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**FINAL REPORT
of the
COMMISSION TO STUDY TRESPASS LAWS**

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TABLE OF CONTENTS

| | |
|--|----|
| EXECUTIVE SUMMARY | i |
| I. Introduction | 1 |
| II. Defining Trespass | 3 |
| A. The Common Law of Trespass and Civil Trespass | 3 |
| B. Criminal Trespass | 5 |
| III. Posting Rules | 6 |
| A. Clarity of Posting Rules | 6 |
| B. Limited Access | 7 |
| IV. Civil Remedies for Landowners | 9 |
| A. Minimum Damages | 9 |
| B. Enhanced Recovery for Actual Damages | 9 |
| C. Reimbursement for Litigation Costs | 10 |
| V. Landowner Liability | 11 |
| A. Liability for Injury to Recreational Users | 11 |
| B. Liability for Environmental Damage to Land | 12 |
| VI. Clarifying Law Enforcement | 14 |
| A. Response to Trespass Complaints | 14 |
| B. Prosecution Problems -- Proof | 15 |
| C. Administrative Law Enforcement | 15 |
| VII. Property Damage | 17 |
| MINORITY REPORTS | 19 |
| NOTES | 22 |

APPENDICES

Appendix A: Resolve Creating the Commission

Appendix B: Commission Membership

Appendix C: Proposed Legislation

- C-1: Posting Rules
- C-2: Encouraging Identification of Landowners
- C-3: Civil Damages
- C-4: Landowner Liability Law Changes
- C-5: Property Damages
- C-6: Damage by Motor Vehicle
- C-7: Motor Vehicle Trespass

Appendix D: Summary of Maine Trespass Laws

Appendix E: Landowner Relations Program Brochure

Appendix F: Staff Memo regarding Civil Trespass and the Role of Custom

Appendix G: Trespass Laws, Posting Rules in Selected Other States

Appendix H: Survey of Landowners

Appendix I: Department of Inland Fisheries and Wildlife Policy regarding
Department Employees' Access to Private Property

EXECUTIVE SUMMARY

The Commission to Study Trespass Laws was created at the request of the Joint Standing Committee on Fisheries and Wildlife. Noting the high concentration of privately owned land in Maine, the traditional use of private land for public recreation and the lack of clear, concise laws governing access to private property, the study Resolve asked the Commission to review Maine's trespass laws and suggest ways to make them into a "functional set of trespass statutes that best provides for the needs of landowners and citizens of the State as well as facilitating enforcement of trespass."

Recognizing that trespass laws raise a multitude of issues, Commission members began their work by formulating and prioritizing a list of issues they intended to explore. Among the top priorities were:

- Defining "trespass" and consolidating the multitude of trespass laws
- Clarifying how to post property for purposes of the criminal trespass laws
- Providing civil remedies for landowners
- Improving the law protecting landowners from liability for injury to recreational users
- Clarifying who has responsibility to enforce trespass laws and improving the ability of law enforcement to prosecute those laws
- Improving remedies for illegal dumping and property damage

Given limitations on its time, the Commission was not able to define trespass and consolidate all trespass laws into one place in the Maine statutes. No recommendation is made with regard to this issue, however the report includes a summary of the major Maine laws relating to trespass, which may serve as a useful resource for those who enforce and analyze the trespass laws.

The Commission spent considerable time discussing a rule for posting property under the criminal trespass law. Commission members agreed that landowners, law enforcement officials and recreational users are dissatisfied with the current law, which calls for property to be posted "in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders," but does not prescribe a specific method of posting. To alleviate this lack of guidance, a majority of the Commission recommends a specific set of rules that, if complied with, would be deemed to meet the standard in the law. This would be one method of meeting that standard, but any other method that a court finds to be "reasonably likely to come to the attention of intruders" would also be acceptable. The rule provides for posting by signs or paint markings, specifies posting intervals, and provides other details. Two Commission members disagreed with the recommendation, one because it does not solve the major problem in prosecuting criminal trespass violations, the other because it is burdensome for landowners and may prove to be ineffective against trespassers.

The Commission also recommends increasing the ability of landowners to bring private actions for trespass, by increasing their recovery for property damage caused by trespassers. A recommendation is made to allow landowners to recover treble damages for actual physical damage to their property, to allow them to recover attorney fees and costs for pursuing an action in court, and to add illegal dumping of litter to the laws allowing for such recovery.

In addition to the burden of repairing property damage, landowners are concerned that they may be held liable by regulatory agencies for environmental damage caused by recreational users and others who come onto their property. The Commission asks the Joint Standing Committee on Natural Resources to discuss ways to assure that landowners are not unfairly required to pay penalties or clean-up costs for damage caused without landowner permission by third parties. Although the Commission is concerned that this damage be repaired, they are also concerned that innocent landowners may be asked to bear the burden of damage they did not cause and could not prevent.

On the issue of law enforcement, the Commission applauds the efforts of the Department of Inland Fisheries and Wildlife in taking a more active role in responding to trespass complaints and urges law enforcement agencies to continue to work together to improve response to these complaints. The Commission also finds that adoption of the proposed posting rules is likely to simplify enforcement and prosecution of criminal trespass cases.

Given the concern with the rights of private property owners to control access to their land, the Commission recommends that state administrative agencies develop policies governing their employees' access to private property. The Department of Inland Fisheries and Wildlife has an internal staff policy limiting access to private property without landowner permission. The Commission recommends that all state agencies consider adopting the department's policy, adjusted if necessary to meet the unique needs of that state agency.

Finally, the Commission recommends clarifying that the law protecting landowners from liability for injury to recreational users of their property applies to landowners regardless of whether they have given permission to use their property.

I. INTRODUCTION

The Commission to Study Trespass Laws was appointed pursuant to 1995 Resolve chapter 53. The Resolve, initiated by the Governor's Commission on Landowner/Sportsmen Relations, was enacted into law upon the recommendation of the Joint Standing Committee on Fisheries and Wildlife.

The Resolve notes that Maine has a very high concentration of privately owned land, which has traditionally been used for public recreation, and that a growing number of people wish to close or restrict use of their land for public recreation. The Resolve finds that the current trespass laws are too numerous, are scattered throughout the statutes and are difficult to understand and enforce.

The Commission was charged with studying existing trespass laws and making recommendations for legislative changes to consolidate and revise existing laws "into a functional set of trespass statutes that best provides for the needs of landowners and citizens of the state as well as facilitating enforcement of trespass."

Convened on September 25, 1995 the Commission held 9 meetings throughout the fall to examine issues related to trespass. Commission members articulated a number of concerns with current laws regarding unauthorized entry on public and private land, focusing especially on entry for recreational purposes and the factors that enhance or detract from the willingness of property owners to make their land available to public recreation.

The Commission grouped and ranked its concerns based on Commission member priorities. The groups are as follows:

Priority #1

- Define trespass
- Clarify posting rules
- Provide civil remedies for landowners
- Improve landowner liability law
- Clarify law enforcement

Priority #2

- Address illegal dumping
- Address property damage

Priority #3

- Compensation for landowners who allow access
- Clarify definition of “unimproved land” in Colonial Ordinance
- Clarify identification requirements for land users
- Address the discharge of firearms from town-maintained gravel roads

The Commission focused on issues in priority groupings #1 and #2. A discussion of each of those issues and the findings and recommendations related to them are included in this report.

II. DEFINING TRESPASS

Although it's easy to conjure up in our minds a general definition of "trespass," it's not possible to find one place in the laws of Maine where trespass is defined and its implications stated. There are criminal trespass laws, which punish a person for entering or remaining on land when it is clear he or she is not wanted there. There are laws setting forth procedural rules for civil lawsuits for trespass. And there are laws, primarily found in Title 12 of the Maine Revised Statutes, which prohibit the entry on public or private property for various recreational purposes.

As charged by the Resolve creating the Commission, commission members discussed ways to consolidate and clarify the trespass laws. This task turned out to be more complicated than expected and the benefits of wholesale law changes seemed doubtful. Instead, the Commission agreed to clarify criminal trespass law, to strengthen civil trespass remedies and to make some other changes in the existing law, rather than reorganizing them.

A. The Common Law of Trespass and Civil Trespass

The common law is a body of legal principles created by hundreds of years of court decisions, rather than by Legislatures. Although there is no single place to look for the common law, the treatise known as The Restatement of Torts is a generally accepted statement of common law principles.

The Restatement describes trespass as follows:

One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally:

(a) enters land in the possession of the other, or causes a thing or a third person to do so;

(b) remains on the land; or

(c) fails to remove from the land a thing which he is under a duty to remove.

Restatement of Torts, 2d, section 158.

Maine courts have adopted this as a general statement of civil trespass. See, e.g., Hayes v. Bushey, 196 A.2d 823 (1964). This definition of trespass, which is not found in the Maine statutes, affects trespass lawsuits brought by private citizens in Maine courts.

The Commission discussed placing this definition in statute, but found that doing so would require them to resolve a controversial issue: whether the Maine tradition of public use of unposted private land for hunting and other recreational purposes provides a defense to a trespass charge.

In general, a person does not commit trespass if he or she enters property with the consent of the landowner. According to the Restatement of Torts, consent may be explicit or implicit, and may be indicated by action or inaction. The Restatement recognizes that custom can, under some circumstances, create implied consent. For example, lack of posting may imply consent, if it is understood in the community, by long-standing custom, that it does so.

In determining whether conduct would be understood by a reasonable person as indicating consent, the customs of the community are to be taken into account. This is true particularly of silence or inaction. Thus if it is the custom in wooded or rural areas to permit the public to go hunting on private land or fish in private lakes or streams, anyone who goes hunting or fishing may reasonably assume, in the absence of a posted notice or other manifestation to the contrary, that there is the customary consent to his entry upon private land to hunt or fish.

Comment (d) to Section 892 of the Restatement 2d of Torts.

This is a general statement of the common law concept of consent as determined by community custom. Maine courts have not specifically ruled on this issue, and until they do so, it is not clear whether Maine law recognizes that custom can create implied consent, and if so, where the custom applies and what it allows. A staff memo included as Appendix F describes selected Maine trespass cases and commentary on the role of custom in creating easements to use private property.

The issue of custom and the right to enter upon unposted land was one of the most controversial issues for the Commission. Most members believed that one does not commit civil trespass in Maine by entering unposted private property. Others disagreed. A proposal was presented to the Commission, recognizing that custom may create consent to enter unposted unimproved land, but stopping short of saying that the custom exists in Maine. Some members found the proposed law went too far toward codifying this right, others felt it was too controversial, and others felt it didn't go far enough. In the end, the Commission decided not to make a recommendation to the Legislature on defining civil trespass.

Finding: *The Commission finds that it would be helpful to have one place to turn in Maine law for a definition of trespass and references to other trespass laws, but crafting such a law is difficult within the confines or time frame of the Commission.*

Recommendation: *The Commission chose to make no recommendation regarding consolidation and revision of the trespass laws, in general.*

B. Criminal Trespass

Criminal trespass is generally defined in Title 17-A, section 402. Trespass rises to the level of a criminal violation under Title 17-A when a person has been told personally that he or she is not welcome, when the land is posted with “No Trespassing” signs, when the person enters a dwelling or in other instances when a person clearly knows he or she is not authorized to enter the property.

Although section 402 states the general rule, there are a number of criminal trespass laws relating to similar activities scattered throughout the statutes. Title 17 includes specific provisions for trespass by motor vehicle, and for violation of privacy. Title 6 contains a specific provision relating to trespass on airport landing areas. Title 37-B creates a special rule for trespass on civil defense facilities and utility property. Each law contains elements similar but not identical to those found in Title 17-A, section 402.

Title 12 is another source of laws imposing criminal penalties for entry upon private lands, but focuses specifically on recreational use of private property. Those provisions include laws regulating hunting and trapping and the use of snowmobiles and all-terrain vehicles. Violations of the provisions of Title 12 enforced by the Department of Inland Fisheries and Wildlife are Class E crimes.

The Commission discussed possible consolidation of criminal laws, but decided against making major changes. Repealing the laws other than section 402 would result in substantive changes, since they contain elements different from those in 402, and amending section 402 to include the additional elements did not seem appropriate. In addition, removing the provisions from the Titles in which they now are placed may affect a department’s authority to enforce the laws and the penalties that apply for violations.

Finding: *The Commission finds that the criminal code provision covering trespass appears to cover most of the serious trespass incidents. Criminal trespass laws in other Titles differ from the criminal code provision, and repealing them would result in substantive legal change that may not be desirable.*

Recommendation: *The Commission recommends no consolidation of criminal trespass laws at this time.*

III. POSTING RULES

A. Clarity of Posting Rules

Current law on criminal trespass has created a great deal of confusion for both land owners and land users by its vague reference to posting. According to Title 17-A, section 402, subsection 1, paragraph C, a person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person

“[e]nters any place from which that person may lawfully be excluded and that is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders....”

The confusion arises because a manner of posting for purposes of criminal trespass is not prescribed in statute or in rule. As a result of this gap in the statute, land owners and users are unclear about what method of posting is effective. Prosecution of criminal trespass cases is made difficult because of the burden of proving that the property was properly posted against trespassing and that the intruder knew the property was posted.

The Commission had several goals while addressing the issue of posting:

- to provide landowners with a prescribed method of keeping unwanted intruders off their land,
- to provide options that encourage landowners to leave their property open to users who ask permission,
- to ensure that where land is posted it is done in a manner likely to come to the attention of potential users, and
- to facilitate enforcement of criminal trespass.

The common theme that emerged from these goals was the need to clarify the posting rules.

In pursuing this issue, the Commission was aware of the need to balance the right of landowners to protect their property without the burden of expensive posting requirements and the need to provide adequate notice to land users who often have no means of knowing when they cross boundaries.

The Commission concluded that a balance could be achieved by specifically prescribing in statute one manner of posting that presumptively gives adequate notice to intruders, while preserving for landowners the option of posting in any reasonable manner.

The Commission examined the trespass laws in fourteen states (see Appendix G), and found that five of those permitted posting to be accomplished through either signs or identifying paint marks. To reduce the burden on landowners, the commission endorses giving the option of posting property with either signs or paint. In addition to being less costly than traditional “No Trespassing” signs, paint markings are less vulnerable to vandalism.

