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Senate Bill 106 (as passed by the Senate)
Sponsor: Senator Curtis S. VanderWall
Committee: Natural Resources

Date Completed: 1-13-22

RATIONALE

The Nature Resources and Environmental Protection Act generally prohibits an individual from entering onto private property to engage in recreational activity if the property is enclosed or conspicuously marked against entry. Private property owners in Michigan may post signs marking their land as private property through a variety of means, usually by placing signage around the perimeter either on posts or mounted on trees. However, this signage may not be an option for some property owners who are concerned about possible damage to trees from mounting signs. While posts are an option for some, not all terrains are ideal for post-mounted signage. Additionally, signs posted on either a post or a tree are liable to be removed or damaged by trespassers. It has been suggested that using purple paint as a "private property" marker could mitigate these concerns because it would not cause physical damage to a tree and could not be easily removed.

CONTENT

The bill would amend Part 731 (Recreational Trespass) of the Natural Resources and Environmental Protection Act to do the following:

- Prohibit a person from engaging in recreational activity or trapping on another person's property if, among other things, the property were posted against entry with purple paint marks on trees or posts around the property.**
- Specify length and height requirements for purple paint marks, and require the paint used to be approved by the Department of Natural Resources (DNR).**
- Prohibit a person from removing or destroying a purple paint mark that had been placed on a tree or post.**
- Prohibit a person from placing purple paint marks on another person's property to prohibit hunting, fishing, trapping, or other recreational activities on that property.**

The bill would take effect 90 days after its enactment.

Part 731 generally prohibits a person from entering or remaining on another person's property, other than farm property or a wooded area connected to farm property, to engage in a recreational activity or trapping on the property without the consent of the owner, or his or her lessee or agent, if the property is fenced or enclosed and is maintained in such a manner as to exclude intruders, or if the property is posted in a conspicuous manner against entry with signs meeting specified size and spacing standards.

Also, except as provided to retrieve a hunting dog, a person may not enter or remain on farm property or a wooded area connected to farm property for any recreational activity or trapping

without the consent of the owner or his or her lessee or agent, whether or not the farm property or wooded area connected to farm property is fenced, enclosed or posted.

Under the bill, instead, a person could not enter or remain on the property of another person to engage in any recreational activity or trapping on that property without the consent of the owner, or his or her lessee or agent, if any of the following circumstances existed:

- The property was fenced or enclosed and was maintained in such a manner to exclude intruders.
- The property was farm property or wooded area connected to farm property.
- The property was posted in a conspicuous manner against entry by posting signs meeting the current size and spacing standards, or by placing purple paint marks on trees or posts around the property.

If purple paint marks were used, it would have to be a paint approved for that purpose by the DNR. Each paint mark would have to be a vertical line at least eight inches long, and the bottom of the mark would have to be between three and five feet above the ground. The paint marks could not be more than 100 feet apart and would have to be placed so that they were readily visible to individuals approaching the property.

The Act prohibits a person from removing, defacing, or destroying a sign or poster that has been posted under Part 731. This prohibition also would apply to a purple paint mark that had been placed on a tree or post. Also, a person may not post a sign on property owned by another person or enclose another person's property to prohibit hunting, fishing, trapping, or other recreational activity on that property without the written permission of the property owner, or his or her lessee. The bill would prohibit a person from placing a purple paint mark on a tree or post for these purposes, as well.

(An individual who violates Part 731 is guilty of a misdemeanor punishable by up to 90 days' imprisonment or a fine of at least \$100 but not more than \$500, or both. The court may order an individual who violates Part 731 to pay the costs of prosecution. The Act prescribes enhanced penalties for a second or subsequent violation within three years of a previous violation and allows the court to order that the person's hunting, fishing, or trapping license be revoked and that the person not seek or possess a license for three years. Also, the court must order a person convicted of violating Part 731 to make restitution for any damage arising out of the violation.)

MCL 324.73102 et al.

ARGUMENTS

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

Supporting Argument

Paint markers would be an effective alternative to signage when marking property lines because it would be more difficult to remove or alter, intentionally or unintentionally. Also, it would prevent property owners from having to resurvey their property lines, which can be expensive, if signage were removed. Purple paint also would be a more practical and less costly alternative to mark private property when terrain or size of the property makes it inconvenient to use fencing.

Opposing Argument

There are a number of issues that could present themselves if purple paint were used to mark private property. Paint could be too permanent a marker in many instances. For example, if a painted mark were made in error or to deceive, it would be more difficult to remove than signage

on a post or a tree. Also, some game species are hunted at night. Many signs are designed to be highly visible and to contrast with forest colors and would serve as a better property marker for use in the evening or at night. Purple is a dark color and likely would not be readily visible at night. Lastly, the bill is unclear as to who would bear responsibility for removing paint improperly applied or how often paint would need to be refreshed to be considered signage.

Response: Fifteen other states, including Indiana and Illinois, currently allow purple paint for the purpose of marking private property. Arkansas was the first state to adopt this method in the 1980s, and it has continued to allow its use, which demonstrates that it is effective. Additionally, using purple as opposed to another color of paint would provide continuity of meaning for individuals from other states who come to Michigan for outdoor recreation or vice versa.

Legislative Analyst: Dana Adams

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ben Dawson

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