1) Subject to the conditions and restrictions of this section, the provisions of 45-6-203 do not apply to a person who is licensed or registered under Title 37, chapter 67, part 3, as a professional land surveyor, as defined in 37-67-101, or to a person acting under the direct supervision of a professional land surveyor as an employee, agent, or representative.

(2) A person qualified under subsection (1) may enter public or private land to investigate and use boundary evidence and perform boundary surveys if the notice



1 requirements of subsection (3) are met.

2 (3) (a) At least 15 days before the desired date of  
3 entry to land, a professional land surveyor shall give  
4 notice to the owner of the land, by certified mail, return  
5 receipt requested. The notice must contain the following  
6 information:

7 (i) the identity of the person for whom the survey is  
8 being performed;

9 (ii) the purpose for which the survey is being  
10 performed;

11 (iii) the name of the employer of the professional land  
12 surveyor;

13 (iv) the identity of the professional land surveyor;

14 (v) the dates, times, and location of entry to the  
15 land, including the estimated number of entries;

16 (vi) a timetable for completion of the survey, including  
17 an estimated completion date; and

18 (vii) a statement requesting the landowner to provide  
19 the surveyor with the name of each person who occupies the  
20 land as a tenant or lessee.

21 (b) A landowner may waive the notice requirement of  
22 this subsection (3), either orally or in writing.

23 (c) This section does not impose liability upon a  
24 landowner who fails or refuses to provide the requested  
25 entry.

1 (4) (a) If a landowner does not acknowledge receipt of  
2 the notice within 15 days, a person qualified under  
3 subsection (1) may enter the land pursuant to the  
4 specifications given in the notice.

5 (b) If a landowner acknowledges receipt of the notice  
6 within 15 days, the landowner may modify the access  
7 provisions of the notice, as long as the modifications do  
8 not unreasonably restrict completion of the survey.

9 (5) Persons qualified under subsection (1) who enter  
10 land pursuant to this section shall carry on their person  
11 identification sufficient to identify themselves and their  
12 employer or principal and shall present the identification  
13 upon request.

14 (6) Vehicular access to perform surveys is limited to  
15 established roads and trails, unless approval for other  
16 vehicular access is granted by the landowner.

17 (7) Approval of the landowner is required for the  
18 clearing of trees, brush, or other vegetation.

19 (8) A landowner may request a person qualified under  
20 subsection (1) who enters land pursuant to this section to  
21 wash any vehicle prior to entry in order to remove mud and  
22 debris that might carry noxious weeds or noxious weed seeds.  
23 The person may request that the landowner be present at the  
24 time of any entry to inspect the vehicle under the terms of  
25 this subsection.

~~{9}--A person qualified under subsection (1) who enters land pursuant to this section is liable for actual damages caused during entry to and stay on the land. A person qualified under subsection (1) who enters land for survey purposes does not have a civil cause of action against a landowner or lessee for personal injury or property damage incurred while on the land, except when the injury or damages were purposely or knowingly caused by the landowner or lessee.~~

~~{10}(9) A PERSON QUALIFIED UNDER SUBSECTION (1) WHO ENTERS LAND PURSUANT TO THIS SECTION IS LIABLE FOR ACTUAL DAMAGES CAUSED DURING ENTRY TO AND STAY ON THE LAND. A ENTRY UPON LAND FOR SURVEY PURPOSES BY A PERSON QUALIFIED UNDER SUBSECTION (1) WHO ENTERS LAND FOR SURVEY PURPOSES DOES NOT HAVE A CIVIL CAUSE OF ACTION AGAINST A LANDOWNER OR LESSEE FOR PERSONAL INJURY OR PROPERTY DAMAGE INCURRED WHILE ON THE LAND, EXCEPT WHEN THE INJURY OR DAMAGES WERE PURPOSELY OR KNOWINGLY CAUSED BY THE LANDOWNER OR LESSEE CREATES A REBUTTABLE PRESUMPTION THAT THE LANDOWNER OR LESSEE PROPERLY PROTECTED THE PERSON AGAINST PERSONAL INJURY OR PROPERTY DAMAGE WHILE THE PERSON WAS ON THE LAND.~~

~~(10) As an act of good will and in order to keep the landowner informed, a professional land surveyor shall supply the landowner with information on located, established, or reestablished corners that lie on the land~~

or that may affect the boundaries of the land. Upon request, the professional land surveyor shall provide the landowner with a copy of any relevant survey filed or recorded.

NEW SECTION. Section 3. Codification instruction.  
[Section 2] is intended to be codified as an integral part of Title 70, chapter 16, and the provisions of Title 70, chapter 16, apply to [section 2].

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