B. Limited Access

According to a 1988 Maine landowner survey, included in a 1992 report by the Department of Inland Fisheries and Wildlife¹, 80% of landowners want to be asked by the public for permission to use their land, but 38% have never been asked for such permission. Most of the Commission members feel strongly that when a landowner permits access only with permission, the landowner should conspicuously post the landowner’s name and address on the property so that a potential user of the property can identify whom to ask for permission.

In order to give landowners an option other than posting signs prohibiting public access to their land altogether, the Commission recommends expanding the options for posting with signs to include not only the traditional signs indicating that access is prohibited, but also signs indicating that access for a particular purpose is prohibited.

***Finding:** The Commission finds that the statutes governing trespass do not sufficiently define the concept of posting property to give notice to land owners or users what constitutes legally posted land and therefore what constitutes criminal trespass.*

The Commission further finds that landowners want guidance on how to post their property, while preserving their options so that they can post in a manner that suits their needs and the needs of persons using their land.

The Commission further finds that clarifying the posting rules in statute will benefit land owners and users alike, and facilitate the enforcement of criminal trespass.

The Commission further finds that persons who are committing criminal trespass frequently tear down or destroy “No Trespassing” signs in order

to hinder prosecution, causing a great deal of frustration among landowners.

Recommendation: *A majority of the Commission recommends that the Legislature enact the proposed legislation amending Title 17-A, section 402, which is included as Appendix C-1. This proposal clarifies the criminal trespass statute by prescribing one specific manner of posting sufficient to give rise to a criminal trespass prosecution, while preserving the option of posting property "in a manner reasonably likely to come to the attention of intruders".*

The proposed legislation gives landowners the option of posting their property with signs or paint markings, and expands the options for posting with signs to include not only the traditional signs indicating that access is prohibited, but also signs indicating that access is prohibited without permission or that access for a particular purpose is prohibited. The proposed legislation also makes clear that boundary marking for this purpose has no effect on boundaries of property and does not constitute claims of possession or adverse use.

The proposed legislation also specifies that knowingly posting the property of another or destroying signs or markings on the property of another is a criminal violation under the criminal mischief law

Comments of the two dissenting Commission members are included in the section entitled "Minority Report".

Finding: *The Commission finds that many landowners want to be asked by the public for permission to use their land, but that land users are often unable to locate the landowner for this purpose. The conspicuous posting of signs containing the name and address of the landowner would enable land users to ask permission to use the land of others, and would improve relations between land owners and users.*

Recommendation: *The Commission recommends that the Legislature enact the proposed legislation amending Title 12, section 7035, which is included as Appendix C-2. This legislation would permit the Department of Inland Fisheries and Wildlife, through its Landowners Relations Program, to encourage landowners who allow access to their property only with permission to conspicuously post signs on the property containing the name and address of the owner or another person with authority to grant permission. The Commission further recommends that the Department encourage uniformity among landowners by suggesting the placement of such signs at a particular location on a parcel of property.*

IV. CIVIL REMEDIES

As with other torts such as assault or defamation, the person whose rights have been injured by a trespasser can sue the wrongdoer in court.

Given the concerns about the ability of public law enforcement and prosecutors to address minor trespass as a criminal issue, the Commission explored ways to make private remedies for trespass more feasible for landowners. The main issue is cost, primarily legal expenses. Since many trespass cases do not involve substantial physical damage to property, the landowner who is successful in a trespass suit often receives only a small amount of money for damages, and nothing to cover legal expenses. The penalty may not provide much deterrence for a potential trespasser.

The Commission considered several options for facilitating private trespass lawsuits: providing for a minimum damage award for a landowner, regardless of physical damage to property; providing for double or treble damages for actual physical damage; and providing for recovery of litigation costs, such as attorney fees.

A. Minimum Damages

A minimum damages law would require the court to award a certain sum of money to a landowner whose property had been trespassed upon, even if there was no physical damage to the property. The Commission discussed the possibility of a minimum \$1,000 award, but decided against recommending such a law. Concerns were expressed that the law might be abused by over-zealous landowners and that a person who accidentally wanders onto the land of another person would be unfairly penalized by such a law.

B. Enhanced Recovery for Actual Damages

Many states, including Maine, have laws providing for recovery of double or treble damages for loss or destruction of certain types of property. Maine law, for example, provides for enhanced recovery for damage to trees, agricultural products or survey markers: double damages for negligent damage, treble damages for intentional damage. 14 MRSA section 7552.

This enhanced recovery provides additional deterrence against trespass and allows a landowner to recover additional funds to help cover legal expenses. The Commission agreed that treble damages for all types of actual physical damage suffered by a landowner would provide sufficient incentive to landowners to

pursue private remedies, being assured that they would receive adequate compensation for their efforts.

C. Reimbursement for Litigation Costs

Courts in Maine do not award attorney fees and other litigation costs to a successful litigant, unless such an award is specifically authorized or required by statute. For example, current law allows the award of attorney fees and costs to successful claimants under the Unfair Trade Practices Act and the Maine Human Rights Act.²

The Commission agreed that landowners who succeed in demonstrating that their land has been trespassed upon and their property damaged should receive reimbursement of the costs of pursuing that lawsuit.

***Finding:** The Commission finds that although landowners have the right to bring a private suit against trespassers, such suits are costly and may not result in a substantial recovery for the landowner.*

***Recommendation:** The Commission recommends that the Legislature enact the proposed legislation, included as Appendix C-3, to provide for treble damages for actual physical damage to property and to allow the prevailing landowner to recover reasonable attorney's fees and other litigation costs.*

V. LANDOWNER LIABILITY

A. Liability for Injury to Recreational Users

Many landowners are concerned that they will be sued if a person using their land for recreation is injured. The Legislature enacted a law in 1961 limiting landowner liability for such injuries by providing that a landowner has no duty to make his property safe for recreational users or to warn of possible hazards on the property. The law does not protect commercial recreational enterprises and does not protect a person from liability from willfully or maliciously failing to warn of dangers.

There has been some confusion, however, about whether this law protects only people who give permission to use their land. The confusion arises because 2 subsections of the law seem inconsistent. The first, subsection 2, states generally that landowners have no duty to keep their property safe for recreational use. The second, subsection 3, provides more specific protections against legal claims but applies only to persons who give permission to use their land. Some landowners interpret subsection 3 as a limit on the protection provided by subsection 2, and fear that the limited duty of care does not apply to a person who has not given permission to use the land.

Another explanation of the purpose of subsection 3 is that it is intended to clarify that subsection 2 is not negated by giving permission. The Commission believes that this is the better interpretation and wishes to clarify this question for doubtful landowners.

The Commission also heard concerns that the protection for landowners does not extend to certain types of recreational activities. The statute defines recreational activities to include all recreational activities conducted out of doors, and then lists specific types of activities as examples. Although the law was intended to be inclusive of all types of recreation, some groups have preferred to have their activity listed specifically to dispel any doubt about whether that activity is included. The Commission agrees that it would be useful to add dog-sledding and equine activities to the list of recreational activities.

***Finding:** The Commission finds that, although current law was intended to provide protection for landowners who post their land as well as to landowners who do not, landowners continue to have questions about the meaning of the law.*

Recommendation: *For this reason, the Commission recommends that the landowner liability law be amended to clearly state that the limitation on duty applies to landowners, regardless of whether they have granted permission to use their land. Appendix C-4 provides the recommended language.*

Finding: *The Commission finds that advocates of many recreational groups prefer to have their activity listed within the definition of recreational activities, so that they can assure landowners that use of the land for that purpose will not result in liability.*

Recommendation: *The Commission recommends that dog-sledding and equine activities be added to the definition of recreational activities in the landowner liability law. Appendix C-4 also includes this language.*

B. Liability for Environmental Damage to Land

Landowners are also very concerned about potential liability for environmental damage on their land caused by 3rd persons without their consent. Examples include the dumping of hazardous substances or reckless use of an ATV in an environmentally sensitive area that causes gravel or pollutants to be washed into a lake or stream. Both would likely violate state environmental laws, and the landowner could be asked to clean up the damage and could possibly be subjected to civil or criminal penalties.

Certain environmental laws hold landowners responsible for damage, regardless of fault, and others include a presumption that the landowner caused the damage if it occurs on his property.³ Although the Department of Environmental Protection may refrain from imposing penalties on a landowner if he claims a third party committed the violation, it is not unusual for the department to require landowners to clean up the damage and then to seek recovery when and if the person who caused the damage is found.

The Commission feels that landowners should not be penalized in any way for violations committed by persons they allow to use their property, but understands that freeing landowners from the responsibility to clean up environmental damage raises other difficult issues. How will the property be cleaned up? Who will pay? How can we design a system to quickly determine if a landowner is legitimately denying responsibility?

In addition to environmental liability, landowners may incur costs to remove and properly dispose of used tires, white goods and other waste illegally dumped on their property. It is believed that illegal dumping has increased in recent years as people try to avoid the disposal fees and restrictions imposed in Maine as part of an attempt to strengthen the solid waste disposal laws. When a

person disposes of waste on the land of another, that landowner is forced to pay the disposal fees for these items. One Commission member questioned whether municipalities could exempt volunteer clean-up groups from disposal fees as a way to facilitate clean-ups.

Finding: *The Commission finds that current law, which allows enforcement agencies to hold landowners liable in certain cases for environmental damage that occurs on their property without their permission, is an unfair burden on landowners and encourages them to post their land against public access in an effort to reduce their liability.*

Recommendation: *The Commission recommends that the Legislature's Joint Standing Committee on Natural Resources discuss this issue during the 2nd Regular Session and attempt to find ways to alleviate the unfair burden on landowners without avoiding the need to clean up environmental damage and jeopardizing environmental quality. We suggest that the committee work with interested parties, including the Department of Environmental Protection, the Land Use Regulation Commission and the Office of the Attorney General in examining this issue.*

VI. LAW ENFORCEMENT

A. Response to Trespass Complaints

Among the first issues raised by Commission members were the concerns that law enforcement agencies were not responding adequately to complaints about trespassing, particularly trespassing that does not involve property damage or personal injury and the confusion about who has responsibility to respond to complaints involving trespassers who are engaging in recreational activities.

Dan Tourtelotte, Deputy Chief Warden at the Department of Inland Fisheries and Wildlife and a Commission member reported that the department instituted a policy this year requiring Game Wardens, beginning September 1st, to respond to all recreational trespass complaints, within their time constraints. This is expected to alleviate at least some of the confusion and frustration. The department also expects to collect data about complaints and response, to enable the state to better understand the problems.

Several district attorneys, contacted by telephone, stated that they did not have many trespass cases involving posted land. They said that they would prosecute such cases if police or the Department of Inland Fisheries and Wildlife presented them for prosecution. One DA remarked, however, that trespass on posted unimproved land that did not involve damage or personal injury or threats would be a low priority for him, given the workload of more serious crimes.

***Finding:** The Commission finds that landowners have felt that law enforcement agencies were not responding appropriately to their trespass complaints. Clarification of the role of Game Wardens in responding to trespass complaints may alleviate some of this concern.*

The Commission further finds that law enforcement officials are beginning to cooperate in order to better respond to trespass complaints, and that this may also alleviate some of the confusion and frustration currently associated with trespassing.

The Commission also finds that the efforts of the Department of Inland Fisheries and Wildlife, through its landowner relations program, are improving relationships between recreational users and landowners. The Commission applauds the efforts of the department and urges it to continue those efforts.

Recommendation: *The Commission recommends that the Warden Service continue its efforts to respond to recreational trespass complaints and that all levels of law enforcement continue their efforts to cooperate in addressing the problem of trespass.*

B. Prosecution Problems -- Proof

There was a feeling among many Commission members that law enforcement officials and prosecutors dislike having to prosecute trespass cases because they are hard to prove in court. The two most frequently mentioned problems are the need to prove boundaries and the need to prove that the property was adequately posted.

In many cases, there are disputes over where the property boundaries are, and it is expensive to hire surveyors to prove boundaries. In addition, many people may innocently wander onto another person's property because they are unaware of boundaries.

Entry on posted land is illegal if the property is posted "in a manner reasonably likely to come to the attention of intruders." In some cases, the signs have been destroyed by the trespasser so it is difficult to prove property posting. Also, since the statute does not specify the exact method of posting, it is not clear in all cases whether the trespass is a criminal trespass.

Finding: *The Commission finds that the lack of clear posting rules and the difficulty of determining property boundaries are two issues that make prosecution of trespass cases difficult.*

Recommendation: *The Commission recommends adopting the posting rules set forth in Appendix C-1 as a method of facilitating appropriate prosecution of trespass cases.*

C. Administrative Law Enforcement

Numerous laws allow state administrative agency employees to enter private property to enforce laws, and provide that such entry is not trespass. Examples include a law allowing Bureau of Forestry personnel to enter private lands to enforce forest harvesting regulations, 12 MRSA section 8869, and a law allowing Maine Turnpike Authority personnel to enter lands to make surveys, 23 MRSA section 1967.

Commission members expressed the belief that such access rights run contrary to private property rights. In addition, the provisions for each department differ from the others and are scattered throughout the law books. The Commission considered whether to consolidate all the laws into one uniform

law providing limited rights to access for administrative law enforcement. But, realizing that many departments have special needs that may call for unique laws, the Commission did not recommend a consolidated uniform law.

The Commission did, however, review a policy statement of the Department of Inland Fisheries and Wildlife relating to access to private property. In summary, the policy requires department employees to:

1. Obtain landowner permission to enter property posted "No Trespassing," unless they are responding to an emergency;
2. Obtain permission to cross enclosed pasture lands containing livestock or other domestic animals, even if the land is not posted;
3. Attempt to obtain permission for entry on other lands; and
4. Refrain from placing signs or other markings on private property without permission except for public health advisories and regulations.

This policy does not apply to law enforcement personnel, investigation of environmental permits and applications or compliance or safety operations.

The Commission chose not to recommend imposing this policy on other departments, but to express its approval for the concepts contained in the policy by recommending that other departments review and adopt similar policies.

***Finding:** The Commission finds that employees of many state departments have statutory rights to enter private property without permission of the landowner. Although state employees may need immediate access for certain emergency purposes, they should be sensitive to the landowners' rights to exclude persons from their property and should seek permission whenever possible.*

The Commission further finds that the Department of Inland Fisheries and Wildlife has adopted a department policy which respects the rights of private property owners, and which the Commission wants to encourage other departments to adopt.

