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RECREATIONAL TRESPASS

**Senate Bill 767 with House
Committee amendment
Sponsor: Sen. Mat J. Dunaskiss**

**Senate Bill 768 as passed by the Senate
Sponsor: Sen. Loren Bennett**

Addendum to SFA analysis (10-21-98)

**Senate Committee: Natural Resources and
Environmental Affairs
House Committee: Conservation,
Environment and Recreation**

ADDENDUM TO SENATE FISCAL AGENCY ANALYSIS OF SB 767 AND 768 DATED 6-17-98:

HOUSE COMMITTEE ACTION:

The House committee on Conservation, Environment and Recreation adopted three amendments to Senate Bill 767 (S-6). The amendments would remove the Senate-passed provisions requiring licensed hunters to wear a numbered tag and those requiring the Department of Natural Resources to maintain a computer file of information from hunting license applications.

In addition, the amendments would remove the seizure and forfeiture exemption for electronic hunting-dog-retrieval equipment and would specify that the seizure and forfeiture provisions were limited to any protected animals, fur-bearing animals, game, or fish taken during a violation of part 731, not all property.

As reported from the House Committee on Conservation, Environment and Recreation, the bill would amend Part 731 (Recreational Trespass) of the NREPA (Natural Resources and Environmental Protection Act) to allow property owners to sue trespassers, increase penalties, and revise seizure and forfeiture provisions.

The NREPA prohibits a person from trespassing on someone else's property, other than farm property or a wooded area connected to farm property, to engage in any recreational activity or trapping without the owner's or lessee's consent except under certain circumstances. Under current law, a person who violates this provision is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$100. A second or subsequent violation within three years of a previous violation is punishable by imprisonment for up to 90 days or a fine of at least \$100 but not more than \$500, or both, and the court may revoke the person's hunting or fishing license for the rest of the year, and order the person not to seek another license for up to three years.

The bill would allow the owner or lessee to bring a civil cause of action against a trespasser for \$250 or actual damages, whichever was greater, and actual and reasonable attorney fees. In addition the bill would increase the criminal fine for an initial offense to at least \$100 but not more than \$500. Until September 31, 2001, a subsequent offense within three years of a prior offense would be subject to imprisonment for up to 90 days and/or a fine of at least \$250 but not more than \$1,000, and the court would have to revoke the offender's hunting, fishing, or trapping license and order the person not to seek a license of any kind for the remainder of the calendar year and during at least one succeeding year. After September 30, 2001, the penalty for a repeat offense would revert to the current level.

The bill would also make changes to two of the circumstances for exceptions to the prohibition against recreational trespass. Currently, a person who is fishing a navigable public stream may enter onto fenced, posted or farm property while following the stream provided he or she stays within the clearly defined banks of the stream or a route as close as possible to the stream bank to avoid any natural or artificial hazards or obstructions. Under the bill, a person who entered property under this exception would be required to avoid damaging any farm products when he or she left the banks of the stream to avoid any hazards or obstructions. In addition, current law allows a person to enter onto the property of another to retrieve a hunting dog, provided that the person retrieving the dog is unarmed and has not been previously prohibited from entering onto the property by the owner. The bill would place the burden of proving that a hunter had been previously prohibited entry on the land on the property owner or the prosecuting attorney when a hunter claimed that his or her actions were within the dog retrieval exception.

Currently, the court must order a trespasser to make restitution for any damages arising out of the violation. The bill would include reimbursement to the state for the value of any protected animal, fur-bearing animal, game, or fish that was taken while the violation was being committed. In addition, the current law provides that property that is brought onto the property of another during a repeat offense may be seized and forfeited. The bill would specify that the seizure provisions were limited to any protected animals, fur-bearing animals, game, or fish taken during a violation of part 731, not all property.

POSITIONS:

The Michigan Farm Bureau supports the bills. (10-20-98)

The Michigan United Conservation Clubs supports the bills. (10-20-98)

The Department of Natural Resources supports the bills. (10-21-98)

Analyst: W. Flory

■ 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.