

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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Senate Bill 767 (as enrolled)

Senate Bill 768 (as enrolled)

Sponsor: Senator Mat J. Dunaskiss (S.B. 767)

Senator Loren Bennett (S.B. 768)

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Conservation, Environment and Recreation

PUBLIC ACT 546 of 1998

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Date Completed: 1-25-99

RATIONALE

Part 731 of the Natural Resources and Environmental Protection Act (NREPA) is designed to limit the liability of land owners to persons coming onto their property for recreational purposes, and to prevent recreational trespass by specifying imprisonment and/or a fine for a violation, establishing a penalty for a subsequent violation, and permitting the forfeiture of violators' property. Some people, however, believe that these provisions have been ineffective in curbing recreational trespass since, reportedly, some hunters continue to encroach on private property in pursuit of their recreational activities and show little regard for private property of others. Evidently, many property owners have attempted to press criminal charges against the violators but found the process to be tedious and complicated. Therefore, it was suggested that the NREPA should be amended to allow recreational trespass actions to be remedied under criminal *and* civil law, provide increased penalties for violations.

CONTENT

Senate Bill 767 amended Part 731 (Recreational Trespass) and Part 435 (Hunting and Fishing Licenses) of the NREPA to allow property owners to sue trespassers; increase penalties; and revise seizure and forfeiture provisions. Senate Bill 768 amended the Revised Judicature Act to allow recreational trespass actions by property owners or lessees to be brought in the small claims court, and to require the State Court Administrator to prepare instruction sheets for these actions.

The bills were tie-barred to each other. The following is a detailed description of the bills.

Senate Bill 767

The NREPA provides that a person must not enter or remain upon property of another person, 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 the bill, the owner or lessee may bring a cause of action against a violator for \$250 or actual damages, whichever is greater, and actual and reasonable attorney fees.

Previously under the Act, a person who violated Part 731 was guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$100. Under the bill, the fine is at least \$100 but not more than \$500. The Act also provided that a second or subsequent violation within three years of a previous violation was 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 could 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. Under the bill, until September 31, 2001, a repeat offender within three years is 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 must 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 will revert to the former level.

Under the Act, the court must order a violator to make restitution for any damage arising out of the violation. The bill includes reimbursement to the State for the value of any protected animal, fur-bearing animal, game, or fish taken while the violation was committed. These animals and fish also may be seized and forfeited, under the bill.

In addition, the Act previously allowed the seizure and forfeiture of property brought onto the property of another during a repeat offense. The bill allows the seizure and forfeiture of property in the possession of the defendant while he or she committed a second or subsequent violation within three years of a previous violation. This does not apply to electronic hunting-dog-retrieval equipment and living or dead animals not described above.

Senate Bill 768

Under the Revised Judicature Act, actions of fraud, libel, slander, assault, battery, or other intentional torts may not be instituted in the small claims division. The bill creates an exception for an action under Section 73109 of the Natural Resources and Environmental Protection Act (which, under Senate Bill 767, allows a property owner or lessee to bring an action for a recreational trespass violation).

The Act requires the State Court Administrator to prepare instruction sheets clearly explaining the small claims division's functions and procedures. A copy of the instruction sheet must be given to the claimant and also must be made available at the office of each clerk and deputy clerk of the district court. The clerk must send a copy of the defendant's instruction sheet and the served affidavit copy to the defendant. Under the bill, the State Court Administrator also must prepare instruction sheets specifically for an action under Section 73109 of the NREPA.

MCL 324.43516 et al. (S.B. 767)
600.4701 et al. (S.B. 768)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Trespass by people pursuing outdoor recreation has been a problem in the State for some time. Reportedly, trespassers have used intimidation to gain access to land for hunting and other recreational uses. In some cases, property owners reported harassment and property destruction by persons who were denied access to the property. Other incidents evidently occurred when property was sold and the new owner refused to permit other persons on the land. Sportspeople who, with the permission of the previous owner, have hunted the land for a number of years threatened to continue hunting despite the new owner's restrictions. The previous penalties--potential

imprisonment and fines, revocation of a violator's recreational license, seizure or forfeiture of property brought by a trespasser, and restitution--did not adequately deter hunters and others from trespassing on private property in pursuit of their recreational activities. Many property owners who experienced these types of situations contended that there was little recourse under the criminal procedure, especially since few county prosecuting attorneys apparently are willing to take a trespass case to court. The bill strengthens the NREPA by allowing property owners to sue trespassers in small claims court to seek reasonable damages, increasing the penalties for violations, and requiring violators to reimburse the State for the value of any animal, game, or fish taken by a violator. These provisions send a message that an act of trespass is to be taken seriously and will result in significant penalties and civil liability.

Legislative Analyst: N. Nagata

FISCAL IMPACT

Senate Bill 767

The bill will have an indeterminate fiscal impact on State government, depending upon the number of violations and amount of fine revenue received. The bill will have no fiscal impact on local government.

Senate Bill 768

The bill will have a minimal fiscal impact on the State Court Administrative Office regarding preparation of instruction sheets for actions under Section 73109 of the Natural Resources and Environmental Protection Act.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.