

SB

201

<TARGET><BILL>SB 201</BILL><SUBJECT>SB
201</SUBJECT><COMM>SFIN28</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT First Committee of Referral

DATE: 3/31/14

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered SENATE BILL NO. 201

SB 201 CRIMINAL TRESPASS ON PRIVATE PROPERTY

"An Act relating to the crime of trespass."

and recommends:

- [] be replaced with CS _____ (_____) [] Same Title [] New Title
 [] adopt previous CS SB 201 (JVD) [] Same Title [] New Title
 [] attached amendment(s)
 [] adopt _____ Letter of Intent
 [] further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
ADM			✓	
COR			✓	
LAW			✓	

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
ADM			✓	1
DPS			✓	4
DPS			✓	5

[] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	NO REC	AMEND
	Clark			✓	
	Hoffman	✓			
	Bishop	✓			
	FAIRCLOUGH	✓			
	Dunleavy				✓
CO-CHAIR:	Kelly			✓	
CO-CHAIR:	Meyer	✓			

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: SB 201
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB201CS(JUD)-LAW-CRIM-04-07-14
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY
Sponsor: STEDMAN
Requester: (S) FINANCE

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Fiscal note changed from indeterminate to zero, and analysis changed to reflect that the committee substitute does not repeal AS 11.46.350(b), which requires notice against trespass by posting or actual communications.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division:	Department of Law	Date:	03/31/2014 10:20 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	04/07/14
Agency:	Department of Law		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201 (JUD)

Analysis

This bill repeals AS 11.46.350(c), which describes the manner in which a person must post his property under the criminal trespass prohibition. Current law requires that notice be a minimum size and be placed at each place of access to the property known to the owner.

If the bill is enacted owners would still be required to post their property in a reasonably conspicuous manner or personally deliver notice. The number of entries that will be illegal under this change is not known; however the Department of Law does not anticipate a fiscal impact.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: SB 201
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB201CS(JUD)-DOA-PDA-03-29-14
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY
Sponsor: STEDMAN
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Public Defender Agency
OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Updated for committee substitute.

Prepared By:	Quintan Steiner, Public Defender	Phone:	(907)334-4414
Division:	Public Defender Agency	Date:	03/29/2014 03:20 PM
Approved By:	Curtis Thayer, Commissioner	Date:	03/29/14
Agency:	Department of Administration		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201(JUD)

Analysis

SB201 eliminates the specific language articulating the ways notice against trespass must be given by property owners.

The Public Defender Agency does not anticipate a fiscal impact from this legislation and therefore submits a zero fiscal note.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: SB 201
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB201CS(JUD)-DOC-OC-03-29-14
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY
Sponsor: STEDMAN
Requester: Senate Judiciary

Department: Department of Corrections
Appropriation: Administration and Support
Allocation: Office of the Commissioner
OMB Component Number: 694

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

This fiscal note reflects changes made in Senate Judiciary.

Prepared By: April Wilkerson, Director
Division: Administrative Services - Department of Corrections
Approved By: Leslie Houston, Deputy Commissioner
Agency: Department of Corrections

Phone: (907)465-3460
Date: 03/29/2014 08:00 AM
Date: 03/29/14

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201(JUD)

Analysis

This bill repeals the section of law which outlines detailed requirements for posting notice of trespass. Under this legislation, a property owner would only be required to give notice of trespass in person or by posting a notice in a reasonably conspicuous manner under the circumstances.

Criminal trespass in the second degree is a class B misdemeanor and is punishable by a term of imprisonment of not more than 90 days. The Department could see a fiscal impact of \$0 (no days served) to \$14,280.30 (90 days served) for each class B misdemeanor conviction under this legislation.