***Recommendation:** The Commission recommends that Departments throughout state government review the Department of Inland Fisheries and Wildlife "Administrative Policy Regarding Respect of Private Property," and adopt, to the extent possible, the concepts embodied in the policy. The Policy is attached to this report as Appendix I.*

VII. PROPERTY DAMAGE

According to the 1988 survey of landowners⁴, the second most common reason for posting is past abuse of property. 38% of respondents had encountered problems from vehicle use associated with public use, 25% of respondents had encountered problems with damage from theft or fire, and 20% had encountered the problem of littering.

The concern among landowners about property damage is strongly associated with the issue of environmental liability, but property damage takes many different forms. Landowners, their agents and land users report problems including littering, irresponsible bear-baiting, illegal hunting stands, vandalism, damage to access roads from ATV use, tipping and fires.

Landowners are increasingly frustrated by their inability to monitor the use of their property or to assign blame for property damage. They often feel their only recourse is to post their property against all public use.

***Finding:** The Commission finds that current law does not provide landowners with the tools to protect their property from damage by others using their land, either with or without permission.*

***Recommendation:** The Commission recommends that the Legislature enact the proposed legislation amending Title 14, section 7552, included as Appendix C-5, to provide for civil remedies in cases of damage to roads, ditches, culverts or bridges and in cases of disposal of litter without the permission of the owner.*

Under the proposed legislation, owners may recover double damages for negligent damage to property, with a minimum recovery of \$250, and treble damages for intentional damage to property, with a minimum recovery of \$500.

***Finding:** The Commission finds that there is a need for stronger laws prohibiting damage to forestland and forest products by motor vehicles. The commission further finds that current law, which makes it a crime to damage crops or roads as a result of operating a motor vehicle on farmland, should be extended to forestland.*

***Recommendation:** The Commission recommends that the Legislature enact the proposed legislation amending Title 17, section 3853-D,*

included as Appendix C-6, to make it a Class E crime to damage forest products or other personal property as a result of operating a motor vehicle on forestland.

MINORITY REPORTS

Two members of the Commission, Michael Coty and Perry Lamb, oppose the Commission's recommendation that the criminal trespass laws be amended to include posting rules, as set forth in Appendix C-1. A third Commission member, Chris Neagle, supports the Commission's recommendations, but submitted additional comments.

Chief Michael Coty, representing the Maine Chiefs of Police Association, opposes the Commission's recommendation regarding posting rules because it does not do enough to facilitate enforcement of criminal trespass laws. One of the most serious problems for law enforcement is proving that the trespasser lacked consent to enter the property. Landowners are often required to testify to the lack of consent, which they are reluctant to do. The posting proposal does nothing to alleviate this problem. Chief Coty had suggested that law enforcement officers be allowed to arrest a person on the land of another unless that person has written permission from the landowner to be there. The Commission did not adopt this suggestion.

Perry Lamb, representing the Small Woodlot Owners' Association, also opposes the posting rule recommendation and submitted the following comments:

"As SWOAM's representative on the Legislature's Commission to Study Trespass Laws, I would like to express several of my concerns about some of the contents of our draft report which is about to be presented to the Legislature. The major part of our discussions dealt with public access to private lands and posting during which a substantial majority of commission members were in favor of making public access as "user friendly" as possible. Accomplishing this goal had two parts.

"First, a forceful invocation of the 'custom' and 'tradition' themes was used to justify the concept that hunters have long had rights to enter private lands that were not posted. To me, I consider this idea as being in direct conflict with IF&W's Dave Pepard comment in the October 1995 SWOAM NEWS in which he states: 'No one has the right to go on private property, posted or unposted, without landowner permission,' This really says it all. I completely agree with this statement. As to the matter of tradition and custom somehow creating rights for hunters to use private property, I would be glad to hear from anyone who can explain to me how this works.

"Second, posting was recommended that required signs or painted markers to be located at least every 100 feet around the area to be posted. In order to understand the significance of this recommendation it is necessary to compare this new proposal with present requirements for posting. I would first like to say that in the past several days I have asked about a dozen hunters and several legislators about present posting guidelines. All answers referred to signs required at some unknown distance apart. Up to the past month I was never quite sure what the law

was so I took a guess and put my 'Written permission required' signs wherever I thought they were needed. This usually suffices. If there is anything confusing about the existing statute, it is that it was not sufficiently publicized.

"The present statute, 17-A MRSA Section 402, in pertinent part, states "... in a manner reasonably likely to come to the attention of intruders ... " There is no reference to specific placement of signs.

"The Trespass Commission's recommendation repeats this phrase but then complicates or restricts its meaning by adding the 100 foot sign or paint posting distance requirement. There is wording that states that the 'reasonably likely' phrase still is applicable but at the same time reference is made to specific maximum distances between posting devices. I consider that the recommended posting requirements are both unnecessary and unwarranted. Rear boundary posting at required distances merely causes arguments. I see no reason why we have to make our laws complex and costly solely for the purpose of meeting the needs of hunters who don't know where they are. Our Commission made no study as to costs of sign or paint posting. Or replacement costs.

"There are other states having posting requirements that are less costly to landowners and would be just as effective that were not seriously considered by the Commission. Some require posting along public boundaries only. Others post by a published newspaper notice.

"For Maine I think it would suffice to add wording to the present 'reasonably likely' phrase stating that this standard can be met by signs or paint at or along public boundaries located at visible distances.

"I particularly like the Illinois approach wherein one notice only is required at the main entrance to the property. A legislative comment states that 'This puts the burden on the trespasser to ascertain at his peril when he leaves his own or public land and goes upon the land of another The expensive requirement that farmers and other landowners post their entire acreage is eliminated.'

"I doubt that the suggested posting plan would do anything to improve IF& W's much needed Landowner Relations Program."

Chris Neagle, representing the Maine Bar Association, supports the Commission's recommendations, but submitted the following additional comments:

"I was impressed by the effort and good faith of the entire Commission, and felt privileged to be a part of the process. I do support the final recommendation of the Commission, but am disappointed that we did not go further to propose a simpler, consolidated statute, as recommended by the statute creating the Commission. The other members of the Commission apparently felt it was unnecessary or too controversial when presented with the framework of such a statute. I am also disappointed that the final Report does not reflect my recollection of certain decisions made by the Commission and that the Report states that 'most members believed that one does not commit civil trespass in Maine by entering unposted private property,' which I strongly disagree with and do not believe is a fair statement of the collective view of the Commission."

NOTES

¹ Maine Department of Inland Fisheries and Wildlife. A Report on the Program of Landowner Relations. Report to the Joint Standing Committee on Fisheries and Wildlife. 1992.

² 5 MRSA chapter 10; 5 MRSA chapter 337

³ 38 MRSA chapter 3, subchapter II-B; 38 MRSA section 480-R

⁴ Maine Department of Inland Fisheries and Wildlife. A Report on the Program of Landowner Relations. Report to the Joint Standing Committee on Fisheries and Wildlife. 1992

APPENDICES

Appendix A: Resolve Creating the Commission

Appendix B: Commission Membership

Appendix C: Proposed Legislation

C-1: Posting Rules

C-2: Encouraging Identification of Landowners

C-3: Civil Damages

C-4: Landowner Liability Law Changes

C-5: Property Damages

C-6: Damage by Motor Vehicle

C-7: Motor Vehicle Trespass

Appendix D: Summary of Maine Trespass Laws

Appendix E: Landowner Relations Program Brochure

Appendix F: Staff Memo regarding Civil Trespass and the Role of Custom

Appendix G: Trespass Laws, Posting Rules in Selected Other States

Appendix H: Survey of Landowners

Appendix I: Department of Inland Fisheries and Wildlife Policy regarding
Department Employees' Access to Private Property

APPENDIX A

Resolve Creating the Commission

APPROVED

CHAPTER

JUL 3 '95

53

BY GOVERNOR

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-FIVE

H.P. 954 - L.D. 1343

Resolve, Establishing a Commission to Study the
Trespass Laws

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State contains a vast amount of private land that is traditionally used by the public for outdoor recreation; and

Whereas, a growing number of landowners wish to restrict or otherwise control the use of their land by the public; and

Whereas, there are over 100 laws relating to trespass scattered throughout the State's statutes, making it difficult for landowners, the public and law enforcement agencies to understand and enforce trespass laws; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Commission created and charged. Resolved: That there is established the Commission to Study Trespass Laws, referred to in this resolve as the "commission." The commission shall study existing trespass laws and make recommendations and suggest legislative changes regarding the consolidation and revision of existing laws into a functional set of trespass

statutes that best provides for the needs of landowners and citizens of the State as well as facilitating the enforcement of trespass; and be it further

Sec. 2. Appointment. Resolved: That the commission consists of the following 16 persons:

1. **Three commissioners or their designees.** The Commissioner of Inland Fisheries and Wildlife, the Commissioner of Public Safety and the Commissioner of Conservation, or their designees;

2. **Ten private sector members.** The president or executive director of the Maine Sheriffs' Association, the Maine Chiefs of Police Association, the Maine Forest Products Council, the Sportsman's/Forest Landowner Alliance, the Small Woodland Owners Association of Maine, Inc., the Maine Farm Bureau Association, the Sportsman's Alliance of Maine, the Maine Snowmobile Association, Inc., the Governor's Council on Landowner/Sportsmen Relations and the Maine State Bar Association. The president or executive director of any of these organizations may name a person who is a member of the organization to serve in the president's or executive director's place;

3. **Two legislative members.** One member of the House of Representatives and one member of the Senate who are members of the Joint Standing Committee on Inland Fisheries and Wildlife. The member of the House of Representatives is appointed by the Speaker of the House of Representatives. The member of the Senate is appointed by the President of the Senate; and

4. **One public member.** One member of the public appointed by the Governor.

All appointments must be made no later than 30 days after the effective date of this resolve. Persons responsible for making appointments under this section shall notify the Executive Director of the Legislative Council of the names of the persons appointed; and be it further

Sec. 3. Convening the commission. Resolved: That the chair of the Legislative Council shall convene the first meeting of the commission after all members of the commission have been appointed; and be it further

Sec. 4. Election of chair. Resolved: That, at its first meeting, the commission shall elect a chair from among its members. The chair shall call all subsequent meetings of the commission; and be it further

Sec. 5. Compensation. Resolved: That members of the commission serve without compensation, except that members who are Legislators are entitled to reimbursement of expenses related to attending meetings of the commission; and be it further

Sec. 6. Staff assistance. Resolved: That the Office of Policy and Legal Analysis, with the approval of the Legislative Council, shall provide research, clerical and computer assistance to the commission; and be it further

Sec. 7. Report. Resolved: That the commission shall submit a report, together with any necessary implementing legislation, to the Second Regular Session of the 117th Legislature by December 1, 1995; and be it further

Sec. 8. Costs paid by department. Resolved: That the Department of Inland Fisheries and Wildlife shall reimburse the Legislature for expenses of the commission upon request by the Executive Director of the Legislative Council.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

APPENDIX B

Commission Membership

**COMMISSION TO STUDY TRESPASS LAWS
(Chapter 53, RESOLVES 1995)**

MEMBERSHIP

Appointed by the President

Senator R. Leo Kieffer

Appointed by the Governor

Vern C. Crockett, III

Department Members

Peter Beringer

Robert Moore

Dan Tourtelotte

Private Sector Members

Sheriff Bryan Lamoreau

Chief Michael Coty

William J. Vail

David Manley

Perry Lamb

Jon Olson

George Smith

Lewis Newell

Terry Walters

Christopher S. Neagle

Appointed by the Speaker

Representative Paul F. Jacques

Department of Conservation

Department of Public Safety

Department of Inland Fisheries
and Wildlife

Maine Sheriffs' Association

Maine Chiefs of Police Association

Maine Forest Products Council

Sportsmans' & Forest Landowner
Alliance

Small Woodland Owners Association

Maine Farm Bureau

Sportsman's Alliance of Maine

Maine Snowmobile Association, Inc.

Governor's Council on Landowner
Sportsmen Relations

Maine Bar Association

APPENDIX C

Proposed legislation

**An Act to Describe Property Posting
under the Criminal Trespass Laws**

Sec. 1. 17-A MRSA §402 is amended to read:

1. A person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person:

A. Enters any dwelling place;

B. Enters any structure that is locked or barred;

C. Enters any place from which that person may lawfully be excluded and that is posted in ~~a manner prescribed by law~~ accordance with subsection 3 or in a manner reasonably likely to come to the attention of intruders or that is fenced or otherwise enclosed in a manner designed to exclude intruders;

D. Remains in any place in defiance of a lawful order to leave that was personally communicated to that person by the owner or another authorized person;

E. Enters any place in defiance of a lawful order not to enter that was personally communicated to that person by the owner or another authorized person; or

F. Enters or remains in a cemetery or burial ground at any time between 1/2 hour after sunset and 1/2 hour before sunrise the following day, unless that person enters or remains during hours in which visitors are permitted to enter or remain by municipal ordinance or, in the case of a privately owned and operated cemetery, by posting.

2. Violation of subsection 1, paragraph A, is a Class D crime. Violation of subsection 1, paragraph B, C, D, E or F is a Class E crime.

3. For the purposes of subsection 1, paragraph C, property is posted if it is marked with signs or paint in compliance with this subsection. Any posted sign or paint marking actually seen by an intruder is presumed to be posted in a manner reasonably likely to come to the attention of intruders.

A. Signs must indicate that access is prohibited, that access is prohibited without permission of the landowner or the landowner's agent, or that access for a particular purpose is prohibited.

B. Paint markings mean that access is prohibited without permission of the landowner or the landowner's agent. Paint markings must consist of two painted horizontal lines per tree, post or other object.

(1) Each line must be a minimum of two inches high and at least as long as the width of the object, but need not be more than eight inches long.

(2) Lines must be painted on the side of the tree, post or other object that would be visible to a person approaching the restricted property and must be painted within an area three feet to six feet above ground level.

(3) The paint must be silver or aluminum colored.

C. Signs or paint must mark the property at intervals no greater than 100 feet and at all vehicular access entries from a public road.

D. Signs or paint markings are required only on the portion of the property where access is prohibited or limited. Signs or paint posted in accordance with this section have no effect on boundaries of property and do not constitute claims of possession or adverse use in accordance with Maine law.

E. A person commits criminal mischief and is subject to prosecution under section 806 if that person, without permission of the owner or owner's agent:

(1) knowingly posts the property of another with a sign or paint mark indicating that access is prohibited, that access is prohibited without permission, or that access for a particular purpose is prohibited; or

(2) removes, mutilates, defaces or destroys a sign or paint mark placed for purposes of this section.