At this time the department does not have information to quantify the number of potential offenders this legislation would create and will continue to monitor for future impacts. The Department of Corrections anticipates minimal to no fiscal impact at this time.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 201(JUD)
Fiscal Note Number: 1
(S) Publish Date: 3/31/14

Identifier: SB201-DOA-OPA-03-14-2014
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY
Sponsor: STEDMAN
Requester: Senate Judiciary

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Office of Public Advocacy
OMB Component Number: 43

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: <u>Richard Allen, Director</u>	Phone: <u>(907)269-3504</u>
Division: <u>Office of Public Advocacy</u>	Date: <u>03/14/2014 11:15 PM</u>
Approved By: <u>Curtis Thayer, Commissioner</u>	Date: <u>03/14/14</u>
Agency: <u>Department of Administration</u>	

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201(JUD)

Analysis

This legislation repeals AS 11.46.350(b) and (c). Those provisions prescribe a limited privilege for trespassing upon private property under certain circumstances and also prescribe methods of notice and posting by landowners which negate that limited privilege.

By repealing those provisions, SB201 would strengthen the criminal trespass law at AS 11.46.300-330 and eliminate potential or possible defenses to a charge of criminal trespass based upon (b) and (c). The bill would impact the general public, landowners, prosecutors and defendants charged with criminal trespass.

This bill would not likely have any material impact upon OPA operations, administration or budget and therefore, OPA submits a zero fiscal note.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 201(JUD)
Fiscal Note Number: 4
(S) Publish Date: 3/31/14

Identifier: SB201-DPS-AWT-03-14-14
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY
Sponsor: STEDMAN
Requester: Senate Judiciary

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska Wildlife Troopers
OMB Component Number: 2746

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Captain Burke Waldron	Phone: (907)761-7139
Division: Alaska Wildlife Troopers	Date: 03/14/2014 03:30 PM
Approved By: Gary Folger, Commissioner	Date: 03/14/14
Agency: Department of Public Safety	

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201(JUD)

Analysis

This bill proposes to repeal subsections (b) and (c) from AS 11.46.350 relating to the definition of terms used in burglary and criminal trespass laws; essentially removing the exception (privilege) that allows a person to remain on private property that is unimproved and apparently unused land unless notice is given. This specifically relates to criminal trespass in the second degree under AS 11.46.330.

Criminal trespass in the second degree has a default culpable mental state of "knowingly" per AS 11.81.610. The definitions contained in AS 11.46.350(b) and (c) give parameters of what constitutes "knowingly" for the purposes of trespassing onto private property that is unimproved and apparently unused. If (b) and (c) are removed, "knowingly" will default to the definition given in AS 11.81.900 which is more ambiguous than the necessary conduct described in (b) and (c).

Though it is anticipated that the Alaska Wildlife Troopers may spend more time investigating reported trespass cases on unimproved land trying to establish whether the conduct would constitute "knowingly" trespassed, this is part of the normal job duties of a trooper and would therefore not result in a fiscal impact. Consequently, a zero fiscal note is being submitted.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSSB 201(JUD)
Fiscal Note Number: 5
(S) Publish Date: 3/31/14

Identifier: SB201-DPS-DET-03-14-14
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY
Sponsor: STEDMAN
Requester: Senate Judiciary

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: <u>Lt. Rodney Dial</u>	Phone: <u>(907)247-4480</u>
Division: <u>Alaska State Troopers</u>	Date: <u>03/14/2014 01:30 PM</u>
Approved By: <u>Gary Folger, Commissioner</u>	Date: <u>03/14/14</u>
Agency: <u>Department of Public Safety</u>	

FISCAL NOTE ANALYSIS #5

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201(JUD)

Analysis

This bill proposes to repeal subsections (b) and (c) from AS 11.46.350 relating to the definition of terms used in burglary and criminal trespass laws; essentially removing the exception (privilege) that allows a person to remain on private property that is unimproved and apparently unused land unless notice is given. This specifically relates to criminal trespass in the second degree under AS 11.46.330.

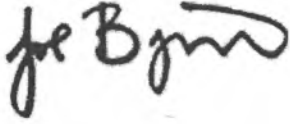
Criminal trespass in the second degree has a default culpable mental state of "knowingly" per AS 11.81.610. The definitions contained in AS 11.46.350(b) and (c) give parameters of what constitutes "knowingly" for the purposes of trespassing onto private property that is unimproved and apparently unused. If (b) and (c) are removed, "knowingly" will default to the definition given in AS 11.81.900 which is more ambiguous than the necessary conduct described in (b) and (c).

Though it is anticipated that the Alaska State Troopers may spend more time investigating reported trespass cases on unimproved land trying to establish whether the conduct would constitute "knowingly" trespassed, this is part of the normal job duties of a trooper and would therefore not result in a fiscal impact. Consequently, a zero fiscal note is being submitted.

Doniece Gott

From: Sen. Pete Kelly
Sent: Wednesday, April 02, 2014 11:11 AM
To: Senate Finance Committee
Subject: FW: SB 201/HB375

Public testimony



Joe Byrnes
Staff for Senator Pete Kelly
907-456-3709



From: Ross Beal [mailto:rossbeal@gci.net]
Sent: Wednesday, April 02, 2014 10:53
To: Sen. Click Bishop; Sen. Pete Kelly
Cc: Rep. David Guttenberg
Subject: SB 201/HB375

Senators,

I view this Bill as another knee-jerk reaction to one unfortunate incident of trespass in the valley concerning a State Trooper and another individual. It seems this is being done due to the one incident. We have a couple of bad apples so let's change or eliminate the statute to remove privileges from all. This removes any responsibility from the land owner and puts it all on the individual who just wants to enjoy all that our great state has to offer. I strongly urge that this Bill not go forward and leave AS 11.46.350 as stated in its original form.

Ross Beal
P. O. Box 70933
Fairbanks, Alaska
E-Mail: rossbeal@gci.net

ALASKA STATE LEGISLATURE

SESSION

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SENATOR BERT K. STEDMAN

Sponsor Statement

CSSB 201(JUD) - Criminal Trespass on Private Property

As a landowner, you have the right to regulate activities on your property. However, in Alaska, current state law gives a person the privilege to enter and remain on unimproved or apparently unused land that isn't posted with "no trespassing" signs. Furthermore, a sign must be placed at each roadway or access point onto the property. Many Alaskans own private property in remote locations with inclement weather. No trespassing signs can be blown down, removed by vandals, or covered by snow. The lack of visible signage should not absolve trespassers of guilt.

Senate Bill 201 would repeal Alaska Statute 11.46.350(c), thereby removing the requirement that no trespassing signs be posted at each roadway and at every way of access to private property in order for criminal trespass laws to be enforced. It should be the responsibility of the individual to know who owns the property that they want to access. Today's technology allows many options for individuals to identify public and private property boundaries such as topo maps that can be downloaded on a smart phone or GPS. In addition, the public can access maps showing property boundaries from the state Department of Natural Resources, the U.S. Geological Survey, as well as municipal plats available at city hall.

District Q

*Ketchikan • Sitka • Wrangell • Haines • Metlakatla • Craig
Klawock • Hoonah • Kake • Thorne Bay • Angoon • Saxman • Hydaburg • Coffman Cove • Naukati • Hollis
Klukwan • Hyder • Pelican • Kasaan • Port Alexander • Port Protection • Edna Bay • Whale Pass • Elfin Cove • Point Baker • Meyers Chuck*

ALASKA STATE LEGISLATURE

SESSION

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SENATOR BERT K. STEDMAN

MEMORANDUM

TO: Senator Lesil McGuire, Chair
Senate Rules Committee

FROM: Senator Bert K. Stedman

DATE: 3/31/14

SUBJECT: Senate Judiciary Changes to SB 201

SB 201 version A repealed AS 11.46.350(b) and (c). The Senate Judiciary Committee Substitute version U only repeals AS 11.46.350(c).