Nothing in this subsection limits any manner of posting reasonably likely to come to the attention of intruders.

STATEMENT OF FACT

Current criminal law provides that a person commits criminal trespass if he or she enters property "posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders." Although there are specific posting rules for state-owned property and certain other types of property, current law does not prescribe a generally-applicable method of posting for purposes of criminal trespass nor does it clarify when posting is "reasonably likely to come to the attention of intruders."

This proposal, the majority recommendation of the Commission to Study Trespass Laws, adds to the criminal trespass law one specific method of posting, allowing use of signs or paint markings to notify persons that entry upon the property would constitute criminal trespass. Markings would have to appear no more than 100 feet apart on all property boundaries, and would have to be placed at all vehicular access entries from a public street. Paint markings would have to meet specific standards set forth in the law.

The method of posting described in this bill is intended to give property owners and property users a clear method of posting, but it is not intended to be the only method of posting that would give rise to a criminal trespass violation. Any other posting that is made "in a manner reasonably likely to come to the attention of intruders" would also meet the terms of the statute.

The bill also makes clear that a landowner is only required to mark the portion of property where access is prohibited or limited. Any boundary marking for purposes of this law does not determine legal boundaries for purposes of title, and does not constitute a claim of possession or adverse use. Finally, the bill specifies that destroying signs or markings on the property of another or posting land without the owner's permission is a criminal violation.

**An Act to Improve the Ability of Potential Users of Private Land
to Seek Permission from Landowners**

Sec. 1. 12 MRSA §7035, sub-§13, ¶A is amended to read:

A. A program that supports landowners, called the Support Landowners Program. Twelve dollars of each \$15 collected under section 7101, subsection 5-A, section 7133, subsection 4-A and section 7151, subsection 5-A is dedicated to the Support Landowners Program. The Support Landowners Program may:

- (1) Offer a toll-free number for landowner concerns;
- (2) From among existing staff, appoint a landowner relations coordinator at the Augusta office of the department and regional landowner relations coordinators at the regional offices;
- (3) Provide linkage with local conservation organizations, volunteer groups and advisory groups;
- (4) Enhance enforcement of trespass, dumping and property damage violations;
- (5) Provide educational materials and signs; and
- (6) Coordinate with other related landowner relations activities, including Landowner Recognition Day; and
- (7) Encourage landowners who allow access to their property only with permission to conspicuously post signs on the property indicating the name and address of the owner or other person with authority to grant permission; and

STATEMENT OF FACT

This bill permits the Landowners Relations Program within the Department of Inland Fisheries and Wildlife to encourage landowners who allow access to their property only with permission to conspicuously post signs on the property containing the name and address of the owner or another person with authority to grant permission.

**An Act to Increase Civil Damages Recovery for
Persons Whose Property is Damaged**

Sec. 1. 14 MRSA §7551-B is enacted to read:

7551-B. Civil Damages

A person who enters the land of another without permission and causes damage to property is liable to the owner in a civil action. The owner may recover three times the owner's actual damages, plus costs and reasonable attorney's fees for preparing the claim and bringing a court action.

STATEMENT OF FACT

This proposal allows landowners to recover treble damages for property damaged by a trespasser on posted or unposted land. It also provides for recovery of costs and reasonable attorney's fees.

An Act to Clarify the Landowner Liability Law

Sec. 1. 14 MRSA §159-A, sub-§1, ¶B is amended to read:

B. "Recreational or harvesting activities" means recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, hiking, sight-seeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, dog-sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting or gathering of forest products. It includes entry, use of and passage over premises in order to pursue these activities. "Recreational or harvesting activities" does not include commercial timber harvesting.

Sec. 2. 14 MRSA §159-A, sub-§2 is amended to read:

2. Limited duty. An owner, lessee, manager or occupant of premises does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes. This subsection applies regardless of whether the owner, lessee, manager or occupant has given permission to another to pursue recreational or harvesting activities on the premises.

STATEMENT OF FACT

This bill proposes to amend the landowner liability law, which limits the duty of care owed by landowners to persons who use their property for recreational or harvesting activities. The proposal adds dog-sledding and equine activities to the list of activities that are specifically included in the definition of recreational or harvesting activities.

The proposal also clarifies that the limitation on the duty of care applies to landowners, regardless of whether they have granted permission to the public to use their property. Because one subsection of the law applies only to persons who grant permission to their property, there has been some confusion about whether the primary part of the law limiting the duty of care also applies only to those who have given permission to use their property. This proposal clarifies that the law includes all landowners, including those who post their property to prohibit access.

**An Act to Amend the Laws Relating to Recovery for
Property Damage**

Sec. 1. 14 MRSA §7552 is amended to read:

§7552. Injury to lands or property

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agricultural product" means crops produced and livestock raised as a result of cultivating the soil and harvesting. Agricultural products include, but are not limited to, vegetables, fruit, forages, grain, nuts, berries, flowers, ornamental plants, nursery crops, milk, dairy products, eggs, domestic livestock and other products in varying degrees of preparation. Agricultural products also include the soil amendments and by-products that are used in cultivation.

B. "Christmas tree" and "evergreen boughs" have the same meanings as provided in Title 12, section 8841.

C. "Forest products" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, evergreen boughs or cones or other seed products.

D. When there is damage to public property, the term "owner" may include a suitable official authorized to act on behalf of the public entity.

For damage to a monument or mark under subsection 2, paragraph C, "owner" may include the entity for whose benefit the monument or mark is maintained.

E. "Professional services" may include:

- (1) The damage estimate of a licensed professional forester;
- (2) A boundary survey;
- (3) A title opinion; and
- (4) Attorney's fees for preparing the claim and bringing a court action.

2. Prohibitions. Without permission of the owner a person may not:

A. Cut down, destroy, damage or carry away any forest product, ornamental or fruit tree, agricultural product, stones, gravel, ore, goods or property of any kind from land not that person's own;

B. Damage or throw down any fence, bar or gate; ~~or~~ leave a gate open; ~~or~~ break glass; damage any road, drainage ditch, culvert or bridge; or do other damage to any structure on property not that person's own; ~~or~~

C. Disturb, remove or destroy any lawfully established transit point, reference point, stake, plug, hub, guardstake, bench mark, pipe, iron, concrete post, stone post or other monument of any railroad, highway, public utility or other engineering location or survey or any such monument marking the bounds of public or private property; or

D. Throw, drop, deposit, discard, dump or otherwise dispose of litter, as defined in Title 17, section 2263, subsection 2, in any manner or amount, on property not that person's own.

3. Measure of damages. ~~Paragraphs A and B govern~~ This subsection governs the measurement of damages resulting from a violation of subsection 2.

A. When agricultural or forest products have been destroyed or carried away, the owner's damages may be measured either by the value of the lost products themselves or by the diminution in value of the real estate as a whole resulting from the violation.

B. For lost trees, the owner may claim in lieu of market value the forfeiture amounts in Title 17, section 2510, subsection 2. In addition, the owner's damages may include the costs for regeneration of the stand in accordance with Title 12, section 8869.

C. For damage to property under subsection 2, paragraph B, the owner's damages may be measured either by the replacement value of the damaged property or by the cost of repairing the damaged property.

D. For the disposal of litter, the owner's damages include the direct costs associated with properly disposing of the litter, including permits, and the costs associated with any site remediation work undertaken as a result of the litter.

4. Damages recoverable. Damages are recoverable as follows.

A. A person who negligently or without fault violates subsection 2 is liable to the owner for 2 times the owner's damages as measured under subsection 3, or \$250, whichever is greater.

B. A person who intentionally or knowingly violates subsection 2 is liable to the owner for 3 times the owner's damages as measured under subsection 3, or \$500, whichever is greater.

C. In addition to the damages recoverable under paragraphs A and B, a person who violates subsection 2 is also liable to the owner for the costs the owner may incur if the violation results in a violation of any federal, state or local ordinance or law and, as a result, the owner becomes involved in an enforcement proceeding. These costs include legal fees and the value of the owner's time spent administering to the enforcement proceeding.

5. Costs and fees. In addition to damages, interest and costs, the owner may also recover from the person who violates subsection 2 the reasonable costs of professional services necessary for determining damages and proving the claim, provided that the person first has written notice or actual knowledge that a claim is being asserted.

The amount awarded for professional services may not exceed 50% of the damages recovered pursuant to subsection 4 plus interest on the damages. Interest may be assessed after service of a notice of claim pursuant to section 1602.

6. Offer of settlement. At any time after the violation but more than 10 days before trial begins, the person who violated subsection 2 may make a written offer to settle the owner's claim.

A. For such an offer to be valid, it must by its terms remain open for at least 10 days and the owner must first be provided with liability and damage information that is:

(1) Available to the person and not reasonably available to the owner; and

(2) Necessary or pertinent to an evaluation of the owner's claim.

B. Notwithstanding the Maine Rules of Civil Procedure, Rule 68, any offer not paid within 10 days of its acceptance is void for purposes of this subsection but may be specifically enforced by the owner, if the owner so elects.

C. If the owner does not accept the offer, the owner may not recover any interest, costs or professional fees incurred following the date of the offer unless the owner later proves that the value of the claim, at the time the offer was made, exceeded the amount of the offer.

7. Issues of fact. The court sitting without a jury shall resolve issues of fact arising under subsections 5 and 6.

STATEMENT OF FACT

Under current law, a property owner may recover enhanced damages from a person who destroys or damages trees, agricultural products, or survey markers. In addition to recovering double damages for negligent damage and treble damages for intentional damage, the owner is entitled to recover the reasonable costs of professional services, including attorney's fees.

This bill extends the law to permit enhanced recovery by the owner for damage to any road, drainage ditch, culvert or bridge or for disposal of litter, and outlines how such damage is to be measured. The bill also provides for a minimum damage award of \$250 for negligent damage and \$500 for intentional damage.

Finally, the bill permits an owner to recover any costs the owner may incur if the damage results in a violation of any other ordinance or law and, as a result, the owner becomes involved in an enforcement proceeding. These costs include legal fees and the value of the owner's time spent administering to the enforcement proceeding.

**An Act to Provide Recovery for Motor Vehicle Damage
to Forestlands**

Sec. 1. 17 MRSA §3853-D is amended to read:

§3853-D. Operating a motor vehicle on land of another

1. Damage or destruction to farmland or forestland. A person who, as a result of operating a motor vehicle on farmland or forestland, damages or destroys crops, forest products, personal property or roads on that farmland or forestland, commits a Class E crime.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Farmland" means land used for the production of fruits, vegetables, grains, hay or herbs that consists of 5 or more contiguous acres. The term "farmland" does not include land used for the production of wood products.

B. "Motor vehicle" means any self-propelled vehicle not operated exclusively on tracks, including all-terrain vehicles as defined in Title 12, section 7851, but not including snowmobiles.

C. "Forestland" means land used for the production of forest products.

D. "Forest products" means any woody stemmed plant as well as any products that have been harvested but not yet transported from the harvesting site, including logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, Christmas trees, evergreen boughs and cones for seed production.

3. Application. This section does not apply to:

A. A landowner operating a motor vehicle on farmland or forestland owned by that landowner;

B. A person given permission by a landowner to operate a motor vehicle on farmland or forestland owned by that landowner;

C. An agent or employee of a landowner who operates a motor vehicle on farmland or forestland owned by that landowner in the scope of that agent's or employee's agency or employment; or

D. A law enforcement officer who, in an emergency and in the scope of that law enforcement officer's employment, operates a motor vehicle on farmland or forestland owned by another.

STATEMENT OF FACT

This bill makes it a Class E crime to damage forest products, personal property or roads as a result of operating a motor vehicle on forestland. The bill defines forest products as any woody stemmed plant as well as any products that have been harvested but not yet transported from the harvesting site.

**An Act to Provide for Posting Nonresidential Property
Against Motor Vehicle Trespass**

Sec. 1. 17-A MRSA §404 is amended to read:

§404. Trespass by motor vehicle

1. A person is guilty of trespass by motor vehicle if, knowing that he has no right to do so, he intentionally or knowingly permits a motor vehicle belonging to him or subject to his control to enter or remain in or on:

A. The residential property of another; ~~or~~

B. The nonresidential property of another for a continuous period in excess of 24 hours; or

C. The nonresidential property of another that is:

(1) posted in accordance with section 402, subsection 3;

(2) posted to prohibit access by motor vehicles; or

(3) posted in a manner reasonably likely to come to the attention of intruders.

For purposes of this paragraph, property is posted to prohibit access by motor vehicles if the property owner or the owner's agent has posted the property boundaries at points where they are crossed by roads or trails with signs indicating that motor vehicle access is prohibited or with paint markings that comply with section 402, subsection 3, paragraph B.

2. Upon proof that the defendant was the registered owner of the vehicle, it shall be presumed that he was the person who permitted the vehicle to enter or remain on the property.

3. Trespass by motor vehicle is a Class E crime.

STATEMENT OF FACT

Under current law, a person is guilty of trespass by motor vehicle if that person permits a motor vehicle to enter or remain in or on the residential property of another for any period of time or the nonresidential property of another for a continuous period in excess of 24 hours, knowing that he or she has no right to do so. This bill extends the crime of trespass by motor vehicle to include permitting a vehicle to enter or remain on the posted nonresidential property of another for any period of time.