District Q

*Ketchikan • Sitka • Wrangell • Haines • Metlakatla • Craig
Klawock • Hoonah • Kake • Thorne Bay • Angoon • Saxman • Hydaburg • Coffman Cove • Naukati • Hollis
Klukwan • Hyder • Pelican • Kasaan • Port Alexander • Port Protection • Edna Bay • Whale Pass • Elfin Cove • Point Baker • Meyers Chuck*

Alaska Statutes

Title 11 – Criminal Law

Chapter 46 – Offenses Against Property

Sec. 11.46.350. Definition.

(a) As used in AS 11.46.300 - 11.46.350, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so;

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued or filed under AS 18.66.100 - 18.66.180 or issued under former AS 25.35.010(b) or 25.35.020.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or

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

(c) A notice against trespass is given 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 who is 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; and

(6) states any specific prohibition that the posting is directed against, such as "no trespassing," "no hunting," "no fishing," "no digging," or similar prohibitions.

From: John M. Kennish [mailto:kennish@live.com]
Sent: Sunday, March 16, 2014 1:48 PM
To: Sen. Bert Stedman
Subject: SB201

I support this bill. I have property in NInilchik and people are always coming on to it without permission. My cabin has been broken into once and I always see signs that someone has driven onto my property with the ATV. It is especially bad when the Salmonstock celebration is ongoing. I respect other people's property and I would appreciate the same in return. Thank you for this effort.

From: Cleve Cowles [mailto:ceejaycee5@yahoo.com]
Sent: Sunday, March 16, 2014 11:04 AM
To: Sen. Fred Dyson
Subject: Please support SB 201; please consider a few other comments on this topic:

As it appears, the SB 201 proposed deletions of AS 11.46.350(b and c) take the burden from the landowner requiring onerous posting requirements. I support these changes.

This would be helpful, but I don't think those changes go far enough or clearly articulate a more fundamental principal: If you haven't acquired prior approval to be on private property, regardless of how the land appears (remote or within sight of a dwelling) you are presumed to be trespassing.

Other comments:

It appears odd to me that this section is buried under the heading of "Vehicle Theft"

More needs to be done on this topic, if it hasn't been: The state code should make it clear that unless you have obtained permission in writing to be on private property, that you are presumptively trespassing. The ignorance excuse doesn't cut it anymore given that modern locational devices (GPS) can tell a person exactly where they are. Also, the law should articulate that the State Police can act forcibly to immediately remove or charge a trespasser if requested to do so by an aggrieved private property owner providing clear evidence of trespass (such as by photo images, including remotely operated or otherwise automated cameras).

Does the Alaska Code have a definition of trespass? If not, it needs one along the lines of the above comment.

Thank you for your consideration.

Cleve Cowles
Eagle River, Alaska

ADN.com

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Wildlife trooper with traps on private land sued for trespass

By ZAZ HOLLANDER

zhollander@adn.com December 14, 2013

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Land leaseholders Mark Loomis and Nicolene Jordan posted a no trespassing sign at an access point near Colony High School after they discovered snares on the land. Authorities say setting traps or snares on private land isn't illegal unless access points are posted with signs. November 2013.

PHOTO BY MARK LOOMIS

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WASILLA — An Alaska wildlife trooper has been named the defendant in a lawsuit that claims he and his trapping partner violated the law when they set snares for fox and coyote on private property without permission.

Central Gravel Products owners Nicolene Jordan and Mark Loomis filed the civil lawsuit against Trooper John Cyr for "multiple trespasses and creation of an ongoing nuisance" on land they lease in a suburban area near Colony High School.

The complaint, which Talkeetna attorney Paul Brattan filed Thursday in Palmer Superior Court, also lists as a defendant Rick Ellis, Cyr's trapping partner and a past president of the Alaska Frontier Trappers Association.

Ellis said Friday he hadn't yet been served and declined to comment. Cyr previously instructed a reporter to contact Ellis for any comments. He is a wildlife trooper based out of Palmer.