APPENDIX D

Summary of Maine Trespass Laws

Summary of Trespass Laws in the Maine Statutes

INDEX

| | |
|--|----|
| Criminal Violations..... | 2 |
| Civil Violations..... | 3 |
| Trespass by Animals..... | 4 |
| Trespass by Motor Vehicles..... | 5 |
| Trespass on Public Lands..... | 5 |
| Trespass to Real Estate..... | 6 |
| Forestry / Timber..... | 7 |
| Private Trespass Suits - Procedure..... | 8 |
| Hunting..... | 8 |
| Airmobiles..... | 9 |
| ATVs..... | 10 |
| Snowmobiles..... | 11 |
| Commercial Shooting Area..... | 11 |
| Violation of Privacy..... | 12 |
| Other Statutes Relevant to Trespass..... | 12 |

CRIMINAL VIOLATIONS

17 §3853-A. Public beaches and shores

Anyone who willfully permits livestock or motor vehicles to enter upon public beaches, shores or banks without a permit shall be guilty of trespass and shall be fined or imprisoned or both

17 §3853-D. Operating a motor vehicle on land of another

A person who, as a result of operating a motor vehicle on farmland owned by another, damages or destroys crops or roads on that farmland, commits a Class E crime

17 §3860. Great pond; access or egress

The Attorney General shall prosecute criminally or civilly any person who denies access or egress to a great pond; \$100 fine and imprisonment for not more than 90 days

17-A §402 Criminal trespass

A person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person enters any dwelling place (Class D crime), enters any structure that is locked or barred (Class E crime), enters any place from which that person may lawfully be excluded and that is posted (Class E crime), enters or remains in any place in defiance of a lawful order to leave (Class E crime), or enters or remains in a cemetery at night (Class E crime)

17-A §404. Trespass by motor vehicle

A person is guilty of trespass by motor vehicle if, knowing that he has no right to do so, he intentionally or knowingly permits a motor vehicle to enter or remain in or on the residential property of another, or the nonresidential property of another for a continuous period in excess of 24 hours (Class E crime)

17-A §511. Violation of privacy

Civil trespass on property with the intent to overhear or observe any person in a private place;
Class D crime

17-A §805. Aggravated criminal mischief

A person is guilty of aggravated criminal mischief if that person damages or destroys property of another in an amount exceeding \$2,000 or in a manner that recklessly endangers human life; or damages, destroys or tampers with property of a law enforcement, fire department, utility or sanitation agency and thereby causes substantial interruption or impairment of service to the public (Class C crime)

17-A §806. Criminal mischief

A person is guilty of criminal mischief if that person intentionally or knowingly damages or destroys the property of another; tampers with property and thereby impairs the use of the property; damages, destroys or tampers with property of a law enforcement agency, fire department, utility or sanitation supplier and by such conduct recklessly creates a risk of interruption or impairment of services rendered to the public; or drives or places in any tree or saw log, without the prior consent of the owner, any iron, steel, or other substance sufficiently hard to damage saws or wood manufacturing or processing equipment with intent to cause inconvenience, annoyance or alarm to any other person (Class D crime)

36 §4314. Permit required

It is unlawful to harvest, pick or remove blueberries from the land of an owner without first securing written permission from the owner; violation is a Class E crime

See sections on Hunting, Snowmobiles, Airmobile, and ATVs for Class E crimes relating to these activities.

CIVIL VIOLATIONS

7 §4041. Animal trespass

The owner or keeper of a livestock animal shall be responsible, at the owner's or keeper's expense, for removing any livestock animal found trespassing

12 §555. Trespass

Willful mutilation of a notice of restrictions on public lands is a misdemeanor punishable by a fine of not more than \$100

17 §2510. Unlawful cutting of trees

Any person who intentionally, knowing, recklessly or negligently cuts down or fells any tree without the consent of the owner of the property on which the tree stands commits a civil violation for which forfeitures of \$25 to \$150 per tree may be adjudged

17 §3853-C. Civil trespass by motor vehicle

A person who parks a motor vehicle or allows that vehicle to remain parked in any private drive or private way in a manner so as to block or interfere with the free passage of vehicles, or on a public highway in such a manner as to block the entrance to a private driveway, commits a civil trespass by motor vehicle forfeiture not to exceed \$100

17 §3859. Trespass on land devoted to wildlife preservation

Whoever willfully and knowingly hunts upon unimproved land devoted to the preservation of wildlife, provided that all boundaries of said land are posted, shall be punished by a fine of not more than \$50

TRESPASS BY ANIMALS

7 §4011. Cruelty to animals

The owner or occupant of property is privileged to use reasonable force to eject a trespassing animal

7 §4041. Animal trespass

The owner or keeper of a livestock animal shall be responsible, at the owner's or keeper's expense, for removing any livestock animal found trespassing

17 §1031. Cruelty to animals

The owner or occupant of property is privileged to use reasonable force to eject a trespassing animal

17 §3853-A. Public beaches and shores

Anyone who willfully permits livestock or motor vehicles to enter upon public beaches, shores or banks without a permit shall be guilty of trespass and shall be fined or imprisoned or both (See Trespass by Motor Vehicles)

TRESPASS BY MOTOR VEHICLES

17 §3853-A. Public beaches and shores

Anyone who willfully permits livestock or motor vehicles to enter upon public beaches, shores or banks without a permit shall be guilty of trespass and shall be fined or imprisoned or both

17 §3853-C. Civil trespass by motor vehicle

A person who parks a motor vehicle or allows that vehicle to remain parked in any private drive or private way in a manner so as to block or interfere with the free passage of vehicles, or on a public highway in such a manner as to block the entrance to a private driveway, commits a civil trespass by motor vehicle forfeiture not to exceed \$100

17 §3853-D. Operating a motor vehicle on land of another

A person who, as a result of operating a motor vehicle on farmland owned by another, damages or destroys crops or roads on that farmland, commits a Class E crime

17-A §404. Trespass by motor vehicle

A person is guilty of trespass by motor vehicle if, knowing that he has no right to do so, he intentionally or knowingly permits a motor vehicle to enter or remain in or on the residential property of another, or the nonresidential property of another for a continuous period in excess of 24 hours (Class E crime)

TRESPASS ON PUBLIC LANDS

12 §553. Director of the Bureau of Public Lands

The director shall receive all moneys, securities and other things of value accruing to the state in payment for timber, grass and other things of value cut or taken by trespassers

12 §555. Trespass

Director to prosecute trespass cases on public lands; any person who unlawfully enters public lands and cuts or takes trees is a trespasser and damages shall be the highest price such materials would bring at the usual place of sale or treble damages if the trespass is willful

12 §556. Public access

Full, free, public access to public reserved lands shall be the policy of the state except where restrictions are necessary to assure the optimum value of such lands; the Director of the Bureau of Public Lands shall have the authority to restrict public access; any person who enters restricted public lots shall be guilty of trespass and fined not less than \$100

TRESPASS TO REAL ESTATE

14 §7551. Treble damages for waste pending action

Waste by cutting or destroying wood, timber, trees or poles pending action for the recovery of land treble damages to be recovered in a civil action

14 §7552. Injury to lands or property

Standards and procedures by which a property owner may measure and recover damages from a person destroys or damages or removes trees, agricultural products or survey markers; double damages for negligent violations and treble damages for intentional violations

14 §7552-A. Land on which 10 acres or more of wood is to be cut

Landowner who authorizes the cutting of timber on more than 10 acres shall clearly mark any property lines

14 §7554-A. Removal or destruction of landmark boundaries by state departments

14 §7556. Salt water islands

Hunting on salt water island after notice by owner; forfeitures to be recovered in a civil action

14 §7557. Notices; injury to signboards

Whoever tears down or in any way defaces or injures any signboard forbidding hunting on a salt water island forfeits \$100 to be recovered in a civil action

17 §2510. Unlawful cutting of trees

Any person who intentionally, knowing, recklessly or negligently cuts down or fells any tree without the consent of the owner of the property on which the tree stands commits a civil violation for which forfeitures of \$25 to \$150 per tree may be adjudged

17 §3853-D. Operating a motor vehicle on land of another

A person who, as a result of operating a motor vehicle on farmland owned by another, damages or destroys crops or roads on that farmland, commits a Class E crime

17-A §402 Criminal trespass

A person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person enters any dwelling place (Class D crime), enters any structure that is locked or barred (Class E crime), enters any place from which that person may lawfully be excluded and that is posted (Class E crime), enters or remains in any place in defiance of a lawful order to leave (Class E crime), or enters or remains in a cemetery at night (Class E crime)

36 §4314. Permit required

It is unlawful to harvest, pick or remove blueberries from the land of an owner without first securing written permission from the owner; violation is a Class E crime

FORESTRY / TIMBER

12 §5012. Duties of commissioner

The Department of Conservation shall publish a compendium of laws affecting forestry, including laws regarding trespass

14 §7551. Treble damages for waste pending action

Waste by cutting or destroying wood, timber, trees or poles pending action for the recovery of treble damages to be recovered in a civil action (See Trespass to Real Estate)

14 §7552. Injury to lands or property

Standards and procedures by which a property owner may measure and recover damages from a person who destroys or damages or removes trees, agricultural products or survey markers; double damages for negligent violations and treble damages for intentional violations (See Trespass to Real Estate)

14 §7552-A. Land on which 10 acres or more of wood is to be cut

Landowner who authorizes the cutting of timber on more than 10 acres shall clearly mark any property lines (See Trespass to Real Estate)

17 §2510. Unlawful cutting of trees

Any person who intentionally, knowing, recklessly or negligently cuts down or fells any tree without the consent of the owner of the property on which the tree stands commits a civil violation for which forfeitures of \$25 to \$150 per tree may be adjudged (See Trespass to Real Estate)

PRIVATE TRESPASS SUITS - PROCEDURE

14 §101. Trespass on land; tender

Defendant's answer

14 §814. Trespass on wild lands; notice to quit; record; private roads in unorganized territory

Proceedings to cause a person who dwells without right on wild lands to quit those lands shall bar such person from obtaining any rights by adverse possession

14 §1402. Action of trespass; jury to find it willful

In action for trespass on property, the court shall determine whether the trespass was committed willfully

14 §7558. Damages and penalties

Actions to recover the sums or penalties named in Title 14, sections 7556 and 7557 (hunting on salt water islands) may be brought in Superior Court or District Court

HUNTING

12 §7071. Eligibility

sub-§5. Persons convicted of criminal trespass of a building located within the unorganized territories are not eligible to obtain any license or permit issued by the Department of Inland Fisheries and Wildlife

sub-§8. There must be a trespass reminder on all hunting and fishing licenses

12 §7077-A (sub-§4). Conviction of violation of Title 17-A while hunting or fishing

If a person is convicted of the violation of any provision of Title 17-A while hunting or fishing, the commissioner may revoke that person's hunting or fishing license for up to 5 years

12 §7406. Prohibited Acts (Hunting)

sub-§7. It is unlawful to hunt from a paved way or within 10 feet of the edge of pavement or from the right of way of a controlled access highway or to discharge a firearm across a paved way (Class E crime)

sub-§16. A person is guilty of abuse of another person's property if, while hunting, that person tears down or destroys any fence or wall, leaves open any gate or bars, tramples or destroys any crop, or damages or destroys a tree by erecting a ladder or observation stand (Class E crime)

12 §7432. Prohibited Acts (Trapping)

sub-§4. It is unlawful to trap a wild animal, except beaver, without written consent of the owner or occupant on land in any organized or incorporated place, or on agricultural land in an unorganized area if there is an occupied dwelling on that land (Class E crime)

sub-§5. It is unlawful to trap a wild animal, except beaver, within 200 yards of an occupied dwelling without written consent of the owner or occupant (Class E crime)

sub-§6. It is unlawful to trap outside one's own land, within 1/2 mile of the compact, built-up portion of a city or village, except that a person may trap there by the use of water sets for mink and muskrat or may trap with cage-type live traps and with water set with the permission of the landowner (Class E crime)

sub-§10. A person is guilty of abuse of another person's property if, while trapping, that person tears down or destroys any fence or wall, leaves open any gate or bars, or tramples or destroys any crop on another person's land (Class E crime)

14 §7556. Salt water islands

Hunting on salt water island after notice by owner; forfeitures to be recovered in a civil action (See Trespass to Real Estate)

17 §3859. Trespass on land devoted to wildlife preservation

Whoever willfully and knowingly hunts upon unimproved land devoted to the preservation of wildlife, provided that all boundaries of said land are posted, shall be punished by a fine of not more than \$50

AIRMOBILES

12 §7800-A. Operating airmobile on land of another

A person operating an airmobile on the land of another shall stop and identify himself on the request of the landowner or agent; any person in violation is "accountable to the owner under existing law"; must observe posted restrictions (Class E crime)

12 §7801 (sub-§25). Operating an airmobile on railroad tracks

It is unlawful to operate an airmobile along or adjacent and parallel to railroad tracks within the limit of the right of way without written permission from the railroad (Class E crime)

12 §7801 (sub-§26). Operating an airmobile too close to certain buildings

It is unlawful to operate an airmobile within 200 feet of a dwelling, hospital, nursing home, convalescent home or church, except when the owner of the land permits such use, when operating on a frozen surface of a body of water, or when crossing public ways in accordance with law (Class E crime)

ATVs

12 §7856. Operating on land of another

It is unlawful for a person to refuse to stop and identify himself while operating an ATV on another person's property, upon request of the landowner or agent; person in violation "shall be held accountable to the owner under existing laws and the penalty provided in Title 12, section 7901" (Class E crime)

12 §7857 (sub-§4). Unlawfully operating an ATV on a private road

It is unlawful to operate an ATV on a private road after having been forbidden to do so by the owner, agent or municipal official, either personally or by appropriate notices posted conspicuously on that road (Class E crime)

12 §7857 (sub-§18). Unlawfully operating an ATV on railroad tracks

It is unlawful to operate an ATV adjacent to railroad tracks without written permission from the railroad; or to operate across the tracks after having been forbidden to do so by the railroad or its agent, either personally or by notices posted conspicuously along the right of way (Class E crime)

12 §7857 (sub-§22-A). Operating ATV in prohibited areas

It is unlawful to operate an ATV on a salt marsh; intertidal zone; marine sand beach; sand dune; cemetery, burial place or burial ground; or on an alpine tundra, freshwater marsh or bog, other than an ATV trail designated by the Department of Conservation, when the ground is not sufficiently frozen and snow-covered to prevent damage to vegetation (Class E crime)

12 §7857 (sub-§23). Operating ATV on crop land or pastureland

It is unlawful to operate an ATV on crop land or pastureland without the permission of the owner of lessee (Class E crime)

SNOWMOBILES

12 §7826. Operating on land of another

A person operating a snowmobile on the land of another shall stop and identify himself on request of the landowner or agent; "any person in violation shall be accountable to the owner under existing law" (Class E crime)

12 §7827 (sub-§3). Unlawfully operating a snowmobile on a plowed road

It is unlawful for a person to operate a snowmobile on a plowed private road or public road plowed privately, if forbidden to do so by the owner, agent or a municipal official, either in person or by appropriate notice posted conspicuously on that road (Class E crime)

12 §7827 (sub-§4-A). Operating a vehicle on a snowmobile trail

It is unlawful to operate a dune buggy, ATV, motorcycle or any motor vehicle other than a snowmobile and appurtenant equipment, on snowmobile trails financed by Snowmobile Trail fund, unless authorized by the landowner or agent, or necessary in an emergency involving the safety of persons or property (Class E crime)