The lawsuit centers on an incident last month that's sparked a debate about just how far hunters and trappers can go before bumping up against private property rights.

Jordan and Loomis in mid-November discovered at least 38 snares in an old potato field on 160 acres leased for years from landowner Ralph Kircher. Neither they nor Kircher ever gave the trappers permission to enter the property, both said last month.

They also found several moose heads and what looked like the body of a moose calf used as bait, according to the complaint. Boot prints led in and out of the property about 200 feet from a sign marking the entrance to the gravel company.

Cyr's name was on a state permit for the salvaged moose parts.

Loomis pulled the snares and Jordan filed a formal complaint about the trooper's actions with the Department of Public Safety.

A wildlife trooper sergeant came out and investigated the complaint. He found nothing illegal happened because the place the trappers entered the property wasn't posted with a sign prohibiting trespassing or trapping, troopers said at the time.

Under Alaska's criminal trespass statute, property owners must post every road and known access point on their land with signs 144 square inches in size that are inscribed with the landowner or leaseholder's name and contact information.

There was no sign at the point where the trappers entered, authorities said. But there were other signs on the property.

Even if Jordan and Loomis "attempt to post enough signs to convince every potential passing trapper that they have complied with the strict provisions in the Alaska criminal trespass statute, the frequent gale-force winds in the area will soon blow a goodly portion of these signs away," the complaint says.

Ellis said last month that he and Cyr trapped fox and coyote on the land last year. This year, he set the snares but hadn't started trapping yet.

They never asked for permission, he said, because they didn't have to.

Ellis, in a contention echoed numerous times by the troopers, said the trappers did nothing illegal. That's because the place they entered the property -- a pull-out blocked by several logs -- wasn't posted.

"Lacking the presence of any signs, anybody can go anywhere they want," he said last month. "They can trap, they can hunt, they can do whatever."

Several attorneys said in interviews that Ellis' assertion is just not true.

Trapping or hunting on private property that's not properly posted may not be a crime but it's also not legal and could lead to civil lawsuits like the one filed this week by Loomis and Jordan, they said.

"It is a civil wrong," said attorney Sam Fortier, a longtime Anchorage attorney who represents 30 village corporations. "What (the troopers) said was true but that's not the whole story. There's kind of an omission. I think it's wrong to omit material facts as much as it to misstate them."

Civil trespass in Alaska is defined much more simply than its criminal counterpart, according to the Alaska Court System's standard jury instructions: "A trespass is an intrusion onto land possessed by another without consent or other privilege. Trespass includes not only entry onto land, but also remaining on land, or causing a third person or thing to enter or remain."

In a civil trespass case, a landowner or lease holder has the right to damages as well as attorney fees if they can prove someone intentionally entered the land when it wasn't an emergency even if no "harm" was done to the property, according to Doug Pope, another Anchorage attorney with decades of practice who's also a former Board of Game chairman.

"The trappers in your story would be classic examples of that," Pope wrote in an email, referring to an earlier Daily News story about the original incident involving the snares.

Troopers can only enforce criminal statutes, spokeswoman Megan Peters said Friday. "We have to go by the criminal definition of the law."

The complaint against Cyr and Ellis, however, charges that the men also may have violated criminal law.

The document refers to a state statute that defines criminal trespass as "a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land."

But the land in this case was clearly not "unimproved and apparently unused," so it was not necessary to post signs, the complaint charges.

"Snares were set within a dozen feet of excavations and gravel storage piles," it says. "Therefore there could have been no question in any reasonable person's mind about the land being 'apparently unused.'"

Cyr had also bought gravel there in the past, according to the complaint.

Even if the court doesn't find that Cyr and Ellis violated criminal law, they are still liable for civil trespass and creating a nuisance with the snares and carcasses, which could draw animals to the site in close proximity to a school, the complaint says.

Jordan and Loomis are seeking damages to be determined at trial, as well as attorney fees.

Superior Court Judge Eric Smith will hear the case. No hearings have been scheduled yet.

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