12 §7827 (sub-§19). Operating a snowmobile in a cemetery

It is unlawful to operate a snowmobile in a cemetery, burial place or burying ground (Class E crime)

12 §7827 (sub-§20). Operating too close to certain buildings

It is unlawful to operate within 200 feet of a dwelling, hospital, nursing home, convalescent home or church, except on one's own property or when the owner of the land permits such use, when operating on a frozen surface of a body of water, or operating on public ways in certain circumstances (Class E crime)

COMMERCIAL SHOOTING AREA

12 §7104. Commercial shooting area license

sub-§4. enforcement of the trespass laws of a commercial shooting area shall be the responsibility of the owner, not the department

VIOLATION OF PRIVACY

17-A §511. Violation of privacy

Civil trespass on property with the intent to overhear or observe any person in a private place;
Class D crime

OTHER STATUTES RELEVANT TO TRESPASS

Agents/Employees Authorized To Enter Upon Lands

5 §13080-D. Property of authority (Loring Development Authority)

7 § 720 Inspection, sampling and analysis (commercial feed inspection; Agriculture)

7 § 745 Inspection, sampling and analysis (commercial fertilizers; Agriculture)

7 § 767 Inspection, sampling and analysis (agricultural liming materials; Agriculture)

7 § 780 Inspection, sampling and analysis (plant or soil amendments; Agriculture)

10 § 1660 Enforcement (oils; Attorney General)

10 § 2902 Taking of samples (testing milkfat contents; Commissioner of Agriculture)

10 § 9086 Right of entry and inspection (mobile home park; Manufactured Housing Board)

12 §54 Powers and duties (dams; State Soil and Water Conservation Commission)

12 §603 Surveys (Bureau of Parks and Recreation)

12 §6121 Fishways in existing dams or artificial obstructions (Commissioner of DMR)

12 §7701-A Fishways in existing dams or artificial obstructions (Commissioner of DMR)

12 §8428 Duties and authority of the Director of the Bureau of Forestry (spray projects)

12 §8869 Forest harvest regulations (Bureau of Forestry)

12 §8901 Forest rangers

- 22 §1471-H Inspection (Board of Pesticides Control)**
- 22 §1820-A Right of entry and inspection of nursing homes and boarding homes (DHS)**
- 22 §2148 Right of entry and inspection (home health care provider; DHS)**
- 22 §2497 Right of entry and inspection (camping areas and eating establishments; DHS)**
- 22 §2647-A Protection of public water source (water utility, municipality, or DHS)**
- 23 §153-B Property for highways; acquisition (survey and appraisal; DOT)**
- 23 §1967 Property of the authority; eminent domain (surveys, etc.; Turnpike Authority)**
- 25 §2397 Witness; investigations private (investigation of fires; Comm'r of Public Safety, Attorney General)**
- 30-A §4452 Enforcement of land use laws and ordinances (municipal officials)**
- 30-A §5274 DFAS development financing (surveys, etc.; municipality)**
- 30-A §5403 General grant of powers (revenue-producing facilities; surveys, etc.; municipality)**
- 37-B §744 Disaster relief (emergency management)**
- 37-B §1054 Powers of agency (Maine Emergency Management Agency)**
- 38 §321 Director of the Bureau of Parks and Recreation; duties (public facilities for boats)**

Airports

- 6 §602. Prohibitions**
- 6 §603. Penalties**

Civil Rights Act

5 §4681. Violations of constitutional rights; civil action by Attorney General

5 §4682. Violations of constitutional rights; civil action by aggrieved persons

5 §4684-A. Civil rights

Entry and Detainer

14 §6005 Writ of possession; service

Great Ponds

17 §3860. Great pond; access or egress

Illegal Dumping

17 §2264 Littering Prohibited

Landowner Liability

14 §159-A. Limited liability for recreational or harvesting activities

Light Trespass

5 §1769. Outdoor lighting

23 §708 Highway lighting

Preventing Trespass

17-A §104. Use of force in defense of premises

Railroads

- 23 §5125. Evading payment of fare or riding freight train**
- 23 §6019. Loitering about or soliciting passengers**
- 23 §6024. Company liable for trespasses on adjoining land**

Sabotage Prevention

- 37-B §1009. Unlawful entry on property**

Security Guards

- 32 §9403. Definitions**

Utilities

- 22 §2647-A. Protection of public water source**
- 35-A §2310. Trespass on a utility pole**

APPENDIX E

Landowner Relations Program Brochure

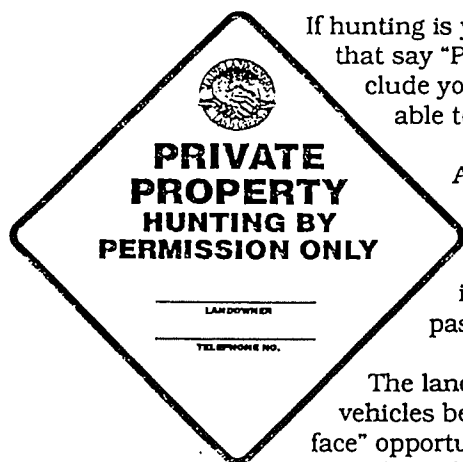
Maine Department of Inland Fisheries and Wildlife
Landowner Relations Program

Landowner Relations
Maine Fish and Wildlife Dept.
P. O. Box 1298
Bangor ME 04401



Questions and Answers: Landowners & Land Users — How To Get Along General Information

The Maine Department of Inland Fisheries & Wildlife and the Governor's Council on Landowner/Sportsman Relations encourage landowners to allow some public use of their land for recreational activities.



If hunting is your only concern, posting your property with signs that say "Private Property" or "Hunting by Permission Only" (include your name and telephone number) is much more preferable to the public than a sign reading "No Trespassing."

Allowing use "by permission only" puts the landowner in direct contact with people using his or her land. People who have asked for and received permission to use a piece of someone's land are usually more inclined to assist by reporting acts of abuse and trespass by others.

The landowner can ask to have the registration numbers of vehicles being used by sportsmen, and can take this "face-to-face" opportunity to advise users of any areas on the property to be avoided for safety reasons, e.g., areas where animals might be pastured, woodcutting operations, or acreage with houses nearby.

The landowners may also specify conditions under which hunting is allowed, e.g. "No Motor Vehicles", "Foot Traffic Only", Distances from dwellings or methods i.e.: tree stands, archery, etc.

General Information

Here are some answers to often-asked questions about posting land.

Question. I want to post my land. How do I go about it?

Answer. There are several approaches which landowners can take to control public use of their land. Certain uses may be *prohibited* by posting specific signs to that effect (e.g., "private property, no motor vehicles, camping etc. allowed").

Or certain uses of posted land can be *allowed* by posting signs saying "private property, hunting, camping, etc. by permission only." Or the landowner can prohibit all use without express permission by posting signs saying simply Private Property No Trespassing.

Question. In order for land to be considered legally posted, do signs have to be a certain size, or distance apart?

Answer. Unlike some states, Maine does not have any laws or regulations specifying the manner in which signs must be placed for property to be considered legally "posted."

A landowner can put people on notice that they may not come on his or her property either by way of signs or by talking with them; if they disregard either posted or verbal notification, the landowner may have them charged with criminal trespass. (T17-A MRSA 402)

Technically, one sign at any common point of access would constitute "posting." Realistically, however, more signs, spread out uniformly along the property boundary, would be much more effective.

Signs should not be placed anywhere or on anything not owned by the person doing the posting; if the signs are located on trees, they should be held in place by staples or aluminum nails which wouldn't damage a chipper or saw blade.

Question. Am I allowed to hunt on my own land if it is posted to prohibit hunting—and can I allow others to hunt on my posted property?

Answer. Yes, you can hunt on your property and you can allow people to go on your property for any purpose, even if it is posted. It is, after all, your property.

Question. If I post my land and the public continues to trespass, what should I do?

Answer. A landowner who posts land should be prepared to assist law enforcement agencies by being able to identify violators, and must be willing to testify in court if necessary. Before calling a law enforcement agency to report a trespass violation, the landowner should make an effort to obtain as much information as possible about the violators—descriptions of the subjects involved, method of transportation, vehicle registration numbers, etc.

Question. Who do I contact to prosecute violators?

Answer. The Maine Legislature has enacted many trespass laws over the years and just as there are many different statutes dealing with trespass there are also several different law enforcement agencies which deal with specific trespass laws.

The Maine State Police, County Sheriff Departments and local police departments have the authority to enforce all trespass laws. Forest Rangers, Marine Patrol Wardens and Game Wardens also enforce trespass laws in certain cases.

Game Wardens are responsible for enforcing trespass as it pertains to the Fish & Wildlife statutes (Title 12) specifically protecting the rights of landowners. These statutes included the following:

1. Automobile, ATV, and snowmobile operators must stop and identify selves upon the request of the landowner. (Title 12, Sec. 7800-A, 7856-2, & 7826-2)
2. Hunting and fishing license holders must exhibit their license upon the request of the landowner whose land they are upon. (Title 12, Sec. 7151-7 & 7406-2)
3. Trappers must obtain written consent of the owner or occupant on land in organized towns or agricultural land with an occupied dwelling in unorganized towns, and of the owner or occupant of land where a trap is placed within 200 yards of an occupied dwelling. (Title 12, Sec. 7432-4, & 7432a-5)
4. Except for beaver traps landowners may remove traps set without obtaining consent. (Title 12, Sec. 7432-7)
5. Written permission must be obtained before placing bear bait within 500 yards of an occupied dwelling. (Title 12, Sec. 7751-3)
6. Permission is required before operating an ATV on crop land or pasture land. (Title 12, Sec. 7857-23)
7. Persons, while hunting, cannot abuse another person's property, with abuse being defined as:
 - a) Tearing down or destroying a fence or wall
 - b) Leaving open gates or bars,
 - c) Trampling or destroying any crop, or
 - d) Damaging or destroying trees by inserting any metallic or ceramic object to be used as part of a ladder or stand or building other tree stands without written permission or without removing by the 10th day after the close of the hunting season. (Title 12, Sec. 7406-16)
8. The prohibitions in a, b, and c of above also apply to trapping (Title 12, Sec. 7432-10) and fishing (Title 12, Sec. 7624-1, 7624-2, 7624-3)
9. A person cannot discharge a firearm within 100 yards of a residential dwelling without the permission of the owner or, in the owners absence, of an adult occupant of that dwelling.

Question. Can I be held liable if someone I have allowed on my land for recreational purposes is accidentally injured?

Answer. No. Title 14, Sec. 3001 through 3005 specifically addresses the question of landowner liability by stating that a landowner has no duty to keep premises safe or give warning to others using his land with or without permission. An exception would be if the subjects were injured by a willful or malicious act on the part of the landowner or if a fee were charged.

APPENDIX F

Staff Memo regarding Civil Trespass and the Role of Custom



**Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS**

State House Station 13, Augusta, Maine 04333
Telephone (207) 287-1670
Telecopier (207) 287-1275

October 23, 1995

TO: Members of the Commission to Study Trespass Laws
FROM: Deborah Friedman, Legislative Analyst
Subj: Common law principles related to civil trespass

The Restatement of Torts provides a description of the generally acknowledged common law rules regarding trespass and the effect of custom in negating trespass.

According to section 158 of the Restatement (2d) of Torts, a person is liable for trespass under the following circumstances.

§158. Liability for Intentional Intrusions on Land

One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally

(a) enters land in the possession of the other, or causes a thing or a third person to do so, or

(b) remains on the land; or

(c) fails to remove from the land a thing which he is under a duty to remove.

Consent of the owner to the person's entry is a defense to trespass. According to section 892 of the Restatement, consent may be manifested by action or inaction and "if words or conduct are reasonably understood by another to be intended as consent, they constitute apparent consent and are as effective as consent in fact." Commentary to the Restatement specifically acknowledges that community custom affects a person's understanding of when consent has been given to enter upon property.

"In determining whether conduct would be understood by a reasonable person as indicating consent, the customs of the community are to be taken into account. This is true particularly of silence or inaction. Thus if it is the custom in wooded or rural areas to permit the public to go hunting on private land or fish in private lakes or streams, anyone who goes hunting or fishing may reasonably assume, in the absence of a posted notice or other manifestation to the contrary, that there is the customary consent to his entry upon private land to hunt or fish." Comment (d) to Section 892 of the Restatement (2d) of Torts.

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The Restatement cautions, however, that consent may be restricted to a particular time, place, or activity (Section 168-170 of the Restatement (2d) of Torts), and that the burden of proving consent rests upon the person who relies on it (Comment to Section 167 of the Restatement (2d) of Torts).

The Restatement provides general principles of the common law, but those principles may not be recognized or may be modified by the courts of a particular state. No written court opinion exists in Maine stating whether custom in Maine establishes that failure to post property implies consent to enter for hunting, skiing or any other recreational purpose.

Selected Maine Case Law Regarding Civil Trespass

Piper v. Voorhees, 130 Me. 305 (1931)

Higgins Beach landowner sued defendant for repeated trespass on her property. Defendant had entered land to use a pathway between Higgins Beach and Scarborough Beach, and claimed that a right of way over plaintiff's land had been created by custom. He argued that the right of way existed for either the general public, the local public, or for him individually.

The court found that the pathway had been used by the public as far back as the 1600's, and that at one time it could have been said that the public had acquired an easement over the property. But a public highway created by the colonial government had taken the place of the pathway and the right of the general public to use the pathway was therefore extinguished.

The court then looked at whether it is possible that the local public had acquired rights in the property. Although the English common law recognizes the concept that local custom may give rise to an easement-like right, there has never been recognition in Maine of the ability to acquire a right of way by custom. [But see description of the Moody Beach case, following] Connecticut was found to have refused to acknowledge such a right. The court found it unnecessary to address the question of whether such a doctrine exists in Maine, since the factual evidence in this case would not have supported a finding of a public right, even if the doctrine existed.

The court awarded plaintiff \$21.00 in damages for the "trampling and spoiling [of] grass and herbage."

Foley v. Farnham, 188 A.2d 708 (1936)

Pedestrians were injured by a falling sign when they stopped to rest on the premises of defendant's factory. The case examined whether the plaintiffs were trespassers and, if so, what duty of care the defendant owed to them.

Plaintiffs had been out for a walk on a Sunday afternoon, and were stopped to rest on the doorsill of defendant's building when the sign fell on them. The court ruled that the plaintiffs were trespassers, since

"every unauthorized entry on another's property is a trespass, and any one who makes such an entry is a trespasser." Foley, 188 A.2d at 712.

The court stated that trespassers must show more than negligence in order to recover for injuries suffered on the property, since

"toward trespassers, it is the universal rule the owner or occupier owes only the bare obligation to avoid inflicting willful injury. (citation omitted)" Foley, 188 A.2d at 712.

Plaintiffs in this case failed to make the required showing.

Hayes v. Bushey, 196 A.2d 823 (1964)

Dwelling owner sued truck owner-operator for damages to her property inflicted when the truck collided with her dwelling. The collision occurred because the truck driver lost control of the vehicle when it was involved in an accident on the nearby road.

The question in the case was whether an unintentional and involuntary entry upon land constitutes trespass. The court recited the Restatement of Torts for the general rule on trespass (Section 158 of the Restatement), but found that the truck driver lacked the intent to enter the land and therefore was not liable for trespass. The court distinguishes lack of intent to enter the land from lack of intent to trespass, making it clear that one trespasses if one enters property unlawfully, even if he thinks he is authorized to enter the land.

One may intend to enter upon the land of another but under the reasonable misapprehension that his entry is lawful. Such a mistake does not avoid his liability for trespass. It is only the intention to enter the land of another that is an essential element of trespass and the absence of such an intention or such negligence as will substitute therefor will destroy liability. Hayes, 196 A.2d at 825

As to the burden of proof in a trespass case, the court said this:

... [T]he plaintiff who shows his own possessory right and the act of intrusion by the defendant makes out a prima facie case as to liability. The burden of going forward with evidence to show the absence of intention and voluntariness then shifts to the defendant. The burden of proof as to all the essential elements of trespass, however, rests throughout upon the plaintiff.

Other Maine civil trespass cases focus on issues not relevant to this study, such as whether plaintiff has sufficient possessory interest in the property to maintain a trespass action.

The Moody Beach Case

Bell v. Town of Wells (The Moody Beach case), 557 A.2d 168 (Me 1989)

The Moody Beach case was not a trespass action; it was initiated by beachfront property owners to clarify the state of their title to the intertidal zone and to acquire an injunction against certain public recreational use of that zone.

The court first found that the Colonial Ordinance of 1641 gave the property owners a fee interest in the intertidal zone, subject to the public rights to fishing, fowling and navigation, but that this reserved public right does not include general recreational use. On the basis of this interpretation of the Colonial Ordinance, the court also found that the state Public Trust in Intertidal Land Act constituted an unconstitutional taking of beachfront owners' property.

Finally, the court addressed the question of whether the public had acquired a public easement by local custom at Moody Beach. First, the court turned to the question of whether Maine recognized the legal doctrine allowing public easements to be created by local custom. The court noted that the Superior Court in Bell I found that Maine did recognize such a doctrine, although it ruled that the facts in this case did not support the finding. The Supreme Court notes this, but refuses to decide whether the Superior Court was correct in holding that under the common law in Maine the public may acquire by local custom an easement over privately owned land. The court expressed some doubt, by stating that:

There is a serious question whether application of the local custom doctrine to conditions prevailing in Maine near the end of the 20th century is necessarily consistent with the desired stability and certainty of real estate titles. Bell, 557 A.2d at 179

Even if Maine did recognize the doctrine, however, the court found that the Town of Wells had failed to make a sufficient factual showing to demonstrate that the public had acquired such rights.

APPENDIX G

Trespass Laws, Posting Rules in Selected Other States

Trespass Laws — Other States

ALASKA

CRIMINAL TRESPASS DEFINED

§11.46.330, 11.46.350

A person commits 2nd degree criminal trespass if he:

(1) enters or remains in or upon premises when the premises are not open to the public and the person is not otherwise privileged to enter or remain;

(2) fails to leave premises open to the public after being lawfully directed to leave personally by the person in charge; or

(3) enters or remains on premises in violation of an order issued under 25.35.020

A person is privileged to enter "unimproved and apparently unused land" which is neither fenced nor otherwise enclosed to exclude intruders unless

(1) notice is personally communicated to that person; or

(2) notice is given by posting in a "reasonably conspicuous manner under the circumstances"

(see column #2 for posting rules)

ALASKA

POSTING PROVISIONS

§11.46.350 (c)

Notice is considered to be given by posting if the notice:

(1) is printed legibly in English

(2) is at least 144 square inches in size

(3) contains the name and address of the person under whose authority the property is posted and the name and address of the person authorized to grant permission to enter the property

(4) is placed at each roadway and at each way of access onto the property that is known to the landowner

(5) in the case of an island, is placed along the perimeter at each cardinal point of the island

(6) states any specific prohibition that the posting is directed against, such as "no trespassing", "no hunting" etc.

ALASKA

CIVIL TRESPASS PROVISIONS

§09.45.730

Treble damages in a civil action for cutting or injuring of trees or shrubs.

ARKANSAS

CRIMINAL TRESPASS DEFINED
5-39-203

A person commits criminal trespass if that person purposely enters or remains unlawfully in or upon a vehicle or the premises of another person.

Criminal trespass is a Class B misdemeanor if the vehicle or premises involved is an occupiable structure. Otherwise it is a Class C misdemeanor.

18-11-403

It is a Class B misdemeanor for any person to enter for recreational purposes upon any real property posted in the prescribed manner (see column #2).

ARKANSAS

POSTING PROVISIONS
18-11-404, 18-11-405

Forest land may be posted by either of the following methods:

(1) placing signs around the boundaries of the property at points no more than 100 feet apart and at each point of entry. The signs shall say "Posted" or "No Trespassing" or both, in letters at least 4 inches high and shall be so placed as to be readily visible to any person approaching the property; or

(2) placing identifying paint marks on trees or posts around the area to be posted.

(a) Each paint mark shall be a vertical line of at least 8 inches in length, and the bottom of the mark shall be no less than 3 feet nor more than 5 feet high.

(b) Such paint marks shall be placed no more than 100 feet apart and shall be readily visible to any person approaching the property.

(c) The type and color of the paint to be used for posting shall be prescribed by regulation by the State Forestry Commission.

Any real property other than forest land may be posted in the same method as above, except signs or paint marks may be placed no more than 1,000 feet apart.

ARKANSAS

CIVIL TRESPASS PROVISIONS
16-68-401

In all actions of trespass, if any damages are found for the plaintiff, the plaintiff shall recover costs.

18-60-102

If any person cuts down, injures, destroys, or carries away any tree, timber, rails or wood on the land of another; digs up or carries away any stone, ground, clay, fruit or plants; or cuts down or carries away any grass, grain, corn, cotton or tobacco in which he has no interest or right from land not his own, the person so trespassing shall pay the injured party treble damages, with costs.

COLORADO

CRIMINAL TRESPASS DEFINED
§18.4.503, 18.4.504

A person commits second degree criminal trespass if such person unlawfully enters or remains in or upon premises of another which are enclosed in a manner designed to exclude intruders or are fenced.

A person commits third degree criminal trespass if such person unlawfully enters or remains in or upon premises of another.

COLORADO

POSTING PROVISIONS

None found.

COLORADO

CIVIL TRESPASS PROVISIONS

None found.

ILLINOIS

CRIMINAL TRESPASS DEFINED
720 ILCS 5/21-3

It is a Class C misdemeanor to:

- (1) Enter upon land or a building (other than a residence) after receiving, prior to entry, notice from the owner or occupant that such entry is forbidden; or
- (2) Remain upon land or in a building after receiving notice from the owner or occupant to depart

A person has received notice from the owner or occupant if:

- (1) he has been personally notified, orally or in writing; or
- (2) a printed or written notice forbidding such entry has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof

Revision Committee Comments to 720 ILCS 5/21-3 (1961, revised in 1970) — "Section 21-3 covers criminal trespass to land without regard to the nature, use or location of the land. .. Note .. that notice posted at the main entrance to the land is all that is required. This puts the burden on the trespasser to ascertain at his peril when he leaves his own or public land

ILLINOIS

POSTING PROVISIONS
720 ILCS 5/21-3(b)

Notice is given by posting "at the main entrance to such land or the forbidden part thereof".

ILLINOIS

CIVIL TRESPASS PROVISIONS
5/5-126

Whoever is guilty of trespass may tender amount he deems sufficient to pay for injury plus costs to that point; if plaintiff refuses sufficient tender, plaintiff is liable to defendant for costs after the time of tender.

ILLINOIS, cont'd

UNLAWFUL HUNTING

520 ILCS 5/2.33 (t)

and goes upon the land of another whether such is permitted. The expensive requirement that farmers and other landowners post their entire acreage is eliminated. Trespass to unposted land is left to the civil courts rather than criminal."

It is unlawful for any person to trap or hunt, or allow a dog to hunt, within or upon the land of another, or upon waters flowing over or standing on the land of another, without first obtaining permission from the owner or tenant. Before enforcing this provision, the law enforcement officer must have received notice from the owner or tenant of a violation of this provision.

PENALTY: ???

[The statute also provides that it is prima facie evidence that a person does not have permission if he is unable to demonstrate that he has permission, and testimony of the owner or occupant is the only way to prove permission; however, a court decision requires the State to prove lack of permission]

LOUISIANA

CRIMINAL TRESPASS

R.S.14.63

It is criminal trespass to:

- (1) Intentionally enter any structure, watercraft, or movable without authorization.
- (2) To intentionally enter immovable property owned by another:
 - a. when the person knows the entry is unauthorized; or
 - b. under circumstances where the person should know the entry is unauthorized.

LOUISIANA

POSTING PROVISIONS

R.S. 14.63

Posting of forest land:

- (1) Paint marks placed no more than 100 feet apart on trees or posts around the area to be posted,
- (2) Signs placed around the area at no more than 100 feet apart and at normal points of ingress and egress, or
- (3) Constructing a fence around the area and placing signs at normal points of ingress and egress.

Posting of any immovable property other than forest land:

- (1) Paint marks placed no more than 1,000 feet apart and at normal points of ingress and egress,
- (2) Signs placed no more than 1,000 feet apart and at normal points of ingress and egress, or
- (3) Constructing a fence around the area and placing signs at normal points of ingress and egress.

LOUISIANA

CIVIL TRESPASS PROVISIONS

R.S. 3.4278.1

Whoever willfully and intentionally cuts, destroys or removes any trees on the land of another without the consent of the owners, shall be liable to the owner for civil damages in the amount of 3 times the fair market value of the trees, plus reasonable attorney's fees.

MICHIGAN

CRIMINAL TRESPASS

§324.73102

It is a misdemeanor to enter or remain upon the property of another person, other than farm property or a wooded area connected to farm property, to engage in any recreational activity or trapping on that property without the consent of the owner if:

- (1) the property is fenced or enclosed; or
- (2) the property is posted in a conspicuous manner against entry.

A person shall not enter or remain upon farm property for any recreational activity or trapping without the consent of the owner, whether or not the property is fenced, enclosed or posted.

MICHIGAN

POSTING PROVISIONS

§324.73102

- (1) Minimum letter height on the posting signs shall be 1 inch;
- (2) Each posting sign shall be not less than 50 square inches; and
- (3) The signs shall be spaced to enable a person to observe not less than 1 sign at any point of entry upon the property.

MICHIGAN

CIVIL TRESPASS PROVISIONS

§ 600.2919

Any person who:

- (1) cuts down or carries off any wood, trees or timber or injures any trees on another's lands, or
- (2) digs up or carries away stone, ore, gravel, clay, sand, turf, or mould or any root, fruit, or plant from another's lands, or
- (3) cuts down or carries away any grass, hay, or any kind of grain from another's lands

without the permission of the owner of the lands, is liable to the owner of the land for 3 times the amount of actual damages. If the trespass was casual and involuntary, or the defendant had probable cause to believe that the land on which the trespass was committed was his own, judgment shall be given for the amount of single damages only.

MINNESOTA

CRIMINAL TRESPASS

§97A.315, 97B.001

A person is guilty of gross misdemeanor trespass if he:

- (1) knowingly disregards signs prohibiting trespass;
- (2) trespasses after personally being notified by the landowner or lessee not to trespass; or
- (3) is convicted of trespass more than once in a three-year period.

A person is guilty of misdemeanor trespass if he:

- (1) enters agricultural land to hunt or operate a motor vehicle for pleasure purposes without first obtaining permission of the owner, occupant or lessee, except that a hunter may enter land on foot to retrieve wounded game (agricultural land is defined as land that is plowed or tilled; that has standing crops or crop residue or is within a maintained fence for enclosing domestic livestock)
- (2) enters any land to take a wild animal after being notified not to do so orally by the owner, occupant or lessee;

MINNESOTA

POSTING PROVISIONS

§97B.001(4)

An owner, occupant, or lessee of private land, or the authorized manager of public land, may prohibit unauthorized hunting, trapping, fishing or trespassing on land by posting signs that:

- (1) Display letters at least two inches high;
- (2) Are signed by the owner, occupant, lessee or authorized manager;
- (3) are at intervals of 1,000 feet or less along the boundary of the area, or in a wooded area where boundary lines are not clear, at intervals of 500 feet or less

A person may not post a sign where the person does not have a property right, title, or interest to use the land

MINNESOTA

CIVIL TRESPASS PROVISIONS

§548.05

"Whoever shall carry away, use or destroy any wood, timber, lumber, hay, grass or other personal property of another person, without lawful authority, shall be liable to the owner thereof for treble the amount of damages assessed therefor in an action to recover such damages. If upon trial, the defendant proves having probable cause to believe that such property was the defendant's own, or was owned by the person for whom the defendant acted, judgment shall be given for the actual damages only, and for costs."

MINNESOTA, cont'd.

(3) enters posted land to take a wild animal, unless the person has permission of the owner, occupant, or lessee (see column #2 for posting provisions)

A person may enter land without permission to retrieve a dog that has treed or is at bay with a raccoon, bobcat, coyote or fox.

A person may not:

(1) wound or kill another person's domestic animal;

(2) destroy, cut or tear down another person's fence, building, grain, crops, live tree or sign erected to give notice;
or

(3) pass through another person's closed gate without returning the gate to its original position

MONTANA

CRIMINAL TRESPASS DEFINED
§ 45-6-201

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:

- (1) the explicit permission of the landowner or other authorized person, or
- (2) the failure of the landowner or other authorized person to post notice denying entry onto private land.

The privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

MONTANA

POSTING PROVISIONS
§ 45-6-201

Effective posting of private land through which the public has no right-of-way:

- (1) 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; and
- (2) this notice 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.

Effective posting of private land through which or along which the public has an unfenced right-of-way by means of a public road:

- (1) a conspicuous sign posted no closer than 30 feet of the centerline of the roadway where it enters the private land, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT ____ MILES"; or
- (2) notice 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, no closer than 30 feet of the centerline of the roadway at regular intervals of not less than one-fourth mile along the roadway where it borders unfenced private land, except that orange markings may not be place on posts where the public roadway enters the private land.

MONTANA

CIVIL TRESPASS PROVISIONS
70-16-107

Any person who cuts down or carries off any wood, tree, or timber or otherwise injures any tree or timber on the land of another person, without lawful authority, is liable to the owner of such land for treble the amount of damages which may be assessed therefor in a civil action. Where such trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser, the damages are a sum equal to the actual damages.

NEW HAMPSHIRE

CRIMINAL TRESPASS DEFINED
§635.2

A person commits a criminal trespass misdemeanor if the person knowingly enters or remains:

- (1) in any secured premises;
- (2) in any place in defiance of an order to leave or not to enter which was personally communicated to the person by the owner or other authorized person; or
- (3) in any place in defiance of any court order restraining him from entering such place.

"Secured premises" means any place which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders.

NEW HAMPSHIRE

POSTING PROVISIONS
§635.4

A person may post his land to prohibit criminal trespass and physical activities by posting signs of durable material with any words describing the physical activity prohibited, printed with block letters no less than 2 inches in height, and with the name and address of the owner. Such signs shall be posted not more than 100 yards apart on all sides and shall also be posted at gates, bars and commonly used entrances.

NEW HAMPSHIRE

CIVIL TRESPASS PROVISIONS
§539.1, §539.3-a

Any person who willfully and unlawfully cuts, destroys or carries away any tree, timber, log or wood which is on the land of another person, without the permission of that person, shall forfeit to the person injured 10 times the market value of every such tree, timber, log or wood cut, destroyed or carried away.

NEW MEXICO

CRIMINAL TRESPASS DEFINED

§30-14-1 — §30-14-6

It is a misdemeanor for a person to:

(1) knowingly enter or remain upon posted private property without possessing written permission from the owner or person in control of the land, unless:

(a) the owner or person in control has entered into an agreement with the department of fish and game granting access to the land to the general public for the purposes of taking any game animals, birds or fish by hunting or fishing; or

(b) the person has a landowner license from the owner or person in control of the land granting access to take game animals, birds or fish by hunting or fishing

(2) knowingly enters or remains upon unposted lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof. Notice of no consent is deemed sufficient notice to the public and evidence to the courts, by the posting of property at all vehicular access entry ways.

NEW MEXICO

POSTING PROVISIONS

§30-14-1 (B)

Notice of no consent to enter property shall be deemed sufficient notice to the public and evidence to the courts, by the posting of property at all vehicular access ways

NEW MEXICO

CIVIL TRESPASS PROVISIONS

§30-14-1 (D)

A person who enters lands without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a misdemeanor, and is liable to the owner, lessee or person in lawful possession for civil damages in an amount equal to double the value of the damage to the property injured or destroyed.

NEW MEXICO, cont'd

(3) knowingly entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian thereof.

PENALTY PROVISIONS

Criminal trespass is a misdemeanor.

A person who commits criminal trespass in connection with hunting, trapping or fishing shall have license revoked by state game commission for a period of not less than 3 years

Whoever removes, tampers with or destroys a "no trespassing" sign is guilty of a petty misdemeanor, unless damage is over \$1,000 in which case it is a misdemeanor.

PROPERTY DAMAGE

Any person who knowingly enters upon the lands of another without written permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a misdemeanor, and he shall be liable to the owner, lessee or person in lawful possession for civil damages for double the value

NORTH CAROLINA

CRIMINAL TRESPASS DEFINED

§14-159-12, 13

First degree trespass (a Class 2 misdemeanor) for a person, without authorization, to enter or remain:

- (1) on premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or
- (2) in a building of another.

Second degree trespass (a Class 3 misdemeanor) for a person, without authorization, to enter or remain on premises of another:

- (1) after he has been notified not to enter or remain there by the owner, person in charge, or another authorized person; or
- (2) that are posted in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises.

§14-159.6

Trespassing upon posted property to hunt, fish or trap

Any person who willfully goes on the land, waters, ponds or a waterfowl blind of another upon which notices, signs or posters

NORTH CAROLINA

POSTING PROVISIONS

§14-159.7

Notices, signs or posters must measure not less than 120 square inches and must be conspicuously posted on private lands not more than 200 yards apart close to and along the boundaries.

At least one such notice, sign or poster must be posted on each side of the land, and one at each corner provided the corner can be ascertained.

For the purpose of prohibiting fishing in any stream, lake or pond, it shall only be necessary that the notices, signs or posters be posted along the stream, or shoreline of a pond or lake at intervals of not more than 200 yards apart (but nothing prohibits entrance of any person upon navigable waters and bays and sounds for the purpose of fishing, hunting or trapping)

Class 3 misdemeanor to mutilate, destroy, or take down any waterfowl blind or any posted no hunting or similar sign on the land, waters or waterfowl blind of another without the consent of the owner or agent; punishment is only fine of \$100.

NORTH CAROLINA

CIVIL TRESPASS PROVISIONS

NORTH CAROLINA, cont'd

prohibiting hunting, fishing or trapping have been placed, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a Class 2 misdemeanor; in Halifax and Warren counties, no arrests may be made under this section without the consent of the owners of the land or their duly authorized agents

PENNSYLVANIA

CRIMINAL TRESPASS DEFINED

18 Pa.C.S.A. §3503

A person commits criminal trespass if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

- (1) actual communication to the actor;
- (2) posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
- (3) fencing or other enclosure manifestly designed to exclude intruders.

An offense under this subsection constitutes a misdemeanor of the third degree if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person. Otherwise it is a summary offense.

PENNSYLVANIA

POSTING PROVISIONS

None found.

PENNSYLVANIA

CIVIL TRESPASS PROVISIONS

42 Pa.C.S.A. §8311

A person who cuts or removes the timber of another person without the consent of that person shall be liable to that person in a civil action for an amount of damages equal to:

- (1) the usual and customary costs of establishing the value of the timber cut or removed; and
- (2) one of the following: 3 times the market value of the timber cut or removed if the act is determined to have been deliberate or 2 times the market value if the act is determined to have been negligent.

VIRGINIA

CRIMINAL TRESPASS DEFINED

§18.2-119

Class 1 misdemeanor if a person:

- (1) without authority of law goes upon or remains upon the lands, buildings or premises of another after having been forbidden to do so, either orally or in writing
- (2) after having been forbidden to do so by a sign or signs posted by the owner, lessee or custodian at a place or places where it or they may be reasonably seen;
- (3) if any person goes upon or remains upon such land after having been prohibited from doing so by a court of competent jurisdiction.

§18.2-132

Class 3 misdemeanor if a person:

- (1) goes on the land, water, ponds, boats or blinds of another to hunt, fish or trap without the consent of the landowner or his agent;
- If the chase begins on other lands, fox and coon hunters may follow their dogs onto prohibited lands, and hunters of all other animals may go upon prohibited lands to retrieve their dogs, but may not carry

VIRGINIA

POSTING PROVISIONS

§18.2-134.1

Property may be posted by:

- (1) placing signs prohibiting hunting, fishing or trapping where they may reasonably be seen;
- (2) placing identifying paint marks on trees or posts at each road entrance and adjacent to public roadways and public waterways adjoining the property. Each paint mark shall be a vertical line of at least 2 inches in width and at least eight inches in length and the center of the mark shall be no less than 3 feet nor more than 6 feet from the ground or normal water surface. Such paint marks shall be readily visible to any person approaching the property. The type and color of paint to be used for posting shall be prescribed by the Department of Game and Inland Fisheries.

VIRGINIA

CIVIL TRESPASS PROVISIONS

None found

VIRGINIA, cont'd

firearms or bows and arrows on their persons or hunt any game while thereon. The use of vehicles to retrieve dogs on prohibited lands shall be allowed only with the permission of the landowner or his agent.

§18.2-134

Class 1 misdemeanor if a person:

(1) goes on the land, water, pond or boat of another which have been posted in accordance with §134.1 to hunt, trap or fish except with the written consent of or in the presence of the owner or his agent.

Class 4 misdemeanor if a person:

(1) goes on the land, water, ponds or boats of another to hunt, fish or trap and willfully refuses to identify himself when requested by the landowner or his agent to do so

Class 3 misdemeanor to mutilate, destroy, or take down any posted, no hunting or other similar sign on the lands or waters of another or to post such sign without the consent of the landowner or his agent. Hunting license is also revoked for a period not exceeding the expiration date of the license.

UTAH

CRIMINAL TRESPASS DEFINED

§ 76-6-206

A person is guilty of criminal trespass if, knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entering is given by:

- (1) personal communication to the actor by the owner or someone with apparent authority to act for the owner;
- (2) fencing or other enclosure obviously designed to exclude intruders;
- (3) posting of signs reasonably likely to come to the attention of intruders.

§ 23-20-14

While taking wildlife or engaging in wildlife related activities, a person may not:

- (1) without the permission of the owner or person in charge, enter upon privately owned and properly posted land of any other person, firm or corporation;
- (2) refuse to immediately leave the private land if requested to do so by the owner or person in charge; or
- (3) obstruct any entrance or exit to private property.

A violation is a Class B misdemeanor.

UTAH

POSTING PROVISIONS

§ 23-20-13

"Properly posted" means that "No Trespassing" signs or a minimum of 100 square inches of bright yellow or fluorescent paint are displayed at all corners, fishing streams crossing property lines, roads, gates, and rights-of-way entering the land. If metal fence posts are used, the entire exterior side must be painted.

UTAH

CIVIL TRESPASS PROVISIONS

§ 78-38-3

Any person who cuts down, injures or carries off any wood, tree or timber on the land of another person, without lawful authority, is liable to the owner of such land for treble damages in a civil action.

APPENDIX H

Survey of Landowners

From: Maine Department of Inland Fisheries and Wildlife
Survey of Attitudes of Members of Three Landowner Groups in Maine
Toward Public Use of Their Private Land, 1988.

Table 11. Percent of respondents by landowner group who want to be asked by the public for permission before use of their land and percent of respondents by landowner group who have never been asked by the public for permission to use their land.

| <u>Landowner Group</u> | <u>Percent of Group</u> | |
|------------------------|------------------------------------|---------------------------|
| | Want To Be Asked for Permission | Never Asked Permission |
| SWOAM (n=193,184) | 82.6 | 46.1 |
| SWCD (n=155,153) | 87.6 | 24.5 |
| SOS (n=95) | 90.5 | 44.2 |

Table 7 Percent of respondents by landowner group selecting reason why land is posted (non-exclusive categories)

| <u>Reason for Posting</u> | <u>Percent of Group</u> | | |
|------------------------------------|-------------------------|----------------|---------------|
| | SWOAM (n=64) | SWCD (n=68) | SOS (n=64) |
| Past abuses of property | 67.2 | 77.9 | 76.6 |
| To protect safety of self & family | 90.6 | 77.9 | 87.5 |
| To protect value of property | 46.9 | 30.9 | 32.8 |
| To protect owner from liability | 53.1 | 50.0 | 53.1 |
| To control hunting | 53.1 | 58.8 | 67.2 |
| To control access | 54.7 | 44.1 | 53.1 |
| Neighbors have posted | 10.9 | 8.8 | 15.6 |
| To control poaching activities | 51.6 | 44.1 | 51.6 |
| To protect farm animals | 37.5 | 60.3 | 53.1 |

Table 8. Percent of respondents by landowner group who encountered a type of public use problem (Non-exclusive categories).

| <u>Type of Problem</u> | <u>Percent of Group</u> | | |
|------------------------|-------------------------|-----------------|---------------|
| | SWOAM (n=195) | SWCD (n=156) | SOS (n=97) |
| Vehicle Use | 38.5 | 42.3 | 32.0 |
| Theft-damage-Fire | 25.1 | 19.2 | 15.5 |
| Littering | 30.8 | 23.7 | 18.6 |
| Property rights | 20.5 | 25.0 | 35.1 |
| Inconsiderate | 17.9 | 25.6 | 16.5 |
| Hunting | 16.4 | 18.6 | 26.8 |
| Illegal activities | 8.2 | 12.8 | 14.4 |
| Anti-Hunting | 2.0 | 3.2 | 8.2 |
| Liability | 1.5 | 0.6 | 1.0 |

APPENDIX I

Department of Inland Fisheries and Wildlife Policy regarding Department Employees' Access to Private Property

DP - A.35



John R. McKernan, Jr.
Governor

Ray B. Owen, Jr.
Commissioner

DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

Telephone (207) 287-3371

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ADMINISTRATIVE POLICY REGARDING RESPECT OF PRIVATE PROPERTY

The personnel of the Department of Inland Fisheries and Wildlife, when engaged in their official activities, will respect the desires of landowners regarding access over and across private property when the landowner has made his or her desires known. Consequently, before Department personnel enter private land that is posted to "NO TRESPASSING," the verbal permission of the landowner, a member of his or her immediate family, or agent, must be obtained. Department personnel responding to emergencies will be exempt from this requirement.

Where the landowner has not made his or her desires known, a reasonable attempt will be made to obtain verbal permission from the landowner or a representative of the landowner (if known) or verbal notification (your name, purpose for entering private property) will be given to an occupant of a home or business, if present, in the immediate vicinity of your point of entry onto private property. The verbal permission of the landowner, a member of his immediate family, or his agent must be obtained before crossing over or through any pasture or other enclosed area containing livestock or other domesticated animals.

Department personnel will respect the rights of the landowner, will complete their tasks in a professional and timely manner, and will not engage in extraneous activities that are not part of their assignment.

Under no circumstances should any markings or placement of signs be done without landowner permission, except when posting public health advisories or regulations.

Individuals involved in law enforcement, investigation of environmental permit applications or compliance, or safety operations will not be required to seek or obtain landowner permission.

Ray B. Owen, Jr., Commissioner